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**IN THE FAMILY COURT AT MANCHESTER**

Manchester Civil And Family Justice Centre  
1 Bridge Street West  
Manchester  
M60 9DJ

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Before:

**DISTRICT JUDGE RICHMOND**

Between:

N T  
- and -  
P M

**Applicant**

**Respondent**

MR MILAD SHOJAEI for the Applicant  
MS ELLISON for the Respondent

**APPROVED JUDGMENT**

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*[Please note transcript produced from poor quality recording]*

**DISTRICT JUDGE RICHMOND:**

1. This case involves A. She is a little girl, she was born on (redacted) so she has just turned (redacted) now. Her father is N T, who is the core applicant in these proceedings, and he is represented by Mr Shojaei of counsel. A's mother is P M, and she is represented by Ms Ellison of counsel.
2. The background to this case is that the father was born on 4 July 1982, and mother was born on 21 January 1993. The chronology tells me that they married on 13 July 2019 in a religious marriage, but it is important to note, just for the fullness of the chronology, that their relationship started some years before, in about 2010, 2011, when mum was just 17. It is clear that they did not live together all the time between then and getting married, because of work and study commitments, and they did break up in 2014, but they got back together again.
3. This is of course the fact finder relating to allegations of abuse, and the question was put to mother, "Well, if this was such an abusive relationship, why didn't you leave it? You broke up, why did you get back together again?" But we are all aware, are we not, of the nature of an abusive relationship, and the court has to take into account the fact that often in even the most inexplicable circumstances people who are being abused go back to their abuser. So, the court has to be aware of that.
4. As I say, the parties married in July 2019, A was born in (redacted), but in September 2022 the parties separated. There were some efforts I have seen from the various text messages and the like to agree child arrangements, but eventually the father felt he had no alternative but to issue an application for a child arrangements order in November 2022.

5. A few weeks later, Mr Shojaei notes with a degree of cynicism, the mother issued an application for a non-molestation order, notwithstanding the fact that it was quite a few weeks, certainly three months, since they separated, and he wonders why such an urgent application was necessary.
6. Be that as it may, the application was issued, and it was granted by another judge, and the proceedings have progressed from there, through a First Hearing Dispute Resolution Appointment, directions for a fact finder, to which I will return in a moment, and ultimately to today's hearing.
7. Perhaps the only other point to highlight from the chronology is that in August of last year there was a DNA test which confirmed that the applicant is indeed A's father.
8. So, to pose that rather philosophical sounding question, "Why are we here?" but not to pose it in a philosophical manner, to ask, "What is this hearing all about?"; both parties make allegations of abuse against the other. Where allegations of abuse are made, under Practice Direction 12J the court has to consider whether a fact finding hearing is necessary to see whether any of those alleged facts are true, to inform the court, often with the assistance of a report from CAFCASS or the Local Authority, of the factual nexus upon which the welfare situation should be based.
9. With some difficulty due to ill counsel, non-production of police records and other things, the hearing has finally come on today, and my job today is to consider the allegations which have been made, and decide which, if any, I find are proved.
10. That comment leads me onto something which I feel is often forgotten in fact finding cases, and that is an allegation is not enough. If an allegation is to be of any relevance

within proceedings it has to be proved. If it is not proved, the courts proceed on the basis that it did not happen.

11. I know away from the court environment there are some bodies who perhaps place more reliance on the making of an allegation than the courts can, but unless you can prove your allegations they really are going nowhere, a matter to which I will return.
12. Allegations have to be proved on the balance of probabilities, that is what is more likely than not. Often for the benefit of lay people in the room I say that I am aware that they may have heard of the phrase "beyond reasonable doubt", that is the criminal standard of proof, that is not what I am concerned about today, I am concerned about the civil standard of proof, the balance of probabilities, what is more likely than not.
13. Yesterday I read the transcript of a similar hearing, because I had ordered the transcript to be produced for CAFCASS. I said, and this is relevant in this case, that the way in which the courts deal with these matters is very much a binary one. I only have to be satisfied on the balance of probabilities that something happened.
14. So, even if I am only just satisfied, the courts will then proceed on the basis that it did happen. If I am just not satisfied, the courts will proceed on the basis that it did not happen. There is no grey area in these situations. Either it did happen or it did not happen. I cannot say, "Oh, well, I am 55 per cent for saying that it happened, therefore it sort of might have happened, and CAFCASS need to prepare their report on the basis that it might have happened". That is not what we are dealing with.
15. How does the court go about this? The court hears evidence, in this case from the mother and the father, they produce statements. Both have produced numerous statements, I suggest probably too many statements. Anyway, they have been

produced. I case managed the case, so it is probably my fault if there are too many statements. But they produce their statements, they go in the witness box, they are asked questions by the other side's advocate, they are cross-examined, and their evidence is so tested.

