

Neutral Citation Number: [2023] EWFC 108

Case No: BM21P70384

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 30 June 2023

Before :

HIS HONOUR JUDGE WILLANS

Between :

A Father

Applicant

- and -

A Mother

Respondent

Ayoub Khan (Direct Access Counsel) for the Applicant
Gareth Hutton (instructed by AGR Law) for the Respondent

Hearing dates: 30-31 May and 30 June 2023

JUDGMENT

His Honour Judge Willans:

Introduction

1. Within this judgment I refer to the parties using the label of mother and father. I refer to other individuals by reference to their relationship to the parties. I do so to preserve anonymity and intend no discourtesy.
2. This reserved written judgment follows a 2-day fact find hearing in which I was asked to determine a series of allegations made against the father. I have considered the documents in the final hearing bundle (together with some supplemental documents, audio and photographic files received during the hearing); the live evidence of (i) the parents (ii) the mother's sister and (iii) the maternal grandmother, and; the submissions made by counsel for each party. The hearing proceeded on an attended basis although the family members gave remote evidence. Participation directions applied in the form of a screen during the hearing and appropriate breaks during the evidence.

The allegations

3. I case managed this fact find. Consistent with authority I did not limit the scope of the allegations or restrict them in number. The mother provided a schedule of allegations and a supporting statement¹ in which she alleged:
 - i) *On 4 September 2020 the father forced the mother to have sexual intercourse with him, orally and vaginally ...this was reported on 18 July 2021.*
 - ii) *On 21 September 2020 I wanted to speak to my mother over the phone which the father did not like, the father therefore verbally abused me, took my phone from me and threw it to the floor causing it to smash. The father then pushed me on his way out and threw objects in my direction....I later reported this incident to the police on 18 July 2021*
 - iii) *On 4/5 February 2021 the father verbally abused me and threatened to punch my face. This was after an incident regarding the child's gender, where I was forced to call the hospital also. The father's mother was present. I reported this....on 18 July 2021*
 - iv) *On 22 April 2021 the father physically abused me and made threats to kill me and the child (I was pregnant at the time), he did this while under the influence of cannabis. I reported this....on 18 July 2021*
 - v) *On 4 July 2021 the father held the child whilst heavily intoxicated with alcohol and cannabis. He refused to give her to me whilst being verbally abusive. I reported this....on 18 July 2021*
 - vi) *On 5 July 2021 the father and I were arguing over a Moses basket and he called me a 'bitch' a 'cunt' and 'a fucking stupid bitch' and he said that I never listen to him. I reported this...on 18 July 2021*

¹ In fact she produced two of each with the first containing 5 of the ultimate 8 allegations. The second statement can be viewed as a comprehensive account of her allegations found in each statement.

vii) *On 13 July 2021 a toy was used by the father to suffocate the child in her cot. I reported this... on 18 July 2021*

viii) *On 23 July 2021 the father was demanding contact with our child, he verbally abused me and threatened me with court proceedings. The father called my mother and I 'snakes'. He also states that he does not care about an injunction and calls me a dog. This was after I applied for a non-molestation order in early July 2021...I did not report this....*

4. The statement focused on each of the allegations without providing a separate detailed narrative account of a pattern of behaviour throughout the relationship. In this regard it might be felt this case is restricted to the matters contained in the schedule only. I intend to take a different approach. This is because in the statement one can pick up elements of alleged controlling behaviour and further in a preceding injunction statement the mother raised concerns as to controlling behaviour, whilst not raising the substantive matters set out in §4 above. So, in the supporting statement the mother consistently states she was unable to report the behaviours of which she now complains because: *"every aspect of my life was monitored"*; *"he monitored my phone and I was never alone long enough to call someone and seek help"*; *"the applicant's mother would also listen into my calls"*. In the injunction statement her focus was on alleged controlling behaviour but set this out in relatively limited detail commenting: *...he became very controlling. He stopped me from using Facebook and tried to isolate me from my friends and family. He would tell me what to wear and how to put on (sic) my make up on. He would constantly criticise me for not cleaning or doing things properly"*. I intend to consider these allegations within this judgment.

The law

5. The basic principles of any fact finding are well established and can be summarised as follows:
- 5.1 Whoever makes an allegation has the burden of proving it is true. It is not for the other party to disprove the allegation. An allegation will be proven by establishing it is more likely than not to have happened. If this standard is met the allegation will be regarded as a fact. If not, it will be wholly disregarded.
- 5.2 The Court acts on evidence not suspicions or anecdotal evidence. The evidence of the key participants (here the parents) will be central to any evaluation and should be considered with care. However, all evidence is relevant and the Court should have regard to the wide canvas of evidence in assessing whether something happened.
- 5.3 In cases involving alleged domestic abuse it may be helpful to focus on clusters of allegations (e.g., physical or sexual abuse). Over-reliance on schedules will likely be unhelpful. In cases in which controlling behaviour is alleged the Court is concerned with patterns of behaviour. The Court will benefit from a holistic evaluation and should avoid a compartmentalised approach.

- 5.4 It is inappropriate to import criminal concepts into this civil assessment. The Court should look at the reality of the behaviour rather than becoming tied down in criminal legal definitions. This does not mean the Court should not be mindful of lazy stereotypes of how 'victims' are expected to behave. Guidance given to criminal juries in this regard are of assistance. In any event authorities such as Re H-N set out with care the step change in understanding as to the reality and impact of domestic abuse for victims of the same.
- 5.5 The Court can have regard to the inherent probability of an event taking place but should guard against over-reliance on this noting that there will be very many allegations which are inherently unlikely at a general population level but which are known to occur at a micro level in society. Over-reliance on inherent probability in such circumstances would lead to an incorrect outcome. The touchstone for all cases is for the Court to focus on the evidence before it and what it suggests as being accurate. Inherent probability is but one aspect of this assessment and should not be the determining factor. In any event the standard of proof is not changed by reference to the inherent probability of an event.
- 5.6 In considering where the truth lies the Court can have regard to the demeanour of a witness or the manner in which evidence was given but should approach this with care noting that in the case of emotive evidence a truthful witness may stumble and struggle in giving their evidence whilst an untruthful witness may give their evidence in a composed and attractive manner. The Court will find assistance in the internal consistency of evidence and how it fits with other parts of the evidence. The Court will often be faced by evidence of a party lying to the Court. Such a finding does not justify the Court rejecting the evidence of that witness wholesale. Rather the Court should approach the lies through the guidance set out in the authority of R v Lucas to establish whether the lies can be shown to be probative to the issues in dispute.
- 5.7 The Court is alive to the fact that abusive behaviour has at its heart an imbalance in power within the relationship and the exploitation of the same for the benefit of the abuser. Domestic abuse as with all abuse is the imposition of one party's wishes onto a weaker party. Domestic abuse typically occurs in the private sphere and with this comes real challenges as to assessment and obtaining of evidence. It will often be the case that the Court is left to evaluate the diametrically opposed evidence of the key participants without any help from extraneous sources. The Court can find guidance in Practice Direction 12J as to the concepts of domestic abuse including coercive and controlling behaviour. The Court is reminded through the guidance found in Re H-N & Others [2021] EWCA Civ 448 as to the insidious nature of domestic abuse and the need for sophisticated analysis. This includes awareness as to the potential for abuse to be maintained notwithstanding parental separation and even so where there are protective orders in place.
- 5.8 At the same time the Court has to distinguish between abusive behaviour and poor behaviour which falls short of being domestically abusive and relevant within children proceedings. Not every act of unkindness, rudeness or misconduct will be such as to

justify fact finding. The Court needs to clearly delineate between those findings which will have a material impact on child arrangements (if proven) and those which will not. It is not for the Court to resolve all disputes between adults and it is positively unhelpful for the court to allow the proceedings to become 'another battleground for adult conflict'.

