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IN THE CENTRAL FAMILY COURT

Neutral citation: [2023] EWFC 281 (B)
No. ZC20P00695

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Tuesday, 1 August 2023

Before:

HIS HONOUR JUDGE TALBOTT

(In Private)

B E T W E E N :

B (a father)

Applicant

- and -

M (a mother)

Respondent

ANONYMISATION APPLIES

MS M WHELAN (instructed by Allard Bailey Family Law) appeared on behalf of the Applicant.

THE RESPONDENT appeared In Person.

J U D G M E N T

HIS HONOUR JUDGE TALBOTT:

Introduction

- 1 In this case, I am concerned with P, a little girl born in 2019. She is now aged four. P is referred to by everyone as “P”, and so it is “P” that I will refer to her as.
- 2 P’s mother, M, represents herself in these proceedings. Her father, B, is represented by Ms Whelan, as indeed he has been in the previous hearings before me. I shall refer to them both as “the mother” and “the father” throughout this judgment. No discourtesy, of course, is intended. It is simply for the purpose of making the judgment as easy to follow as possible.

Essential Background and Chronology

- 3 The proceedings have had a protracted history. The initial application made by the father was made in June 2020. The orders he sought at that point were a Child Arrangements Order for him to spend time with P and also a prohibited steps order preventing the mother from removing P from the jurisdiction and from moving P’s home address without notice to him.
- 4 A number of orders were made at the early stages of proceedings in 2020, which ultimately led to a fact-finding hearing before Mr Recorder Lofthouse on 8 April 2021 as part of what was deemed a necessary exercise to determine the factual background against which the court would go on to consider necessary and proportionate arrangements in P’s welfare best interests. The mother made a number of allegations at that point against the father. These included allegations of extensive domestic abuse within the context of a controlling and coercive relationship and also of the sexual abuse of her elder daughter – not B’s daughter – X.
- 5 Following the fact-finding hearing, within a detailed and comprehensive written judgment, Mr Recorder Lofthouse made findings against B to a limited extent. His findings amounted to the following:
- (1) That B had on one occasion grabbed M by the face during an argument; and
 - (2) on at least five occasions, “*reacting to the repeated allegations of affairs*” by the mother, he lost his temper and raised his hands to her, and pushed her, causing her some pain.
- 6 As I will go on to explore within the course of my judgment, Mr Recorder Lofthouse rejected a number of the other allegations made by the mother, not simply on the basis that they were not proved on the evidence before him, but that they were maliciously and grossly exaggerated or, in respect of the allegation of the sexual abuse of X, were falsely and maliciously made with no justification at all.
- 7 As a result of the limited findings made against the father, further case management orders were made, including an order that the local authority produce a s.7 report and for the father, to attend the DVIP – Domestic Violence Intervention Programme. To the father’s credit, he, he has done so and engaged well with it. A number of hearings followed, including a

Dispute Resolution Appointment on 27 July 2021 before the matter was ultimately listed for a final hearing before me in October 2022 due to the unavailability of Recorder Lofthouse.

- 8 Shortly before that final hearing came before me, the mother made an allegation to the police that the father had sexually abused P, his own daughter. As a result of that allegation being made so soon before the final hearing, I had no option but to adjourn the matter, having determined that the allegations should be explored further as part of a further fact-finding hearing.
- 9 On 23 and 24 January of this year, I heard that fact-finding hearing in respect of mother's further allegations that the father had sexually abused P and, in an extensive judgment, concluded that, once more, the mother had falsely and maliciously accused the father and that, for the avoidance of any doubt, the father had not in any way sexually abused P.
- 10 Following that fact-finding judgment, the mother was entirely clear that she would, regardless of whatever order the court made, refuse P having any contact face-to-face with her father until she was an adult. Having been given ample opportunity to reflect on that position she is maintained her stance. I made an Interim Care Order with the support of the Local Authority, with an interim plan for P to move from her mother's care to her father's. That happened shortly after the hearing.
- 11 During the course of that interim care order, I ordered the local authority to prepare a report under s.37 of the Children Act 1989. The matter was before me for hearing on 20 April 2023, the local authority having served that s.37 report. The Interim Care Order was automatically discharged and, since that point, P has been living with the father under the Child Arrangements Order made by me on an interim basis. The matter then came before me over the last two days – 31 July and 1 August 2023 – for this final hearing.
- 12 At the hearing in April, I made a number of very clear case management directions to ensure that the Final Hearing could proceed effectively, including the provision of witness statements from both parents and the provision of questions in writing being sent to the court that the mother wished to ask of the father at this final hearing. The father complied with each of the directions relating to him. The mother did not and explained to me on the first day of the hearing that that was a deliberate choice on her part. She understood what she needed to do but had simply decided there was no point in doing so. After some further encouragement by me and some further time given, the mother did provide to me written questions for the father which I asked on her behalf.
- 13 That is the chronology which led to the hearing before me over the last two days.

