

Neutral Citation Number: [2024] EWFC 386 (B)

IN THE FAMILY COURT AT OXFORD

Case No. OX23P00390, OX23P00392

Courtroom No. 8

St Aldates
Oxford
OX1 1TL

Tuesday, 18th June 2024

Before:
HIS HONOUR JUDGE RICHARD CASE

B v B (Fact Finding)

B E T W E E N:

B (Father)

and

B (Mother)

MS E WENTWORTH, counsel, appeared on behalf of the Applicant
MS L ROWE, counsel, appeared on behalf of the Respondent

Hearing dates: 17-18 June 2024

APPROVED JUDGMENT

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HHJ RICHARD CASE:

1. This is my judgment in OX23P00390. The applicant in that case is the Father, represented by Ms Wentworth of counsel. The respondent Mother is represented by Ms Rowe of counsel. They are respectively the Father and mother of three children with whom I am concerned: C1 is aged 12, C2 is aged 9 and C3 is aged 3. I am also concerned with two other applications. This application is the Father's application for a child arrangements order for the children to live with him and a prohibited steps order against the Mother not to relocate. It was originally also a specific issue order application in relation to a holiday.
2. The application was made on 5 September 2023, and on 27 November 2023, the Mother issued her own application for a non-molestation order in OX23F00224. That was concluded when it came before District Judge Devlin on 22 December 2023 on the basis of no findings and no admissions; the non-molestation order to run to 22 June 2024, in other words, a few days' time. On the same day the Father issued his application, the Mother issued a cross-application in OX23P00392 for a prohibited steps order for the Father not to remove the children from her care.
3. As a result of an order I made at a pre-trial review, for avoidance of any doubt, all three applications have been consolidated. The purpose of this hearing which has taken place over two days, today being the second day, is to determine a number of allegations made by the Mother against the Father and having made a determination on those, to consider whether or not the non-molestation order which is currently due to expire on 22 June should be extended and, if so, for what period.
4. District Judge Devlin heard the non-molestation order application and also, in fact, heard the child arrangements order application, and then on 29 September 2023, made an order for the children to live with Mother until further order. That was a hearing listed at short notice or certainly urgently and a First Hearing Dispute Resolution Appointment was listed before District Judge Jenkins on 28 November. At that hearing, the lives with Mother order was continued, but District Judge Jenkins made an order for the children to spend time with the Father indirectly by way of telephone video calls and for there to be contact between the Father and C1 via text messages.
5. The matter was listed before me on 17 May for a pre-trial review and I placed a limit on the allegations that the Court was to determine in the interests of proportionality. I will

return to what those allegations are in just a moment. I observe that since 27 August 2023, the Father has not had direct time with the children. The current arrangement under the orders that I have set out is that the children are living with the Mother and spending indirect time with the Father. Both parents have parental responsibility. As far as this two-day fact-finding hearing is concerned, the Mother invites me to make findings against the Father and to extend the non-molestation order. The Father denies the allegations, to put it in a broad sense – I will return to the specifics in due course – and says that there is no evidence of molestation and therefore no justification for the non-molestation order to be extended.

6. The bundle runs to just over 450 pages and that, I think, is a slimmed-down version of what I was presented with on the last occasion. Insofar as this two-day hearing is concerned, the following documents are of particular importance: first of all, three statements prepared by the Mother. They are not in chronological order in the bundle but the first is at the beginning of the statement section. The last is in a separate section at the end and was filed in relation to the non-molestation order, and then there is a third witness statement directed in these proceedings.
7. The Father has until recently represented himself and a direction for a qualified legal representative was made, but at the pre-trial review, he indicated he was going to instruct solicitors. Counsel appears on his behalf today. Perhaps because of that situation, his initial five statements were somewhat lacking in focus on the issues in the case and at the pre-trial review, I directed him to file a composite further statement; a sixth statement. I have also particularly had regard to a transcript of what I understood to be an audio recording although it might be a video recording of the parents on 12 August 2023 at a festival. The circumstances of that incident form the basis of allegations four and six which I will return to. There is also a bundle of police disclosure. I have had regard to various parts of that and I have been directed to other parts of the bundle as I set out in the judgment in due course.
8. As far as the law is concerned, these are allegations made by the Mother against the Father. The law requires her to prove the allegations on the balance of probabilities. I remind myself of the directions I have to give myself in relation to fact finding adapted from a summary of Munby LJ, then President of the Family Division in *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam). He made reference to a judgment of Baker J, as he was at the time, in *Re L & M (Children)* [2013] EWHC 1569 (Fam) and set out a number of