Background

6. This is intended to be a summary of the known and agreed background to this case. I will identify when issues are said to have arisen but will return to the competing views in my summary of the evidence below.
7. The parents are 35 (father) and 31 (mother) years of age respectively. They come from the same ethnic community. They met in around 2018/19 via a dating app which served their community. As I understood the evidence there was some existing familial connection but this was a relationship based on mutual regard rather than family arrangement. Both parents were born and brought up in this country. They entered into a religious marriage in March 2020. This was not followed by a civil ceremony due to covid. The mother left her family in London and moved in with the father and his parents in the Midlands. There appears to be no dispute as to the first three months of the relationship being without issue. The account below can therefore be seen to relate to the period of about a year between June 2020 and July 2021.
 - 7.1 The mother alleges a deterioration in behaviour from around June 2020. She argues she was verbally abused and controlled by the father and his family and isolated from her own family.
 - 7.2 The mother alleges that from about August/September 2020 she was the victim of persistent sexual abuse on a daily basis. She recounts a memorable event which took place in September 2020 which she claims led to her conceiving the child subject to these proceedings.
 - 7.3 The mother assisted the father with his business affairs and had some access to his accounts and business documents. I also heard agreed evidence of her working with a family member for a period of time.
 - 7.4 The mother specifies three particular incidents of abuse/control in September 2020, February and April 2021 as set out above.
 - 7.5 In late June 2021 the mother gave birth to the child.
 - 7.6 The mother was visited by her family on 5 July 2021 when the father is said to have been abusive to her. The maternal family claim to have witnessed this abuse.
 - 7.7 The mother claims the father attempted to suffocate the child on 13 July 2021.

- 7.8 On 15 July 2021 the parents separated. The mother says she left claiming she simply wished to visit family. The father claims he asked her to leave due to issues in the relationship. In any event the father drove the mother to London and she stayed with her family.
- 7.9 On 18 July 2021 the mother called the police due to the father's communications with her which she claimed were abusive. She was given advice. On 28 July 2021 the mother called the police when the father attended her home. The police attended the property and spoke to the father who left. No further action was taken.
- 7.10 On about 29 July 2021 the mother booked a hotel for the parents to stay at together in the London area. Ultimately, they argued on the day and did not stay overnight at the hotel. On about 29 July - 2 August 2021 the father stayed overnight at the mother's home.
- 7.11 On 10 August 2021 the father messaged the mother stating he was going to come to her property to see the child. She told him he was not welcome and they would call the police if he did.
8. On 10 August 2021 the mother issued an application for a non-molestation order. This was compromised on undertakings without admission at a hearing on 3 September 2021. On 6 September 2021 the father issued his application for a child arrangements order. This application commenced in the father's local court but was transferred to this court centre as the mother had relocated back to her own family on separation.
9. The application came before me on 22 April 2022. I have subsequently case managed the case on 6 July 2022; 31 August 2022; 4 October 2022; 8 December 2022, and 19 December 2022. At the first hearing before me I determined fact finding was required. There has been significant delay in the case largely associated with difficulties in obtaining police disclosure with respect to particular aspects of the fact finding. At a hearing on 22 April 2022, I directed supervised contact between child and father. The father is funding this contact and the notes of contact are positive.

Summary of Evidence

10. The parties agree the relationship was one based on their own emotions rather than any sense of family/community duty or arrangement. They met via a community linked dating site and formed an interest in each other. Both were well established in their communities. On marriage the mother moved to live with the father's family. My understanding from the evidence was that this was the cultural expectation but I also bear in mind the family were largely supported by the father's business interests and whilst this appears to have required him to travel to an extent it seems his centre of interest was close to where he lived.
11. There is a fundamental dispute between the parents as to the quality of their relationship and what went wrong in the relationship. The mother relies on her allegations and makes a case of being controlled by the father and his family and isolated from her own family. She contends the father was verbally, physically and sexually abusive and exhibited controlling

behaviours towards her. Her communications were monitored and the car was tracked. She could neither communicate with nor visit her family. She was treated poorly and expected to meet the needs of the father in the home. She had little if any personal autonomy and claimed to have developed Stockholm Syndrome type patterns of behaviour. I understand this to be a situation in which classically a captive through coercion aligns their own interests with those of their kidnapper. Ultimately, she 'fled' the property by claiming to wish to spend time with her family although her intention was to leave the father. When he discovered this was the case the father was abusive in his communication leading to the police being called. It was only on her leaving the father's home that she was free to report what had happened and she immediately did this telling her family, police and children's services.

12. The father fundamentally disputes nearly all of the above. He suggests the relationship began to fracture when the mother placed pressure on him to move out of his family home and find alternative accommodation or indeed move to London. He claims this was a persistent request made by the mother and aggravated by her mother's views. When he was resistant to doing this issues arose. The maternal grandmother interfered in their relationship and the mother and the maternal grandmother were disrespectful to his parents. He reached the point where he did not consider they could remain together and asked the mother to leave dropping her in London with her family. Thereafter he had mixed emotions as to whether they should separate but this became inevitable when the maternal family questioned his right to see his daughter. He claims there is evidence of the mother taking active steps to seek advice as to how to restrict or obstruct his relationship with his daughter and he contends the allegations made have been fabricated for this purpose. He does accept he was verbally abusive in his communications in the period after physical separation but explains this needs to be understood in circumstances in which he was wrongly being told he would not see his daughter.

Controlling behaviour

13. Although this is an important theme of the case the evidence on this subject is relatively limited. I have already set out the nature of this control as detailed within the statement evidence. In live evidence the mother suggested matters got worse as time passed with the father wanting things his own way and she not being able to have her own opinions. Part of this issue related to his family who, once the child was born, wanted her (the child) all the time. She felt the father was encouraged by his family and they would say things that would influence him.
14. She agreed she had her own mobile phone and at first was permitted to visit her own family. She agreed she worked for the father in his business and was involved with the administration and invoices. She agreed she could access his bank accounts but that this was only when he was present. She agreed she also worked for a separate family related business. She had her own car and there was no restrictions on its use but it was tracked '24/7'. Although the issue of moving out of the family home had been raised, she was happy to stay at his family home and understood the issues that arose given his fathers disability.