The Relevant Law

- 14 It is P's welfare that is my paramount consideration. I must apply the welfare checklist to this matter in deciding what is best for P. There is only one standard of proof in family proceedings, that being the balance of probabilities, and I must take into account inherent probabilities or improbabilities in light of the evidence as I find it to be.
- 15 I must determine any further facts it is necessary to find purely on the evidence and not on speculation or suspicion. When carrying out my assessment of the evidence before the

court, I must of course weigh each piece of the evidence against all other evidence and consider whether, both internally and in respect of other evidence, it is consistent. I must determine what weight I should place on each piece of evidence, and then revisit the strands of evidence before me in order to try and establish, so far as is possible, a coherent picture consistent with the totality of the evidence. In other words, rather than artificially focusing on one piece of the evidence, I must take a step back and consider the whole canvas of the evidence before me in deciding what is best for P.

- 16 The range of evidence and facts which can properly be taken into account in determining what decisions should be made in the welfare best interests of a child are infinite. They include evidence in respect of the relationship between parents, parental attitudes, the likely harm that children would come to were they to be looked after by one particular parent, and inadequate parental responses. Every matter which has been ventilated has been considered by me, albeit of course I do not need to determine each and every area of dispute in deciding what is best for P.
- 17 I remind myself that a witness may lie for many reasons, and that, if I find a witness has lied in the witness box or within their written evidence, I must not hold that against them unless I am satisfied it was a lie told about a material point and for a without innocent reason. People lie for many reasons: panic, distress, fear, misplaced loyalty, but only if a lie has been told for what I am satisfied is not one of those innocent reasons, even a reason they may not wish to disclose, am I able to hold that lie against them. Even if I were to determine that a witness has lied, I would not, of course, reject the rest of their evidence purely because they have lied about one particular matter.

The Key Evidence

- 18 I have carefully considered all of the evidence which has been filed in this matter, and specifically the evidence contained within the extensive and helpfully prepared bundle in this case. I have carefully considered the evidence from the witness box. Both parents have filed a number of witness statements in this case to which I have had regard.
- 19 During the hearing, I heard evidence from both parents and the social worker.
- 20 I heard evidence first from the social worker. I record from the outset that I found her to be a straightforward, focused, and diligent social worker. Both in writing and orally she was able to explain – even in the face of what I am entirely satisfied were false accusations made to her directly and dishonestly by the mother – what she observed in respect of P being in her father’s care and the nature of her dealings with both parents throughout her involvement with this family.
- 21 As I expressed within my fact-finding judgment in January of this year, where there is a conflict between what it is that is said by the mother and that which is said by the social worker, I am overwhelmingly satisfied that it is the social worker that is the more accurate and honest witness. I remain of exactly the same position having heard both witnesses give evidence before me again. I once again reject the very forceful assertion made by the mother in her evidence that the social worker is deliberately covering up what she knows is child sexual abuse, and that, in the mother’s words, “*She knows about the abuse and is lying to deliberately cover it up.*” That is, I make very clear, completely untrue.