16. What is the court looking for to decide whether something has been proved on the balance of probabilities? In an ideal world every allegation that is made, if it is going to be proved, would have some sort of independent corroboration. So, for example, corroboration that mum has had some abortions can be seen from the Marie Stopes discharge papers. That is something which corroborates in part what she has said.
17. The court also assesses how a witness performs in the witness box. Are they a good witness? Are they a bad witness? Do they appear to be consistent? Are they consistent with their statement? That is the judge's job, to see what he thinks of the witness's performance in the witness box.
18. So, we are looking at the evidence, we are looking at the testing of the evidence, we are looking at corroboration of the evidence, and we are looking at whether the evidence is given properly.
19. To go back to something that I have said a few minutes ago, allegations have to be proved. One of the problems that I have in this case is that I do have my doubts as to whether particularly the mother's case has been given a proper analytical consideration of what might or might not be proved. In fact, I remember at the end of the aborted hearing last time, almost the last thing that I said, because there seemed to be perhaps some realisation from the emergency advocate who was instructed on that occasion that maybe there might be some difficulty in proving things, that maybe somebody needs to have a good sit-down with the mother, discuss whether she really

is going to be able to prove her allegations; that sometimes you make things worse by pressing on with allegations that are not proved.

20. I do not know whether that happened, and I still doubt whether that has happened, I do not know whether Ms Ellison had that conversation with her client, I do know that Ms Ellison has not been involved in any of the previous hearings. So, I suspect she, unlike her instructing solicitors, has not had the opportunity to make that assessment.
21. So far as the witnesses giving evidence is concerned, on balance I found the father to be a more credible and consistent witness. The mother I am afraid did seem to go off at a tangent. I make allowances for the fact that, as she said, she tends to talk quickly, but there were times when her answers to Mr Shojaei's questions appeared to be reactive, she was looking for an explanation of the points that he was putting to her, whether they were true or not.
22. What I would say about the father however, and here I certainly agree with the approach that Ms Ellison took in cross-examination, and she hinted at it in her closing submissions, is it does not take much to look at the messages that were passing between these parties to see that this is a gentleman who one might say adopts a slightly old-fashioned approach to the relationship of husband and wife, or one might say this is a man who seems to see himself as in some ways superior to a woman. That came through in the evidence that he gave.
23. So, whilst I may consider that he was a better witness in some ways, in other ways his superiority as a witness perhaps laid clear some of his faults behind his relationship with the mother.

24. We are told that we should not have schedules of allegations any more, and yet since *H-N* I have not come across a fact finding case where there have not been schedules of allegations. This is no different. I think the way one must approach the schedule of allegations is that they are a guide to making the sort of narrative assessment of the situation that the Court of Appeal wanted us to make in *H-N*. But it is still helpful, I feel, to go through the allegations.
25. For no particular reason I will start on the front page. So, it is the father's allegations about the mother. "The respondent mother was emotionally abusive towards the applicant father. She would often emotionally blackmail when he discussed his concerns in respect of the respondent mother's anger issues. The respondent mother attempted suicide while pregnant" and so on. I do not propose to read it all out before you.
26. The mother certainly did, at least once, if not twice, on her own admission, attempt suicide. She denies however that she tried to throw herself down the stairs. Mr T says, "Well, she said she was going to do it, and then she went off and, before I could get out of the room, she fell down the stairs. So, although I didn't see her do it, she was doing what she had said she was going to do". Mum says, "I just slipped". Obviously, they have had a heated exchange, and when she went out of the room she slipped and fell down the stairs.
27. On balance, given that the father did not see what actually happened, it is very difficult I think for me to find that mum did throw herself off the stairs, and I do not so find.
28. What I do find is that mum's reaction to stressful situations seems to be volatile. She certainly has talked about suicide. She admits she has suicidal thoughts or has had

them. In the section 7 report that I am no doubt going to order there should be a specific direction to CAFCASS that they will need to consider whether the mother needs to have a psychological assessment. She herself said that the effect of this father's behaviour was to affect her parenting capacity. If that is the case, and that is her evidence, then it is something that will require consideration.