She denied making these allegations up and agreed she was intelligent and studying to become a lawyer.

15. The father denied this allegation. He said the mother had a much higher level of autonomy than she has suggested. He was out working most of the day and she was free to contact her family and did so. She would message her parents and sister and there was no restriction on this. They visited her family and stayed overnight and they visited his home. She had her own car and the tracking referred to was simply insurance linked which monitored the driving to keep the premiums down. It didn't amount to a system which permitted him to see where she was. As to her phone being monitored this was simply the 'Find my Phone' app. He claimed the mother had some financial independence and was able to access his accounts without him being present and that there was evidence of her doing so. He relied upon a range of instant messaging between the parents through the course of the period in question which he said cast the relationship in a different light to that described by the mother. The messages were warm and appeared to place the parents on an equal level. At times they were intimate with each other. The mother argued these messages needed to be understood in the context of her being controlled and having to respond in such a manner to keep the peace at home or as she put it to 'survive'.

16. The father claims the court can draw some sense of the respective positions by considering the mother's engagement with an online group post separation in which she discusses how she can best make her case before the court. He also relies upon correspondence in which he claims the mother was seeking for 'spells' to be cast upon him. The mother does not dispute the former but says she was simply seeking help. In relation to the latter, she claims the father has orchestrated this correspondence as he continued to have access to her account. She points to exhibits relied upon by the father which prove his continuing access to her accounts. The father responded by saying the mother had used his laptop when working within the business and her email account was open on the laptop allowing him to see what she had done. The father comments the parents shared religion is one which respects the equality of men and women and that he had no expectations on the mother to stay at home. Whilst he agreed he was the breadwinner the business was a joint collaboration between him and the mother. It was wrong to say the mother could not stand up to him. She would continuously do so and there were issues relating to her wishes for their future life. He agreed the relationship did suffer and they would argue. His parents would intervene to tell them stop arguing over silly things. The main argument related to buying their own home and moving to London. The father contends the mother's case of control is difficult to fit with her willingness to spend time with him having 'escaped' into the care of her family. I understood the mother to explain this by reference to a combination of (a) recognising the importance of the father seeing the child, and/or (b) continuing to feel under a degree of control even after separation.

Allegation of sexual abuse

17. Within the proceedings the mother raises a single allegation of unwanted vaginal and oral intercourse on 4 September 2020. She gives an account of a forceful act in which there could be no question of consent. Her clothes were pulled off and the father restrained her to keep

her quiet. She clearly told him she did not want sex. She was clear in evidence that this took place on the day in question and that this event was the act of intercourse in which the child was conceived. She was questioned as to how she could be so clear as this being the intercourse that led to conception and pointed to its particularly traumatic character. A simple reading of her statement suggests this was an isolated incident and there is no mention of further events with the mother giving the impression this was a particularly traumatic event (as it would be if true).

18. The mother did not reference this event in her injunction proceedings. Indeed, it is neither mentioned in the police CRIS reports from mid-July 2021 or in the Child and Family Assessment from Children's Services at about the same time. The mother made clear that she informed the police as to this taking place at the earliest opportunity. It was her case the police officer had wrongly failed to include the report within his/her contemporaneous records. In October 2021 the mother did speak to the police about this allegation. On this occasion she detailed being subject to repeated rape on a daily basis after August / September 2020 and additionally subject to oral rape on at least a monthly basis when on her period causing her to vomit on occasions. She referenced an occasion which stood out and which logically appears to be the incident at §17 above but the detail is somewhat different in that it does not include the aspect of oral sexual assault.
19. The father denied any sexual impropriety. He was interviewed on a voluntary basis and gave an account of the parents not engaging in sexual activity during the pregnancy save in June 2020 in an attempt to stimulate the pregnancy. He was questioned as to further assault post-birth and made clear this could not have taken place as the mother had received stitches following child birth and she would likely have been seriously injured if he had forced her in this period. He accepted the parents engaged in oral sex as part of their relationship but denied any impropriety. He told the police he saw this as an attempt to obstruct a relationship with his child. The father relies upon messaging between the parents on the date of 4 September 2020 as not fitting comfortably with the allegation. The mother disputes this assists the Court. As with the more general messaging the mother made clear this was about her having to do anything to survive and was her pretending to be normal.
20. In live evidence the mother maintained she told the police from July 2021. She told me it was the police and her solicitors who had told her to focus on one allegation of rape only. There had been two occasions of non-congenital oral sex. She accepted there was messaging from her to the father on 4 September 2020 in which she commented on them having sex that evening. She was not able to report these events to her family until after the relationship ended due to her phone being monitored. When asked about why she had not told children's services she questioned what this had to do with the child's safety? In his live evidence the father pointed to contradictions in the mother's evidence and made the point about the relevance of her receiving stitches during child birth. He argued he would not have acted in this way. His parents sit in the room directly below their bedroom and the house is not large with the inference that they would hear if something inappropriate was happening. There was little if any examination as to the detail of the event with the mother maintaining it took place and the father denying the same.

Suffocation

21. The mother gave an account of an incident on 13 July 2021 in which she claimed the father deliberately pressed a toy onto the child's face suffocating it. She explained how earlier in the day she had warned the father against leaving a toy proximate to the child when it was sleeping as this might interfere with the child's breathing. At face value this was not a significant event. Later in the day:

...I asked the [father] if he could look after [the child] whilst I was busy with something else. When I came into the room, I saw the [father] holding a toy this time against [the child's] face, I could see her struggling to breathe. The [father] was laughing at [the child's] distress and [the father's] mother watched him as he held the toy to her face whilst smiling.[C7]

In her live evidence she provided more detail. She told me she was returning to the lounge from upstairs. When she was about three steps from the bottom of the stairs, she could see through into the lounge through the lounge door. The Moses Basket in which the child was placed was in sight. Between her and the basket she could see the father with his back to her. She claimed she could see him acting in the manner alleged and proceeded quickly to intervene removing the child from the basket. She was clear he was pressing the toy on the child's face. The mother reported: '*the baby crying and struggling to breathe...she was going to die due to suffocation...his mother was watching this...he wasn't comforting the baby he was pressing down...his mother was laughing...*'. It seemed clear from the evidence that the mother was little more than about 10-12 feet from the father when she saw what was happening and that she then promptly intervened. It is difficult to see how this event could have taken anything longer than 5 or so seconds from start to finish. No words were spoken between the parents during the event and it was not subsequently mentioned or discussed, whether that evening or otherwise.