- 22 the social worker's evidence, in a nutshell, is as follows: that the father is able to provide P with good enough care, that P likes spending time with both of her parents, and that the mother – other than the large looming issue of her fixation on the false allegations she continues to make of child sexual abuse – is able, and has been able, to meet P's basic care needs. Ultimately, the social worker's recommendation, as expressed extremely clearly within the s.37 report, is that P lives with her father and spends time with her mother within a professionally supervised setting in a contact centre, at this stage, on the basis that the emotional harm that would be caused to P were she to live with her mother or spend time with her alone. the social worker's view is that were P to spend time in an unsupervised way then P would be exposed to the mother's false narrative that both she, and her older sister, had been sexually abused by the father.
- 23 Overall, I found the social worker to be an impressive witness who has been consistent and unwavering in her laser-like focus on what is best for P in the face of what has been sustained and unjustifiable criticism and false allegations made against her by the mother. Even under the most significant of direct challenge in cross-examination by the mother, the social worker maintained her view as to what arrangements best meet P's welfare best interests. For the reasons I shall go on to explain, I agree entirely with the reasoning of the experienced social worker in this case.
- 24 I then heard from B, the father. He struck me as a reflective and mature witness, particularly in respect of the findings that I have previously described being made against him by Mr Recorder Lofthouse. I was struck by how straightforward he was in response to the questions that I asked on mother's behalf of him, that he has now a real insight and acceptance of his previous abusive behaviours. It was clear to me, having considered carefully his written and oral evidence, that the father adopted an entirely honest and open approach to giving evidence.
- 25 He accepts that his behaviours, as found by Mr Recorder Lofthouse, were abusive, and his ability to not only accept but also explain how he would handle situations differently was obvious. In fact, the father's evidence demonstrated an even greater understanding of the impact of his previous behaviour beyond that which was already evident from the positive reports I have from his progress within the Domestic Violence Intervention Programme. The father's evidence was, overall, straightforward and consistent.
- 26 I then heard from the mother, and I am sad to say I found her evidence to be evasive, largely dishonest and presented in an often rude and dismissive manner. She repeatedly spoke over both me and witnesses during the hearing. During what was very fair and skilful cross-examination of her she regularly spoke over counsel, often refused to answer questions with a relevant answer, let alone a straight one. Indeed, it was abundantly clear to me, having considered both what the mother said and how she said it, that she remains entirely fixated on her false and malicious allegations which she seeks to pursue against the father, both in terms of the much more extensive allegations which were rejected by Mr Recorder Lofthouse and in respect of her malicious allegation that the father had sexually abused P.
- 27 All of those allegations, in the face of the most overwhelming of evidence to the contrary and two judgments of the Family Court concluding that they were false, are ones which she maintained with as much vigour and force as she always has. Overall, I found the mother's

evidence to be inconsistent, entirely unconvincing, and indeed focused largely on what she felt was best for her, and at some points X, rather than on what is best for P.

28 I have weighed carefully all of the oral evidence that I have heard with the written evidence that I have. I make clear that there is only, in my judgment, a limited amount that can properly be gleaned from the way in which a witness gave evidence and their demeanour in the witness box. It is an important factor, and one that I have taken into account, but is not one which in any way could be seen as determinative of my view of the evidence. Giving evidence in proceedings of this sort is particularly difficult for parents and I must not lose sight on the impact that have on the way in which a witness presents regardless of whether they are telling the truth or not.

Welfare Analysis

29 I have considered the evidence of the parents, which of course is of the utmost importance, in line with the clear and detailed written evidence and oral evidence from the social worker. I must place my view of the evidence within the parameters of the welfare checklist.

30 I am satisfied on the evidence of the social worker that P is doing really well living with her father and is very happy. I am also entirely satisfied that P is very happy when she spends time with her mother, and the contact notes reflect this. P would, if she were able to, express that she would wish to spend significant time with both parents. Of course, what P would want is only a factor, particularly bearing in mind her age, that I must weigh into the mix. However, I am satisfied that P would wish to, if at all possible, spend a lot of time unsupported and unsupervised with both parents.

31 I have to consider P's physical, emotional, and educational needs. The evidence before me paints the clearest of pictures that these are all being met in father's care. There was repeated criticism by the mother of the social worker for having failed, in her mind, to consider whether P had, in her words, "*dropped*" in respect of her educational attainments and abilities since leaving the mother's care and living with the father. I reject that criticism entirely. What is clear on the evidence before me is that P is doing very well in her father's care and the evidence is entirely supportive of that.