29. I am not sure that the father's allegations can be taken much further than that. One always has to remember the words of I think it was Peter Jackson LJ in *H-N*, when he said, to paraphrase, that there is a difference between domestic abuse and the disagreements, the arguments I suppose, that happen when a couple are breaking up. One is not the same as the other, said Peter Jackson LJ.
30. The cooker incident, if I can call it that, clearly happened. I have seen the video, mum accepts it has happened, but mum accepts that it should not have happened, and it does appear to have been brought up when convenient rather than actioned upon at the time. Social services were not involved. Rather like one or two of the other things that are alleged against the mother, one does wonder that, even if that happened when the child was only 2, is that something which really informs the factual nexus of the welfare position?
31. Which one of us in the room is a parent, and I only know that the mother, father and me are parents, because I do not know whether counsel are parents, can say that we have parented out child, or children in my case, perfectly at all times? I would venture to suggest that anybody who thinks they have is either deluding themselves or lying. I certainly have sometimes read papers, not this case, where you look at what is alleged, particularly in some care cases, and you often wonder how one's own children were not taken off you at a very early age. That does not happen.



32. There is an allegation that mum would stay up all night and watch Korean and Chinese subtitled movies. She gave an explanation for this. I think the explanation was reasonable. She was looking after a small child, she was breastfeeding for a year. The child slept. When the child is asleep, she could do other things. The child was being well fed.
33. Father says he feels he was forced to cook healthy meals for the child. With the best will in the world, if mum is looking after the child in the day, dad is at work, I am afraid in the 21st century you cannot come home from work and expect dinner to be on the table, and you put your feet up with the newspaper. The child importantly seems to have been well cared for. Such evidence as there is, of the health visitor's visits, is that there were no issues raised. So, again, even if mum did watch videos or movies, I think by the sound of the name, if I can be forgiven for saying so, somebody who might be Korean or Chinese, the friend she was watching them with, one is tempted to say, "So what?"
34. "When the mother gets angry, she would drive off in her car with the child in the front seat, without appropriate safety measures in place to ensure the child is safe", then there is the light bruising point. There is no evidence to substantiate the light bruises point at all, that cannot be found on the balance of probabilities.
35. The parents' evidence is that they had a row, mum was going off. She says she strapped A in, dad says she did not. It is very difficult to make a finding as to what did or did not happen, but what one can say again is that, if that happened, the only evidence is that it happened once. There is no evidence that mum frequently carried the child around in the car without being in a child seat or strapped in. So, again, one wonders where this is going to take the case so far as any welfare considerations are

concerned, particularly when that is an event that has now happened, if it happened at all, a good 18 months ago.

36. "Verbal and emotional abuse". I have read many of the text messages. There is no doubt that this was a relationship which broke up, there is no doubt that it was a volatile relationship, one just has to look at what happened, they got married, broke up, got back together again, and so on and so forth.
37. Is it surprising that the parties had arguments? Father has to accept that there was certainly infidelity on his part. This is not a court of morals, I am no longer here to point the finger at somebody who may or may not have committed adultery, that is completely irrelevant. Indeed, and perhaps I should have said this at the outset of my judgment, one has to remember that fact finding hearings are not here as some sort of referee between the parties, as to who did what to whom and when, and who did not do what to whom and when.
38. This is not the forum where I decide who was the worst husband or wife, and who was to blame for the relationship breaking up. That is not what we are here for. This is a relationship which did break up. I am sure that both parties insulted the other, and, from what Peter Jackson LJ said, whether that is high enough to say that it was abuse, we might as well say every argument husband and wife has is abuse, which it is not. That is what Peter Jackson LJ said.
39. "The porn revenge". Again, this is admitted. It is admitted that mum put a recording device in her car, and she recorded father having sexual intercourse with another woman, which she then, at the very least, sent to the other woman's mother. It may be that she then disseminated it to other people. Again, I do not think that really makes much difference. The fact of the matter is that you should not be recorded.