22. The mother was questioned as to there being any room for misunderstanding or confusion. She did not consider this was the case. She told me this had been reported to the police and children's services despite the same not being recorded. It is agreed it is not referenced in her injunction statement. The father denied anything of the sort had happened. He did not have an account of an event which might have been misunderstood but was clear in his denial as to having suffocated the child. He pointed to inconsistencies in reporting on the part of the mother and questioned whether the mother would really have continued to promote any contact between him and the child (as she claimed) if she had seen him act in this fashion.

Other matters

23. In this section I will cover the balance of the allegations. I appreciate these need to be considered in the context of the broad allegation of controlling behaviour and so this section should be read together with the details set out above. Aside from the incident involving the Moses Basket there was far less time taken with these issues on an individual basis during the hearing.

24. Starting out of order with the Moses Basket on 5 July 2021 the mother claims that her family were visiting when the father made enquiries as to what had happened to the Moses Basket which was being used for the child. It transpired his mother had given it to his sister to pass to another person. This was said to have angered the father. Subsequently the basket was returned but that is not material to this point. The mother supported by her family claim the father lost his temper and was verbally abusive to the mother calling her a “bitch”, “a cunt” and “a fucking stupid bitch”.
25. In her statement evidence the mother said that this swearing took place ‘in front’ of her mother and sister and even though his mother had been responsible for giving it away. The mother’s sister and mother both gave an account of this incident. They claimed the father returned to the property when they were sitting in the lounge. He then started shouting at the mother and calling her names as set out above. He then went into the kitchen and started smashing plates in front of everyone. The mother did not allege plates being smashed in her evidence. In live evidence the grandmother appeared to accept there had been an issue prior to their visit which was linked to the father discovering a document which he understood to be ‘black magic’ and which he was concerned to be in his house. Whilst the grandmother disputed this was the case, she appeared to agree this had led to some level of disagreement. The grandmother told me the paternal grandparents were not present when this incident took place. She gave an account of the father going upstairs and swearing before coming down and smashing plates. In her live evidence the mother also told me the father had started swearing at her upstairs but that it continued downstairs. She had not mentioned the plates being smashed as she was too scared to mention this. In contrast the sister said the incident happened when the grandmother returned to the home and told the father she had given the basket away. He then went upstairs where the mother was and could be heard swearing. He then came downstairs and started smashing the plates. She agreed this was out of sight in the kitchen but it was clear what he was doing. The incident happened fast. The father denied acting in this manner. He agreed he had liked the basket but did not shout at the mother or throw plates on the floor.
26. I had some limited evidence about the allegation relating to the disclosure of the sex of the child. In simple terms the parents agreed they had not wanted to know the sex of the child but the hospital inadvertently disclosed the same. The allegation was that the father became angry with the mother and accused her of seeking these details. She alleges she was forced to call the hospital to confirm that it was their mistake not hers and that in the process the father had threatened to punch her. The father agreed there had been a mistake and that the mother had called the hospital but he denied there was anything in the allegations made by the mother. Rather having been informed of these details the call was to confirm the same so the parents could then act on this information. As with aspects of the evidence the father pointed to surrounding messaging which was said to conflict with the case put by the mother.
27. There are two allegations as to the father acting inappropriately when affected by drink and cannabis. This has led to hair strand testing in which the father has provided a positive result between May and July 2022. In addition, I note the father has a historic conviction for

producing cannabis in 2013. The father claims the hair strand test is a false positive arising out of the use of cannabis oil to treat alopecia. As to the detail of each incident the evidence was little more than the allegation and a denial of the same. The only point I note is that whereas for the suffocation allegation it was alleged the father acted out of jealousy towards the child here it was said he was acting out of possessiveness over the child.

28. Lastly, I have the allegation of the incident when the mother's phone was said to be broken when the father sought to stop her communicating with her mother. The mother stands by this allegation which the father denies.
29. This completes the allegations arising prior to separation in July 2021. There is additionally an allegation over the father's communications in the period after separation when he is said to have communicated in a threatening and abusive manner. This is supported by a video/audio of an occasion in this period when the father is recorded whilst speaking on the phone to the mother. He can be heard to speak in a highly abusive and angry fashion. He agrees he acted in this way and explains it by reference to his daughter being kept from him. It is clear underlying this communication is a discussion about the father seeing the child and the mother telling him he cannot see the child on the basis he seeks.

Analysis

30. I have regard to the manner in which evidence was given by each party. However, I did not find this to be of great assistance. Both parents maintained their evidence in the face of cross examination and stood by their accounts. There was nothing of particular note in the way in which they gave evidence that shed particular light on the issues I am required to resolve. There certainly was nothing that would permit me to form a principled opinion in either direction to any material extent.
31. I also have regard to the broader interest each party has as to the outcome of the proceedings more generally. It is in their interest to have their case on the allegations accepted and this may have impacted on the evidence they gave.
32. I bear in mind the family members are likely to be partial in favour of the mother and that in sharing a home with the mother and having discussed the evidence with her they may come to shape their evidence by reference to what she has said.
33. I will relate inconsistencies and contradiction in the evidence and the relevance of the same when considering the allegations below, but, it is almost an inevitable feature of a case like this that where one party makes allegations and the other denies the same that it will be the party who makes the allegation who provides more detail and is thus more likely to find themselves giving evidence which might appear at times inconsistent or contradictory. In contrast, a simple denial can be easily repeated without contradiction. I bear in mind that parties involved in traumatic or emotional events may not have perfect recall and should not be expected to have a perfect memory of what took place. I accept that over time the understanding of an event can come to be shaped or more clearly understood on reflection but that this does not inform me as to the essential truth of the allegation. I appreciate that

timelines can become confused leading to an impression of unreliability when the same is not justified.

34. This case has parallels with many conducted before the Court in that particular focus was placed on certain of the allegations with others being given far less focus/time. In particular, I heard evidence on what might justifiably be thought to be the more serious specific allegations being; (a) the allegation of rape and; (b) the allegation of child suffocation. There was also evidential focus on the Moses Basket incident given this was the key event to which supporting witnesses could give an account. The balance of allegations were dealt with to a far more limited extent as was the suggestion of coercive and controlling behaviour as found within the Family Law Act proceedings.
35. The Court inevitably has to approach allegations in a linear fashion to make sense of the case and in a judgment to provide a sensible account of its analysis and findings. However, before reducing this judgment to writing I have stood back and reflected on the evidence holistically considering the wide canvas of evidence placed before me. Each allegation is independent of the others and there must be room for the Court to make mixed findings. The rejection of one allegation does not justify the Court in moving on to reject all allegations. However, at the same time the Court is bound to draw upon its assessment on one allegation to an extent when considering others. In a case in which coercive and controlling behaviour is alleged it is important that I take care to look for and, if identified, interpret patterns of behaviour present on the facts.