32 I am also entirely satisfied that, when P was living with her mother, her physical needs were largely met, and her educational needs were entirely met. In fact, I am satisfied that the only aspect of P's physical needs that were not being met were when she was subjected to entirely unnecessary invasive and intimate professional and amateur examinations whilst being filmed by the mother and her sister.

33 It has been said that the mother can meet the basic care needs of P, and in so much as that relates to her being able to ensure that P is safe on a day-to-day basis from the dangers that are readily apparent to children by way of them physically hurting themselves, and feeding and clothing her, I am satisfied that is the case. However, the issue at the heart of this case is P's emotional needs and the risk of emotional harm to her in the care of either parent.

34 For the reasons I previously expressed within my extensive fact-finding judgment, the mother has made allegations of child sexual abuse against the father which are entirely untrue. She did so in respect of X, as Mr Recorder Lofthouse found, and she did so again in respect of P.

- 35 It is clear to me from her evidence during this hearing that the mother remains firmly wedded to the false notion that both children were sexually abused by the father, despite the overwhelming evidence to the contrary and the judgments from two judges within the Family Court that he did no such thing. It is this fixation on these false allegations which lies, in my judgment, at the very heart of the welfare decision that must be taken for P.
- 36 Having considered the mother's evidence on this point, it is clear to me that she would inevitably instil in P an entirely false narrative about her lived experience and would reinforce the entirely false story that her father had sexually abused both her and her older sister, X, whenever she had the opportunity to do so. The impact of this on P would be emotionally devastating. It would cause her severe emotional and psychological harm, in my judgment, through making her either believe that she was sexually abused by her father when she was not, or through forcing P to process and compute the fact that her mother was forcefully expressing to her a narrative which P herself knew to be untrue. Either would cause P a huge amount of distress. It would likely lead to the need for significant counselling and therapy in the long term, and would be severely detrimental to her emotional well-being.
- 37 In respect of the proposals for arrangements for P to spend time with the other parent, that is also an very important consideration in respect of the harm that P would likely be caused were her emotional needs not be met in her mother's care. The father case, on one hand, is that he would like there to be a relationship between P and her mother, and X, and for it to be as natural and as safe as possible for P. At this point, he says it must be supported in a contact centre in light of the likelihood of the mother reinforcing the false narrative of sexual abuse. The fact that the mother continues to believe that both P and X was sexually abused by father, when they were not, emphasises to me that the father is right to have this concern.
- 38 The mother's case in respect of contact, were the order of the court to be that P should live with her father, is that she simply will not attend contact in a contact centre were this to be what the court determined was best for P. Were P to be put in that position, P would, again, be caused significant emotional harm through a feeling of abandonment as a result of the mother's decision. I found the mother's evidence in this regard to be entirely unwavering. Even when encouraged by me to reflect overnight on her position that she would simply not attend the contact centre to see her daughter were the court to be satisfied that that is what is best for P at the moment, she maintained her stance and remained ultimately focused on her own desires and, to some degree, the welfare of her older daughter, X, rather than that of P.
- 39 Mother's own case in respect of contact were P to live with her is that the father should only see P in a contact centre due to the risk of sexual abuse to P and the risk of harm to her and her family members through the father's domestic abusive behaviour. It is right, as I have indicated already, that the father was found by Mr Recorder Lofthouse to have acted in a domestically abusive way to some extent. To his credit, the father has accepted these findings, engaged fully and well with DVIP, and continued to make good progress. By the time he came to give his evidence before me, for the reasons I have indicated, I am clear that he has taken on board well and fully the work suggested that he should undertake. He has learnt a great deal and reflected a great deal.

40 The competing stances which are adopted in respect of contact were the court to consider it in P's welfare best interest to live with the other parent are telling in respect of the likelihood of P's emotional needs being met in the care of either parent. I am satisfied that father's approach is such that he is focused on the emotional needs of P and protecting her from further emotional harm. The mother's approach, in contrast, is focused on what mother feels is best for her and X, rather than what is best for P. In essence, the mother would entirely sacrifice, through her own choice, her relationship with P rather than see her for a period in a contact centre.