40. Whilst I am not saying I would go as far as to say that this was coercive or controlling, as Mr Shojaei tried to point out in cross-examination, it is emotional abuse, and he put to the mother, "How would you feel if the father had put a secret camera or recording device in your car, and recorded you?" I am not sure that we ever got a sensible answer to that question, but it is patently obvious that anybody who was in that situation would feel abused.
41. So, to that extent I do believe that there was certainly emotional abuse by the mother, and I think that fits in perhaps with my view of her reaction to stressful situations, the threats to commit suicide and so forth, but it is perhaps something which should be investigated through a psychological assessment, as I have mentioned.
42. I move onto mum's allegations. Mr Shojaei went through a whole list in his closing submissions of areas in which the mum did not produce corroborative evidence when she might have done. I did not, I have to say, write them all down. But he made the obvious ones, "Where are the GP records? Where are the records of the abortions? Why is there no report of her report to (redacted) Police, who are supposed to have given a caution? Why is there not more information in the police disclosure we do have?" Because in fact those investigations seem to have gone absolutely nowhere.
43. I come back to the point, I certainly hinted at this: If one is going to make allegations, one has to prove them. A lawyer's role, and Ms Ellison will thank me for saying this, more likely the solicitor's role, is that you have to discuss with your client, "How are we to get the evidence to prove these allegations?"
44. It is 21 years since I left practice, not giving my age away but certainly giving a rough idea as to how old I am. One of the things that we used to do was obtain an advice from counsel evidence before the hearing, and if the solicitors were not capable,

through no fault of their own necessarily, of working out what evidence was needed, discussing it with the client, then this is probably a case which cried out for a conference with counsel to give that advice, and perhaps at the same time to undertake the analysis that I suggested at the outset should have been carried out after the last hearing.

45. Because the fact of the matter is that there is either no corroborative evidence or at best incomplete corroborative evidence to support mum's case in situations where she could or should have been able to obtain it:
46. For example, the chlamydia allegation. If sadly she tested positive for chlamydia, that would be in her GP records. This is not a case which has come on at short notice when you have not had a chance to get them. This fact finding hearing was first listed in March, three months ago. So, given that the mum's case should have been ready for then, let alone today, all the more surprising that we do not have missing evidence from the GP in relation to that. As Mr Shojaei pointed out, such evidence as we do have, when mum was tested for STDs, is that she was negative.
47. There is similarly the allegation that using clingfilm instead of a condom caused damage to the inside of mum's uterus. Well, that is something that is going to be in the medical notes. GP notes go back for a long time, I do not think doctors ever destroy notes, until you are dead, and probably not even then. They are not all put online, straightaway, they could not possibly put everybody's paper notes onto the computer, so that I can access my medical records by going onto my GP's website, I am not sure how far back I can go, maybe by now I can go back to 1959 when I was born. But, even if I could not do that, the paper records in those old brown files that we all remember would/should have been obtained, and yet they have not been.

48. The same applies to the (redacted) Police information, there was lots of argument, time wasted, over obtaining police disclosure in this case. Nobody ever raised getting information from (redacted), and yet they are the ones who mum says cautioned dad. What better evidence than to include in your police disclosure order (redacted) Police? That was not done.
49. The abortions. There are two fundamental problems with mum's evidence in relation to the abortions: First, at best she has two or possibly three pieces of correspondence in relation to attending the clinic for an abortion. Two are discharge notes from the Marie Stopes clinic, the other is making an appointment with British Pregnancy Advisory Service, BPAS. Even that does not confirm that the appointment took place, it does not confirm that the procedure actually happened. Again, even if BPAS do destroy their notes after 8 years, which is what mum said, then it must be on your GP notes, a letter will have been sent to your GP. If that really happened, efforts could and should have been made to obtain it.
50. I have to decide the case on the evidence which is available to me today, not the evidence that might be available tomorrow, or not speculating about what evidence there might be.
51. It seems to me that, taking into account those statements and mother's own inconsistencies and habit of going off on fancies of her own in the witness box, it is very difficult for me to find that her allegations regarding sexual abuse, chlamydia, abortions and so forth are proven. Even in respect of the abortions that we do know about, there is no evidence whatsoever that she was coerced into it, indeed it does not look like somebody being forced into an abortion on the evidence before me.