A. Controlling behaviour

36. I have considered the evidence with care and reached the conclusion that the evidence does not support a finding of controlling behaviour of such type and form as to impact on child arrangements. This does not mean there were not occasions when the father (and potentially the mother also) acted in a manner which was somewhat dictatorial and open to criticism or which did not give proper allowance for the other's feelings and rights but I am not persuaded this was a theme of behaviour within the relationship and I am not persuaded the mother was materially controlled or subject to coercion in the manner suggested by the PD 12J definition.
37. I do not find this to be a case of a power imbalance between the parents and I do not find the mother had any particular vulnerability when entering the relationship which made her susceptible to controlling patterns of behaviour. To an extent all relationships may exhibit a degree of imbalance but this is not of itself proof of control. This was a relationship based on mutual affection and there were no overbearing cultural issues which balanced power relations differentially between the parents. The mother and father are plainly reasonably intelligent individuals without any disability, learning challenge or other identified vulnerability which leaves them open to exploitation. I accept this does not rule out a controlling relationship but it is a relevant matter to place into the balance. Further, the mother is strongly rooted in her family and community in this country and was not at the outset of the relationship isolated.

38. I considered the evidence to see whether this changed during the relationship. The mother gave an account of social isolation, however whilst I accept she may have felt isolated to some extent having left her family and moved in with the father, this was not a consequence, in my assessment, of misconduct on the part of the father but rather the reality of married life. The evidence I heard from the grandmother was that there were at least a series of visits post marriage between the mother and her family. I consider nothing turns on the fact that the father accompanied her when she travelled to see her family. That is entirely unexceptional. It is clear the maternal family also visited the paternal home. I consider it is likely that a combination of leaving home and moving some distance has impacted on the mother's emotions in this regard. I can see she describes herself as having suffered post-natal depression following the birth of the child and it is likely this has further impacted on her feelings and sense of dislocation. The fact she became part of the father's family would have only exacerbated her likely sense of missing her own family. All of this is added to by the reality that this all took place during the period of covid and during sustained periods of lock down when wider community was legally restricted. This is likely to have contributed to the mother's feelings and is likely to have been exacerbated further when cracks in the relationship began to grow. But in my assessment, this is not evidence of isolation engineered or exploited by the father.
39. I also bear in mind clear evidence of the mother's continuing contact with her parents and sister. The evidence was that she had her phone and the sister confirmed they would message rather than call each other. Having heard all the evidence, I favour the father's account in this regard. I accept he would often, but not always, be away working and that the mother plainly had the opportunity to call her family. It is plain on the evidence that she did so. Her access to a phone is also confirmed by the evidence of messaging between the parents over a sustained period. The mother was not contained or restricted within the family home. She worked and had access to a car which she was free to use. I did not find the evidence of 24/7 tracking at all persuasive. The evidence of the father in this regard was clear and credible. This was plainly an insurance feature and had no bearing on control of the mother. I was equally unimpressed by the suggestion the mother's communication were monitored at all times. I accept there would have been a real likelihood of family being present when the mother made calls but I sense this was a function of family life rather than control. The maternal grandmother gave equivalent evidence of calling the father's home and speaking to the mother and the father. The presence of family members is not probative of control but is as likely to be an innocent aspect of family life.
40. I also did not hear persuasive evidence around financial control. I accept there was evidence to suggest the mother could access the father's bank accounts when he was not there. This was not a case in which the mother claimed that finances were kept tight to control her. Indeed, the sense of the evidence was that the father relied on the mother for support with his business and in doing so gave access to his financial affairs. I note the issue about the black magic arose in circumstances where the father was seeking to take money from the mother's purse because he needed money.

41. It is entirely possible there was within the relationship at the same time an element of gendered roles. The father described himself as the breadwinner and the mother described him as being called 'the boss'. But very little turns on such labels alone. It seems likely the mother was responsible for having the father's food ready when he returned home and I do not rule out him being critical of her on occasions. But this falls short of the controlling behaviour that might impact on child arrangements. This arrangement of domestic life is far from uncommon and exists in both controlling and free relationships.
42. Having considered all of the messaging between the parents and whilst approaching this with some caution I consider it only fair to note that there is a reasonable level of personal and warm correspondence between the parents which better fits with a functioning relationship than a controlling one. I don't recall seeing an item of communication during the relationship which was controlling in language or tone. There was much evidence of light-hearted and appropriate communication. I fully accept this may only be a partial insight into the relationship and I certainly would not determine this point on the messaging alone. However, on assessment it is less consistent with a controlling relationship than a functioning relationship. It fits better with the father's case than with the mother's.
43. I note this relationship ended with the father delivering both mother and daughter to the maternal grandparents. On her case the mother hid the fact she was leaving him. In fact, she describes in her evidence having fled the father's home which sits rather uncomfortably with having been delivered by the father to her parents' home. Whatever interpretation I place on the rationale for the mother having left the father, it sits uncomfortably with the notion of control and social isolation.
44. Elsewhere, I will comment on the father's language to the mother post separation. That language was wholly inappropriate and he should be ashamed of himself. I am not imposing a moral judgment for using profanities per se, but rather being critical of the father for causing these to be directed at the mother. It was a sustained tirade against the mother of his child and is inexcusable. Elsewhere he is described by the maternal grandmother as swearing a lot in general conversation; a point which the father came close to accepting was part of his character. I do not find it difficult to imagine him using this level of profanity against the mother at other times when they fell out and I accept this would have been deeply upsetting for the mother to hear. But it is only right I place this into the wider context of the relationship. As an example, I reflect on the mother's allegation about the sex of the child and the threatening behaviour of the father. She claims this was an instance when he threw abuse into the conversation. The next day she called the hospital about the child's sexual identity being revealed. At 12.22pm on this day (which must have been proximate to the call to the hospital) the mother messages the father:

On your way back can you pleaseeeeeeeeeeeeeeeeeee get me a frapachino

Care must be taken with over interpreting such messaging but it doesn't fit comfortably with the surrounding suggestion of coercion on the part of the father or with the suggestion this was done as it was the only way to survive. This is one of a number of messages which convey a sense of ordinary and appropriate home life. I consider it is likely this was a

relationship which had arguments and that on balance when these arose, they could be heated and the father could express himself harshly and inappropriately. I have absolutely no reason to believe he slipped into error on only one occasion. But I also consider that between arguments the relationship returned to balance and the parents maintained a level of warmth between themselves. I judge an element of this can be seen in the post-separation visits. I do not accept the mother was pretending happiness to survive. It is likely to an extent they fulfilled traditional gender roles. However, I am not persuaded this was a case with patterns of coercive or controlling behaviour underpinning it.