41 In respect of emotional harm, re-visiting the judgment of Mr Recorder Lofthouse from the April 2022, I have already explained how he rejected all but one small part of the mother's allegations. The Recorder specifically found that the mother had maliciously and falsely accused the father of sexually abusing X and also exaggerated dishonestly other allegations of physical abuse. I then found that the mother did exactly the same regarding the sexual abuse allegations of P that she made against the father, finding as I did that:

“The mother is, in my judgment, entirely fixated upon doing anything possible in order to prevent this father playing any part in his daughter's life... I make abundantly clear, the allegations that the mother makes against the father in this case are malicious and are false.”

42 That is a finding which clearly, on the evidence I have heard over the last few days, is as applicable now as it was then. The mother's pattern of utilising her children in a deliberate attempt to pursue knowingly false allegations has likely had a huge emotional impact on P already. I am entirely satisfied, having heard the mother's evidence, that were P to be in her mother's care that she would be exposed to a high risk of significant emotional harm as a result of her mother being determined to effectively brainwash her with a false narrative to which the mother is so inexplicably in the face of the clearest of evidence wedded.

43 The evidence of Dr Shallow in this regard within her March 2022 report is as follows:

“The mother presents as controlling, fixated in her views, and with limited emotional, expressional awareness and insight into her role, the impact of her parenting style and understanding her children's needs, both in terms of their rights to have a relationship with their father but also their emotional needs.”

I am entirely satisfied, having considered the mother's evidence to me, that Dr Shallow's views remain as accurate today as they did in March 2022.

44 Whilst the emotional harm that I am satisfied P would suffer were she to be in her mother's care in an unsupervised setting is a significant factor in my determination as to what is best for P, it is not the only factor. I have considered the likely effect on P of any change in her circumstances, and I make clear that P has lived with her mother for a significant period of time, lived with her father since January, and would be used to living with either of them. I treat that factor as entirely neutral in terms of what would ultimately be best for P.

- 45 P is a very young child. She is clearly very talented and very bright. Her interests, ideally, would best be served by spending time with both parents, unsupported and unsupervised, in a way which was natural were it safe for that to happen. However, I have to consider any harm which P has suffered or is at risk of suffering. I am satisfied, following a consideration of all of the evidence before me, that in her father's care P is not at risk of any harm either through sexual abuse or domestic abuse, as the mother says, or through his inability to meet her needs in any other way. I accept the evidence so clearly and thoughtfully expressed to me by the social worker that P is thriving in her father's care, and I accept she is likely to continue do so.
- 46 By contrast, in her mother's care, P has been exposed to the risk of significant emotional harm and physical harm as a result of being exposed to naked, intimate physical examinations by her mother in the presence of her aunt in the pursuance of mother's own deliberately dishonest agenda against the father. The emotional impact of this on P will, I am satisfied, in all likelihood, not come to the fore for some time. It is likely that what P has already experienced at the hands of her mother – the mother's using of P to pursue her own false allegations against the father on a completely unjustified basis – has already caused her harm. However, it is likely that it is only in future years that P will have to grapple with the consequence of her mother's actions as she begins to question why it is that her relationship with her mother is not as natural as it could otherwise be.
- 47 I consider the impact on P of not living with her half-sister, X. I am satisfied that, ideally, P would like to live with X, or at least spend a significant amount of time with her because there is a strong bond between them. However, in light of the mother having been found to have maliciously lied about the father sexually abusing both X and P, the bond between them and the emotional harm caused to P by not living with her sister must be balanced with, and in my judgment is far outweighed by, the significant emotional harm that P would be caused through the mother's actions were she to live with her through her reinforcement of a false narrative that she has been sexually abused by her own father.
- 48 I have to consider how capable each of the parents are of meeting P's needs. For the reasons I have given, I am entirely satisfied that the social worker is right that the father is able to meet P's needs well, is doing so, and will continue to do so. Her excellent nursery attendance, the observations made by the social worker, and the evidence from the father, all of which I accept, demonstrate that P is doing very well. I have no doubt she will continue to do so in her father's care.
- 49 However, in respect of the mother, I am satisfied that she is a long way from being able to meet P's emotional needs and, in fact, the mother would continue her campaign of making false allegations against the father thereby causing P further emotional harm on top of that which she has already caused her.
- 50 Taking all those matters into consideration, it seems to me that this is a case which was rightly and astutely described by Ms Whelan as being "*very sad*". P is clearly a bright, happy, and intelligent child who would love to have a relationship with both of her parents which was natural. It is clear that both parents love P and she loves them both. However, as well as being a sad case, it is also a straightforward one, in my judgment.