52. The allegation in 2019 that "the respondent's parents received a call from a woman stating the applicant had raped her in the respondent's car" is at best hearsay; at worst there is no evidence at all. It is not something that I can safely make a finding on.
53. "The applicant subjected the respondent to coercive and controlling behaviour", in particular what she wore, who she could see". I have had the benefit of seeing messages passing between the parties, and I have had the benefit of seeing them in the witness box. I have no doubt that the way in which Mr T conducts himself suggests that he is a gentleman who is quite capable of being coercive and controlling.
54. That fits in, if I leap ahead, with the bizarre explanation for the tracker on the child's mobile phone. We will set aside why you provide a mobile phone for a (redacted), apparently it is to watch cartoons and play games, but anyway, it seems that no child can be without their mobile phone, certainly not 15-year-old daughters in my family, or indeed 35-year-old sons.
55. I know there is an explanation, "I only put one on to see whether the phone had arrived". It seems strange for me, as Ms Ellison pointed out, there are many other ways of checking that a parcel has arrived. Indeed most delivery companies will do something like send you a photograph of it being delivered now. If you send it by recorded delivery.
56. I am satisfied that Mr T does display some coercive and controlling behaviour and, to move the case forward slightly, I am concerned that, it will be very difficult for these parties to agree any sort of sensible child arrangements order or arrangement.
57. The information about "the applicant subjected the respondent to financial abuse" is thin and vague, not something that I really find either proved or, it has to be said,

particularly relevant, even if it were proved.

58. The respondent said she felt low because of the applicant's incessant abuse, that she contemplated suicide. Again, I have dealt with that. She admits that she did. It is something that will have to be considered by CAFCASS, when they prepare their section 7 report. We also know that father was unfaithful with other women, again that may well be some form of emotional abuse. But the counter argument of course may be, "Well, they are now separated", so is that something which is really going to be relevant moving forward to making child arrangements for A.
59. The evidence about taking A to (redacted) is confused, to say the least. I cannot find that is proved. To be honest, the evidence in respect of the tongue mutilation is thin, it seems to rely on one message mum sent. It is accepted that A did have some form of speech delay, which is being dealt with appropriately here by her nursery and other professionals. I am not sure that that really helps me.
60. I have dealt with the phone, there is no evidence, no reliable evidence, about Mr M getting involved. Indeed, there is no evidence about many of the things that the wife alleges.
61. It is not in the schedule but there is an allegation that father was a "hands-off" father, but it is clear from the documents that Mr T attended hospital appointments, and it seems to be clear that he was being supportive. Any evidence that he was absent because of work: If he was at work, he was at work. It is certainly not evidence of a lack of support during the covid lockdown.
62. I am not surprised that mum, given the findings that I do make, wanted the father to go through the formal channels. As I have already said, I think that the

communication between the parties is now so poor that it is likely that some form of rebuilding of relationships is going to be necessary.

63. I hinted at this, but I do not see that this is a case in which there is any likelihood of change of the residence of the child. I do not see any actual bar to the father spending time with his daughter, provided it is safe so to do. It may well be that we need a report from CAFCASS, and recommendations by CAFCASS, before that can really move forward, because of the breakdown between the parents.
64. The case I referred to, I read the transcript to approve it yesterday, has a number of similarities with this case, and this seems to have been a case which in reality was a dispute over how and where the father should see the child. There was no suggestion in the earlier text messages that mum was opposed to contact, indeed in her evidence that did not really come across as her case.
65. It is unfortunate that the system that we have encourages parties to concentrate more on allegations that they may not be able to prove than on moving forward in respect of a young child who will always be their child, where there is no real dispute between the parties, and no real danger to the child which cannot be addressed through the usual safeguarding channels and a section 7 report.
66. Mr Shojaei asked me to make a specific finding that mum had done this deliberately. I do not think, given my view of the inadequacy of the evidence that she produced, I can make that finding. But I do find that the vast majority of her allegations are not proved.
67. I think I have covered all my notes now. Yes. The way forward is clear, that there should be a section 7 report dealing with the matters that I have already hinted at



during the course of my judgment.

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