B. The suffocation

45. This is a most serious allegation. It is in a very different category to the other matters. It is directed violence towards the child as an extremely vulnerable individual. A finding in this regard would have plain consequences for child arrangements. My initial sense was that there was a need to establish whether there was room for any confusion as to this allegation. However, the mother was very clear in her response that this was a case of the father deliberately and consciously smothering the child. Notwithstanding this is a serious allegation the standard of proof is unchanged.
46. I have considered this allegation with care and I do not find it proven. In my assessment the evidence falls significantly short of establishing the allegation. This was not a borderline decision. I have reached this conclusion having particular regard to the following:
- i) Inherent improbability is relevant. This is the only allegation of violence directed at the child and it is surprising that the single item raised is effectively at the extremes of behaviour being an attempt to suffocate. There is no surrounding context that might begin to explain why the father acted in such a manner on this day. The most that is suggested is that he was jealous of the relationship the mother had with the baby. However, other evidence in the case suggests the opposite and the desire of the father to maintain a relationship with his child. In any event this would not come close to explaining such conduct. I bear in mind the mother's case is that but for intervention there was a risk/likelihood of death. There is an essential implausibility to this allegation which is otherwise wholly unsupported by the evidence in the case. Added to this is the inherent improbability that were the father to act in this manner that he would do so in a room which the mother could access at any time (as she did), and with the door to the room open and with his own mother sitting and watching (as is clearly alleged). The evidence in no way suggests the paternal grandmother had any malice towards the child and the notion of her watching her son suffocating the child and laughing whilst he did it is very difficult to readily accept.
 - ii) In such circumstances I looked for persuasive evidence to make out the allegation. Yet I did not find the same.
 - iii) The positioning of the parents calls into question the account given by the mother. On her case she could clearly see what was happening from the stairs yet at the

same time she described having a rear view of the father as he leaned into the cot placing the toy over the mouth of the child. Having heard the accounts given in this regard and having considered the very short space of time in which this was viewed I am not persuaded the mother could have gained a confident understanding of what was happening. At best she might have been able to sense the father engaging with the child and she might have maintained concern from earlier in the day (as detailed above). However, the earlier concerns were of a very different type of event. In my assessment the combination of positioning and time available to reflect on what was happening make the mother's case one which has to be treated with real caution. I find it difficult to understand how from the rear she could have had a clear view of the father's actions in front of him let alone an impression of exactly what he was doing with the toy. On the evidence given by the mother I was surprised she was not open to at least a level of uncertainty.

- iv) I make this point having regard to the evidence as to what occurred when the mother came into direct contact with father and child. Her account was not of having to remove the toy from the child's face or moving the father's arm to push him away. Rather she spoke of the toy in some way being moved as she interfered with whatever was happening. This in my assessment casts doubt on whether the toy was in fact on the child's mouth or simply in the vicinity of the child. I consider it far more likely this was an innocuous event in which the father was trying to distract a crying child with a toy. This is common place and unexceptional parental behaviour.
- v) Even having regard to a potential power imbalance between the parents and the possibility of domestic abuse it is deeply puzzling that there was no level of communication between the parents as to what was taking place either at the time or in the surrounding moments. The mother intervened without raising any question of the father as to what he was doing. She didn't shout out for him to stop or ask, 'what are you doing'. She didn't even tell him he should not be acting in this way even though she was able to say something similar earlier in the day. There was no later conversation.
- vi) I have regard to the messaging relied upon by the father. I am wary of placing over emphasis on social media messaging as this can be self-serving and there is the risk of parties communicating in a manner which camouflages underlying difficulties to maintain a calm, peaceful and safe home. Yet taken with the other points raised above it is right to record the messaging seems entirely ordinary and contrary to what one might expect to see in the period surrounding such action on the part of the father. After the event in the surrounding days the mother sends the father photos of the child with warm messages stating words to the effect 'love you daddy'. I find it most unlikely the mother would have acted in this way following an event as described by her.
- vii) It is also striking that this was not recorded by the police as being raised with them when they spoke to the mother five days later on 18 July 2021. The same can be said

for the allegation of rape to which I turn below. In essence the police report does not record the mother reporting either event whereas the mother says she told the police about both and they have failed to record the same. She is supported in this account by her sister who says she was present when the mother told the police. I have to say I find this unlikely and on balance I do not accept the evidence of the mother or sister in this regard as:

- a) At face value the police were called due to complaint as to the father's unwanted communications with the mother post separation. I find it very unlikely that had the mother reported the father both raping her and attempting to kill the child that the police would have failed to reference this anywhere within the CRIS report. This is particularly so as the mother was reporting the father threatening to take the child back. It is difficult to see how the risk associated with such action would not be recorded.
- b) It is noteworthy the mother reported the communication included a threat to kill. Yet the mother is recorded as commenting that she did not believe this was a genuinely intended threat. How does this fit with her case of an actual attempt to suffocate days earlier?
- c) It is also noteworthy that the narrative report states the mother asserted the father 'had never been physically abusive to her'. Again, if she had in the same meeting referenced the rape or the suffocation then this would likely have been recorded or noted as contradictory.
- d) One could question whether the police in taking an account from the mother might have failed to extract relevant details. This though is problematic when one considers the DASH checklist carried out by the police. DASH (Domestic Abuse Stalking and Harassment) is a format used by the police to evaluate the level of risk faced by a complainant and in part sets the manner of their response. In the course of this process (which the mother agrees was undertaken) she is recorded as answering 'no' to:

Have they ever attempted to strangle / choke / suffocate / drown you?

Do they threaten to harm / kill the children?

The mother explained these answers by suggesting she understood the answers were only to be given in relation to the actual incident reported (the communications) and as this did not involve these actions, she answered no. I do not accept this account and, in any event, do not consider the police would have permitted such a wrongly focused response if they had been told of allegations to the contrary. They would have surely commented that this answer appeared contradictory to the narrative account they had just received.

- d) In both police interview and disclosure documents it is reported the rape allegation was made on 24 October 2021 [see E243] rather than July 2021. This fortifies my analysis above as to the lack of report in July 2021.
- viii) The concern is added to by the apparent failure to inform children's services as to this conduct when they spoke to the mother. Again, the mother says she told the social worker but they failed to include the same in the document provided. There is no reference to either the rape or the suffocation within the Child and Family Assessment commenced on 20 July 2021. As with the police I find it inexplicable that a social worker would not have included within the concerns in the case (see E114) the risks to the child as reported within these proceedings had they been reported at that time.
- ix) I note this was not raised in the injunction statement. Indeed, in the injunction statement a wholly different 'final straw' for leaving the father was given by the mother. In that statement she complained of there being too many people around the child despite covid and of the child being kept from her. In my assessment it beggars' belief she would have related this as the operative reason for leaving on 14 July when she now claims there was an attempt to suffocate the child only a day earlier.
- x) Finally, if this was true then why would the mother support and facilitate the father staying overnight at her family home and book a hotel for both of them in the following weeks? In response the mother appeared to relate the importance of the relationship between child and father. This rationale makes little sense in the context of the allegation made.
47. In essence I find the account of this incident to be one in respect of which there is real room for confusion or misunderstanding. The evidence given is not persuasive. It is further inherently implausible and is not supported by the way in which the mother subsequently acted when speaking to the father, the police, children's services or in her first statement. Although it is not for me to ascertain exactly what happened my sense of the evidence is generally of a mother who may at times have lost sense of the reality of what was happening and allowed her emotions and worries to cloud her judgment. It is entirely possible that she was concerned as to the toy being left close to the child and jumped to a wrong conclusion when she later saw the father with the toy proximate to the child. It may be with time this has crystallised into a sense of the father attempting to harm the child. I find for whatever reason the mother has reached a conclusion that is unwarranted and pursued this notwithstanding the circumstances of the account which should have caused her to pause and reflect. Before reaching my conclusion, I have paused to consider whether there is anything in the wider picture which might help me better understand this allegation or might cast my understanding in a different light. Having done so it is quite clear to me that the allegation is unsupportable on the available evidence.