- 51 I draw a number of clear conclusions from all of the evidence I have heard and read in this case. The father did not sexually abuse P. He also, for the avoidance of any doubt, did not sexually abuse X. The mother maintains that he did, and is likely to reinforce this false narrative to P, as I am satisfied she has with X, if given the opportunity to do so. Until there is some shift in the mother's thinking in respect of this, P spending time with the mother in the absence of professional support would likely result in the mother reinforcing the malicious allegation she has made in respect of the father, with the intention of preventing P having a relationship with him. That would be extremely harmful to P in an emotional sense.
- 52 The mother made clear to me that she will not attend the contact centre to spend time with P and will not communicate with the father in any way for any purpose. I am satisfied that both were attempts by her to hold the court to ransom and showed scant regard for the welfare of P. In light of the significant risk P would be at emotionally were she to live with her mother or spend time with her on an unsupervised basis, and the clear evidence that P is thriving in her father's care, I am overwhelmingly satisfied that the only order I can make in respect of P's living arrangements that meets her welfare needs at this stage is that she lives with her father. Living with her mother would expose her to an extremely high risk of significant emotional harm, which would likely result in life-long emotional and psychological damage being caused to this little girl.
- 53 I am entirely clear, however, that it is important that P maintains her good relationship with her mother in a way that shields her, as far as is possible, from her mother's intent to enforce her emotionally harmful narrative on her. However, the mother has been consistently clear that she will simply not attend the contact centre again to see P. Despite great encouragement from me to reflect on that position, she has not done so and maintains that were the court to consider that at this point in time her spending time with her daughter should be in a professionally supervised setting that she simply would not attend and would not see P again. This is not a stance the mother has adopted for practical or logistical reasons – the father has proposed funding the entirety of the costs of the mother's supervised contact.
- 54 Whilst that is an incredibly sad position for a mother to adopt. I make clear it is a deliberately and considered choice on her part to adopt, and in those circumstances I must consider whether the feelings of abandonment and rejection that P would inevitably feel in light of the mother's non-attendance at a contact centre demand that I make no order in respect of contact. Such a course would leave the issue of contact as a matter of discretion for the mother and father to agree between them in due course. Alternatively, I could make an order for there to be supported or supervised contact at the contact centre in the hope that the mother changes her mind and begins to put P's needs above her own.
- 55 I have considered the matter very carefully and with a great deal of anxiety. It is clear to me, however, that making an order for supervised contact, which I am satisfied is the only safe way that P could spend time with her mother currently to protect her from emotional harm, would ultimately be pointless and would inevitably be an order that went on to cause P even more emotional harm than she has already suffered.
- 56 I therefore make no order for contact. In doing so, I make abundantly clear that the only reason I am making no order is because the mother has made clear repeatedly, consistently,

and following an enforced period of reflection by me overnight, that she will not attend any supported or supervised contact at all. I am satisfied, therefore, that P being brought to the contact centre in the expectation of seeing her mother, which she enjoys so deeply and which she looks forward to, only to have her excitement rapidly fall away and turn to upset and distress when she realises that her mother has chosen not to spend time with her, would be devastating and harmful to P. It is simply not something that I am prepared to order, knowing, as I do, that it would result in further harm being caused to P to that which she has already been subjected. It would therefore fly in the face of my duty to make orders which are in P's welfare best interests to make an order that there should be contact at a contact centre at this point in time.