propositions. First of all, the burden of proof lies with the person making the allegations. Secondly, the standard of proof is the balance of probabilities. Thirdly, findings of fact must be based on evidence including inferences that can properly be drawn from the evidence and not on suspicion or speculation. Fourthly, when considering cases of suspected abuse, the Court must take into account all of the evidence and consider each piece of evidence in the context of all the other evidence. The Court invariably surveys a wide canvas. The judge must have regard to the relevance of each piece of evidence to other evidence and exercise an overview of the totality of the evidence in order to reach the conclusion whether the case put forward by the person making the allegations has been made out to the appropriate standard of proof.

9. Next, the evidence of the parents is of the utmost importance. The Court must form a clear assessment of their credibility and reliability. Lastly, the reference to the direction that the Court must give itself in relation to lies which I will come back to in just a moment. Before I do though, on 10 November 2021, McFarlane LJ, the President of the Family Division issued a memorandum on witness statements. Paragraph 14 reads as follows:

“Parties should understand that the Court’s approach to witness evidence based on human memory will be in accordance with Civil Procedure Rule, Practice Direction 57 AC, Appendix paragraph 1.3. This states that human memory:

- (a) is not a simple mental record of witnessed event that is fixed at the time of the experience and fades over time; but
- (b) is a fluid and malleable state of perception concerning an individual’s past experiences and therefore;
- (c) is vulnerable to being altered by a range of influences such that the individual may or may not be conscious of the alteration”.

10. I also direct myself to the judgment of Jackson J, now Jackson LJ in *Lancashire County Council v C, M & F (Children)* [2014] EWHC 3 (Fam) who records at paragraph nine:

“I would only add that in cases where repeated accounts are given of events surrounding [in that case] injury and death, the Court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is, of course, they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated or there may be an inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and the questioning upon memory should also be considered as should the effect on one person of hearing given accounts given by others. As memory fades, a desire to iron

out wrinkles may not be unnatural. A process which might inelegantly be described as ‘story-creep’ may occur without any inference of bad faith”.

11. That guidance needs to be borne in mind by me when considering perceived differences between accounts given over time and generally when considering a witness’ recall. As far as a witness’ demeanour is concerned, Jackson LJ again in *B-M (Children)* [2021] EWCA Civ 1371 says this at paragraph 25:

“No judge would consider it proper to reach a conclusion about a witness’s credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents, the assessment of credibility can quite properly include the impression made upon the Court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed, in family cases, where the question is not only ‘what happened in the past?’ but also ‘what may happen in the future?’, a witness’s demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable”.

12. He continued at paragraph 26:

“I therefore respectfully agree with what Macur LJ said in *Re M (Children)* [2013] EWCA Civ 1147 at paragraph 12, with emphasis on the word ‘solely’:

‘It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so’”.

13. Paragraph 28:

“There will be cases where the manner in which evidence is given about such personal matters will properly assume prominence. As Munby LJ said in *Re A (A Child) (No. 2)* [2011] EWCA Civ. 12 at paragraph 104 in a passage described by the judge as of considerable assistance in the present case:

‘Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness, as here a woman deposing to serious domestic violence and grave sexual abuse, whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and

convincing as to the central core...Yet through all the lies, as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities”.”