C. Rape / Sexual abuse

48. The allegations in this case are of unequivocal unwanted sexual assault. There is no room for ambiguity. The real question is whether these events took place. If they did then the father has acted in an abusive and sexually controlling fashion. If they did not then he hasn't. Allegations of this sort are peculiarly difficult to resolve and ultimately turn on a balancing of the parties' evidence and reflection on the surrounding evidence to consider whether that evidence supports or undermines the allegations. My decision in this regard is more balanced than in the case of the suffocation. I have though reached the conclusion that on balance I do not find the allegation proven or indeed the pattern of abuse proven.
49. In reaching this conclusion I have had regard to the following points:
- i) I struggle to understand why this was not raised, if only in general terms, within the mother's injunction statement. Further, for reasons set out above I do not accept the account of this being referenced to the police but missed out by them. On balance, I find the mother did not raise this with the police. The resulting question for me is as to why she did not do this and why she positively denied sexual assault when taken through the DASH questions. I bear in mind this may have been through embarrassment or shame but I also bear in mind this is not the mother's case and she positively asserts she told both her mother and sister on returning home and the police on first meeting.
 - ii) Further, in the context of the allegations it makes no sense as to why having left the father the mother would have then invited the father to stay at her home for the night or booked a hotel room for both of them. It is equally difficult to understand why her family permitted this to happen if they had just received an account (as is claimed) of the father being both a rapist and child abuser. I simply do not find the mother's account of suffering from Stockholm Syndrome to be an adequate explanation for her behaviour. First, there is nothing approaching medical support or diagnosis of such condition. Second, if this were the case then she would not have been calling the police against the father on unrelated matters in the surrounding days. Third, it is quite clear from her own statement evidence that it was on leaving the father that she was able to make the reports. Her case is not that she internalised a warped sense of appropriate behaviour whilst with the father and which took time to dispel after leaving. Her case is she was aware things were wrong throughout but couldn't report this as she was being monitored but could make a report immediately on separation. Her case is of being conscious things were wrong and being relieved to escape. As she put it in evidence, she had fled the home. This is the very opposite of Stockholm Syndrome. This simply does not fit with booking a hotel room for her and the father. There are photos of the parents together during this period. They give an impression of a couple very relaxed in each other's private company.
 - iii) It is right to note there are inconsistencies in the allegation itself. The mother describes this as memorable having regard to the nature of the event. However, when describing it to the police she failed to include a significant component of the assault (the oral assault). On its own this would not be a determining feature in my

assessment but it is part of the weight of evidence causing me to have concern about the allegations. I am also concerned as to the apparent confidence with which she associated this event with the conception of the child. Plainly if this was an isolated event of intercourse then it may be possible to identify it as the cause of pregnancy. But here the mother informed the police that during this period she was being raped on a daily basis. How could she possibly associate pregnancy with this event? This is more apparent when one considers this event was 42 weeks prior to the child being born which would appear at the extremes of possibility. I find in a case - in which the mother raised a single allegation of rape in her statement and but for the police disclosure (which was not initially forthcoming) there would be no suggestion of broader sexual abuse - it is troubling the mother wanted this to be associated with the conception of the child subject to the proceedings. It is also puzzling that on 24 September 2020 the mother is messaging the father telling him she has just come on her period. It is not clear to me how this can be the case if by this point, she was already pregnant. An hour later she messages the father saying, "Really missing you need a hug". In reality these are snapshots from the messaging and it would be disproportionate to import the full messaging into this judgment. However, the point I make is that the messaging is not obviously consistent with endemic abuse within the relationship. There is much comparable messaging to similar effect.

- iv) A further although lesser contradiction is the claim of at least monthly forced oral sex whereas in evidence she told me this happened twice. I consider this a relatively modest point in the overarching assessment but note it.
- v) As noted above I cannot ignore the parental messaging. Viewed as a freestanding and single event the father is entitled to reference the mother's earlier messaging on that exact date in which she was proposing a sexual encounter that afternoon [4.44pm "sexy time tonight" followed by an emoji kiss and an emoji face with tongue out]. I appreciate that this does not rule out a later abusive act but taken with the other information it better fits the father's case. When the case is viewed in the broader context with regular ('daily') sexual abuse the messaging becomes very difficult to reconcile to the claimed state of affairs in the relationship.
- vi) I do not place weight on the suggestion of the stitches experienced by the mother and how this might have ruled out the allegation. I have struggled to identify where in fact the mother alleges post-birth sexual assault within the evidence. It may be the police misunderstood. It is clear from the father's interview that some dates were confused.

50. I have paused to search for features which may balance these points and which might support the mother's allegation. In this case there is no objective extraneous supporting evidence. There is no medical evidence or contemporaneous reports of misconduct. I accept the mother made reports to her family but these are fundamentally self-serving and were in any event not contemporaneous. I would not place great weight on evidence from the paternal grandmother claiming her son had denied such allegations. I take a similar

approach to the evidence the mother seeks to draw support from from both MARAC and her therapist. They reflect the judgment of others who have heard the mother's complaint. I am equally dismissive of any reliance the father places on the police taking no further action against him. This is not in my assessment probative of the truth of the allegation.

51. Separately the father relies upon messaging between the mother and a domestic abuse support group on Facebook as evidence of the mother seeking to manipulate the system to stop him having contact with the child. He argues this demonstrates her underlying motivation to obstruct contact. As with the points above I do not consider this actually speaks as to the truth or not of the allegations. It is equally plausible a wronged party might seek support as might someone who has suffered no wrong. The mother certainly does not express herself at any point as to having fabricated any allegations – indeed the messaging is largely silent as to the key issues before me. The father also points to other internet communications in which he claims the mother was seeking for spells to be cast against him. He argues this suggests an animus on her part towards him. I appreciate the mother denies she has done any such thing but in reality, this aspect of the evidence does not help answer the question of the allegations placed before me. It is equally plausible (if she did act in this manner) the mother has acted in this way because of the father having wronged her as acting in this way out of malice towards him. It doesn't help me answer the questions I am required to answer. It can be seen there is little if any evidence besides the parents own evidence. I have set out my conclusions in this regard.