- 57 I am satisfied, in light of the mother's utter fixation on the deliberately false narrative that she has pursued on so many fronts against the father, combined with her repeated non-compliance with court orders in this case, and concluding as I do that she often puts her own desires above what is best for P, that a prohibited steps order is required preventing the mother from removing P from the father's care or from any organisation, education provider or individual into whose care she has been entrusted by the father without written agreement. A PSO is also necessary to prevent the mother from removing P from the jurisdiction in light of the mother's previous behaviours. Such an order is necessary and proportionate in all of the circumstances, in my judgment, and shall last until further order. It is a measure which is necessary to protect P from what is rightly described by the social worker as "*mother's unpredictable approach in this case.*"

Costs

- 58 I have been asked to, having made the order that I have made, consider the father's application for costs. In support of the application, I have before me the form N260, which has been completed in respect of the work undertaken from the fact-finding hearing before me up until today's date, which comes to a total of £31,634.12. I have been referred, helpfully, to two cases in respect of the approach the Family Court should take in respect of costs: the authority of *Re W (A Child)* [2020] EWCA Civ 77 – well known to the court – and also a case which, whilst not binding authority, is a helpful published judgment from within the Family Court sitting at Barnet, before Recorder Dias KC, *A Mother v A Father* [2023] EWFC 105, in which the Recorder pulls together a number of very helpful strands setting out what it is the court must consider in determining whether to make an order for costs following, in this case, a fact-finding hearing and subsequent final hearing or indeed generally.
- 59 As I indicated during the course of brief submissions this morning to Ms Whelan, in respect of the judgment of Mr Recorder Dias KC, there is one aspect in respect of which I do not necessarily agree with the Recorder, and that is that fact-finding hearings do not engage a consideration of the welfare of a child, and therefore are not part of the general approach that the making of costs orders does not happen in the Family Court in light of the welfare of the child being a relevant factor. However, for the reasons I will go on to give, that is irrelevant because it is clear that this is a case in which the mother's behaviour and litigation conduct in pursuing deliberately malicious and false allegations against the father of the most heinous kind – the sexual abuse of his own daughter – is the most unreasonable and reprehensible conduct one could imagine in a case of this nature.

- 60 I have to consider the reasonableness of the mother's behaviour. I must consider the fact that, of course, the court has a discretion in respect of the order sought for costs, and that some leeway must be given to parents, in my judgment, within a Family Court setting in which they are entitled, to some degree, to set out the reasons why it is they say the order they seek is in their child's welfare best interests.
- 61 However, in this case, it is difficult to think of a more extreme example of unreasonable and reprehensible behaviour than that demonstrated by the mother, who decided to make repeated false allegations, the one on which I focus being the false allegation that the father sexually abused his own daughter which, for the reasons I gave previously, he did not.
- 62 I am entirely satisfied that the mother's conduct is unreasonable. This falls at the very highest end of the scale of unreasonable behaviour within family proceedings, and I am entirely satisfied that the application for costs is properly made. I have borne in mind that the mother is only in receipt of a limited income through income support and, realistically, Ms Whelan submits that that should result not in the not making of an order for costs, but an order that the costs ordered should only be enforced on further order of the court.
- 63 I have considered the schedule of costs provided, and it is very clear to me that all of the individual items within it, which I have scrutinised, are entirely appropriate. Those instructing Ms Whelan have properly undertaken a great deal of work on this case, which is, in my view, no means excessive and Ms Whelan herself, who has been of great assistance to the court, has been properly remunerated for her work.
- 64 However, I am not satisfied, whilst it clearly is the case that an order for costs is appropriate, that the complete sum sought, £31,634.12, is the right figure on the basis of the reasons I explored with Ms Whelan during submissions. In my judgment, in any event, there would likely have been a shorter, but nonetheless contested, one-day final hearing in this matter were there to have not been mother's false allegations made in respect of the sexual abuse of P. Of course, I have, and I am entitled to bear in mind, both pre-litigation conduct and the conduct of the mother prior to the particular false allegation of sexual abuse, which includes the false allegations that Mr Recorder Lofthouse found to have been made.
- 65 However, in the circumstances, and having assessed summarily the bill of costs submitted to me, I am satisfied that, whilst there should be an order in favour of the father for the recovery of his costs, that there should be a small reduction in light of the need, as I find it to have been, for a final hearing to take place. The total bill of costs should therefore be reduced to the sum of £26,000, that being a reduction of some £5,634.12, to reflect the work that I am satisfied would have been necessary in any event, even were the mother not to have acted unreasonably as she had. That is an order which, as is realistically accepted by Ms Whelan, must not be enforced without further order of the court.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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