The judge continued at paragraph 29: “Still further, demeanour is likely to be of real importance when the Court is assessing the recorded interviews or live evidence of children”.

14. Before I turn to consider lying in a little more detail, in relation to electronic messages, and there is one in particular, in this case, I remind myself of the observations of Lord Kerr in *Stocker v Stocker* [2019] UKSC 17 in which he cautioned against “elaborate analysis of a tweet”. He said that:

“The imperative is to ascertain how... a typical; i.e., an ordinary reasonable reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on”.

15. Insofar as lying is concerned, although I am not going to set it out at length, I have reminded myself of Macur LJ’s elaboration on the standard *Lucas* direction in the Criminal Courts, *R v Lucas* [1981] QB 720, given by her in *Re A, B and C* [2021] EWCA Civ 451. Essentially, I have to have regard to the underlying reasons why someone might have lied and not assume that because someone has lied about one thing, they are lying about other matters.
16. As far as domestic abuse is concerned, the Court of Appeal in *Re H-N and Others (Children) (Domestic Abuse: Finding-of-Fact Hearings)* [2021] EWCA Civ 448 gave guidance. The Court of Appeal emphasised the impact that domestic abuse has on the victim and children and I will return in a moment to paragraph 32 of what the Court of Appeal said. However, I also take account of section 1(2) of the Domestic Abuse Act 2021 which defines domestic abuse in this way:

“Behaviour of person (‘A’) towards another person (‘B’) is ‘domestic abuse’ if:

- a) A and B are each aged 16 or over and are personally connected to each other; and
- b) the behaviour is abusive.

17. Subsection (3):

“Behaviour is ‘abusive’ if it consists of any of the following:

- a) physical or sexual abuse;
- b) violent or threatening behaviour;
- c) controlling or coercive behaviour;
- d) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct”.

18. Practice Direction 12J of the Family Procedure Rules at paragraph three gives a definition of firstly, coercive behaviour, and then controlling behaviour.

“‘Coercive behaviour’ means an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim.

‘Controlling behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support...and regulating their everyday behaviour”.

19. In *F v M* [2021] EWFC 4 Hayden J set out a list of paradigm behaviours which might be coercive or controlling. That list at paragraph 60 was quoted with approval in *Re H-N* and includes isolating someone, monitoring their time, monitoring them via online communication tools, taking control aspects of their life such as where they can go, what they wear, repeatedly putting them down and assault. *H-N* emphasised that the criminal law principles and concepts are not relevant to the fact-finding in Family Courts. At paragraph 32 in *Re H-N*, the Court of Appeal said this:

“It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour will be ‘abuse’ in the context of proceedings concerning the welfare of a child. Much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Jackson LJ in *Re L* [2017] EWCA Civ 2121 at paragraph 61:

‘Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’”.

20. I also observe that in almost every private law case that comes before the Family Court, there has wholly or partly been a breakdown in the relationship between the parents. The case arises because of that unhappy relationship. The fact that parents of children are ultimately unhappy in their relationship does not mean without more that the relationship was abusive.

21. Having set out the law then, let me turn to the credibility of the two witnesses from whom I heard; that was the Father and the Mother although they gave evidence the other way

round. I will approach their credibility in that order, reminding myself that that is part of the broad canvas against which I assess the allegations. Insofar as the Mother was concerned, she was, at times, emotional when she gave her evidence and it might be argued that lends a degree of credibility to the assertions of domestic abuse that she makes. On the other hand, it might be a reflection of the emotion of the process of giving evidence, the turbulence of the relationship, perhaps before it came to an end and thereafter, even if it was not domestically abusive.