D. The Moses Basket

52. The evidence in this regard is more balanced. It is clear the father was not happy the basket had been removed and it is clear this was identified as having been done by his mother. The father says there was no more to the incident than this. Yet the mother and her family all give a broadly similar account of the father becoming angry and abusive. Whilst I do not entirely accept the mother's case in this regard, I do find that there is an essential truth to the allegation as set out below. In reaching this conclusion I have placed particular weight on the following:
- i) I consider the supporting evidence of the sister/grandmother carries weight in my assessment. I note contradictions in what they say but accept the essential truth of an account of the father becoming angry and swearing.
 - ii) The exact picture is complicated once one understands the abuse did not take place directly before them (as was suggested in their statement evidence) but whilst the father, his mother and the mother were upstairs. I accept they heard the father swearing and using the profanities attributed to him. I accept their evidence that the father was swearing loudly and they could hear the profanities referenced in their evidence.
 - iii) I find support for this evidence in the manner the father has spoken post-separation. As I have set out above it paints a picture of an individual who will far too readily use

inappropriate abuse when angry. This language is not just abusive but becomes intimidatory in nature and is unacceptable.

- iv) I questioned as to how the family could know whether his abuse was directed at the mother or the father's own mother in the light of her having given the basket away. No individual identifying words were used (i.e. names or labels) and there is the potential they inferred it was directed at the mother. On balance I consider it likely was. On the evidence I have heard the father has shown no tendency to abuse his own mother whilst he has readily abused the mother. My sense of this piece of evidence is that he was angry over the loss of the basket and vented his anger at the mother.
- v) It is noteworthy that the type of words reported to have been used by the father accord with those used in the later recording.
- vi) I accept the father then came down to the kitchen and the family heard the sound of smashing. However, it is unclear whether this was the sound of the father deliberately smashing plates (as claimed) or the sound of crockery breaking inadvertently. Although the family clearly state what happened it is clear they could not see what was happening and inferred the circumstances surrounding the noise. It is at least equally probable the father in an angry mood was uncontained and accidentally caused crockery to fall and break.

53. I find the father was angry on this occasion and abusive to the mother as alleged. In the course of the incident crockery was broken but I make no specific finding as to the manner in which this happened.

E. The gender disclosure

54. I heard limited evidence in this regard. I do not find the father threatened to punch the mother. The evidence in this regard was limited and unpersuasive. It sat uncomfortably with the surrounding messaging between the parents. On balance I accept there may have been poor language used by the father in the initial period when he discovered the sex of the child had been revealed. My overarching sense of the father is of an individual who will express himself in coarse language and has on occasion unjustifiably blamed the mother when things have appeared to go wrong. An example is found in the basket incident. This is a further occasion. I consider a mistake has been made and rather than reason it through he has blamed the mother and abused her in the course of doing so.

F. The smashed phone incident

55. Again, I heard limited evidence in this regard. I have already rejected the notion of the mother being controlled and isolated from her family. Breaking the phone to stop her communicating with her family generally does not fit with my assessment of the evidence. But this does not mean the parents did not argue on occasion about her calling her mother. However, having reflected on the totality of the evidence whilst I accept there will have been incidents in which the father used abusive language to the mother when arguing or

unhappy with her, and this may have been an example of the same, I am not on balance satisfied he smashed her phone or threw items at her. The mother has not proven this aspect of the allegation.

G. Physical abuse in April 2021

56. I heard little evidence on this allegation and having regard to my broad findings I am not satisfied the evidence establishes this as happening to the necessary standard. I prefer the father's evidence to the extent evidence was heard.

H. Holding the child when affected by drink and cannabis

57. I make no specific finding in this regard. It is not in the form of behaviour that justifies fact finding. I do though accept the evidence of a positive cannabis hair strand result in the case of the father. I reject the notion that this reflects the use of cannabis oil as a topical hair treatment. I do not accept this could lead to the results obtained. The father would need to have supporting expert evidence to make out such a case. He has none. I do therefore accept the father has used cannabis and it seems likely he would have used it during the relationship. I find the account given by the mother credible. It fits with the bigger picture but I do not consider it amounts to a matter which justifies a freestanding finding with impact on contact per se. To the extent this is relevant I consider it a welfare rather than a fact-finding issue. It seems likely the father will be asked to provide an updating test to demonstrate a change in usage if this continues to be a relevant issue in the case.

I. Post separation communication

58. There is a level of acceptance of inappropriate communication post separation. However, to some extent I accept there is a context to this behaviour. The mother was plainly seeking to restrict contact and there is supporting evidence to suggest she was seeking advice informally in this regard. At the same time her conduct was inconsistent with her at times making reports to the police and then having the father stay over. One can easily see the frustration this would cause but it did not justify the language used by the father. I find he was abusive and intimidating in his actions.
59. It can be seen my analysis of these latter points has far less depth than in relation to the earlier points. This is a function of the focus during the hearing and the rather limited evidence provided in any event. I have generally placed weight on the following matters when considering my conclusions:
- i) My finding that the father has too readily strayed into being abusive in his communications with the mother. I generally do not accept this was limited to the occasion post-separation. My finding is that he has too readily been critical and abusive of the mother. I accept this language would have an intimidatory impact on the mother. It has an element of coercion to it when one understands coercion incorporates behaviour which is belittling and humiliating. I consider this language has the tendency to cause the mother to be belittled and humiliated.

- ii) But I also cannot ignore my overarching assessment that the mother has either exaggerated or fabricated circumstances to make the situation appear worse than it actually was. This does cast doubt on the veracity of her reporting and the motivation for the same.
- iii) My conclusions have had regard to these counter-balancing forces.

Conclusions

60. I have reached the following conclusions:

- i) I am not satisfied this is a case of controlling behaviour although I accept the father has at times conducted himself in an oppressive and abusive fashion to the mother both before and after separation. I accept this has aspects of coercion to it in that it will have likely humiliated and belittled the mother.
- ii) I make no findings as to either physical or financial abuse.
- iii) I do not make the finding as to sexual assault or suffocation
- iv) I accept the father was verbally abusive in the relationship in a manner which was both uncalled for and inappropriate.

61. My instinctive feeling is that these are not matters which should fundamentally restrict the father's relationship with the child although they may require safeguards in place to ensure there is no repetition of this behaviour. I appreciate undertakings have been given and these appear to have held for some period without material breach.

62. I intend to hand this judgment down at the directions appointment which is fixed before me at 3pm on 30 June 2023. I give permission for this judgment to be shared with the lay clients in advance of the hearing. I would ask the representatives to provide (a) any corrections; (b) any requests for clarification; (c) any views as to editing required before this judgment is published on an anonymised basis on the National Archives by no later than 12 noon on 29 June 2023 via my clerk. I would also ask for a draft order and short position statements as to the proposed way forward for consideration at the hearing to be sent to me at the same time.

His Honour Judge Willans

22 June 2023