22. More particularly, there were a number of areas where her credibility was challenged and potentially found wanting. I am going to take those in turn. First of all, I make a general observation about the lack of reporting of her allegations. There is limited support for her allegations by way of contemporaneous reports to the police, children's social care or to others. I remind myself that that may be for a number of reasons. It might be because of embarrassment about reporting personal matters. It might be through a sense of feeling disempowered. It might be an attempt to save the relationship. It might be that the person not making contemporaneous allegations to the police or children's social care feels trapped and feels that making the allegations might make matters worse. It was the last of those that the Mother gave evidence of. She said in her evidence-in-chief:

“I didn't report incidents at the time because I had no finances to leave and I didn't have friends or family to turn to, and I thought if I reported to the police or children's social care or the school, the children would be taken away”.

23. Despite having prepared three witness statements prior to giving that oral evidence, that explanation was not given, and I find that surprising. More troubling, perhaps, is that despite having prepared three witness statements and despite having been asked questions in-chief and in cross-examination, it was not until re-examination that for the first time, she gave an explanation for not taking any photographs of alleged bruising being that the Father had access to her phone.
24. Next, in relation to allegation four, that is an incident that happened at the festival in August 2023, there was the following exchange in cross-examination. She was taken to page 264 of the bundle, and two minutes and 51 seconds into the transcribed audio, at which point, she said, “I'm going to phone the police. Get the bag”, that is the children's bag, “or I phone the police”.

Father: “Are you threatening me?”
Mother: “I'm not threatening you; I'm telling you”.
Father: “No, you are”.

Mother: "I said no, the arrangements are cancelled".
Father: "You can't just cancel them all of a sudden".
Mother: "I can do what I feel is right".
Father: "And who says?".
Mother: "Says I".

25. It was suggested to her that that was her dictating the arrangements which she denied. On the face of the transcript, it is difficult to view that exchange in any other way. It was then put to her that when she did not get her own way, she would threaten the Father and she was taken to another part of the transcript of the audio recording, page 265, four minutes, 49 seconds in. The Mother is recorded saying, "If you don't give her to me right now", that is C3, "I'm going to children's Court on Monday morning. I'm not fucking around with you. You keep pissing me off and you keep fucking doing whatever you want to do".
26. The transcript is an agreed transcript and again, on the face of it, it appears to be a threat to the Father in relation to the time he spends with the children. Her explanation was this was after there had been a physical altercation. She was then taken to the next page of the transcript at seven minutes, five seconds, where she is recorded as saying, "You know if this goes through the Court, you're not going to see them for quite a while". She then agreed that was her dictating arrangements to the Father. That might tend to undermine her allegations that the Father behaved in a controlling way towards her.
27. Next, just under the general umbrella of credibility and in relation to allegation six, an allegation which, in part, relates to how the Father treated C1 at the festival, it being alleged that he had hit C1, it was put to the Mother that the reason the Father had interacted with C1 physically was to protect C3, because C1 was pulling her in such a way that an umbrella which the Father had under his left arm whilst he was holding C3 was pushing into C3's face. In cross-examination, Ms Wentworth said to the Mother that, "The father told you about the umbrella multiple times and that's what happened". The Mother's answer was "I don't agree". I then asked her this: "But the umbrella is referred to twice in the transcript and you don't say words to the effect, 'What umbrella?'". Her answer was, "I don't recall the umbrella". I asked her, "Why not say 'There was no umbrella?'". Answer: "I didn't want to argue". Then I said to her "But you carried on arguing, as the transcript demonstrates", and she said, "I didn't think it", that is the umbrella, "was relevant". I do not find it credible for her to assert that there was not an umbrella under the Father's arm in circumstances where it is mentioned in the course of their altercation, and she does not challenge the assertion which the Father makes in the further circumstances

where, as early parts of the transcript demonstrated, she was quite forthright in response to the Father.

28. Next, the Mother's evidence on her awareness of the Father's mental health difficulties. It was put to her in cross-examination that she was aware of those and their origins, namely that they arose from his concerns about her mental health. On 15 June 2023, the Mother reported that the Father had left the house and was missing. There is a police summary of that report dated 19 June 2023 at page 314 of the bundle which records in two parts, the following: "The MP", which I take to be the missing person: "The MP has not been diagnosed with any mental health issues. However, the partner thinks they may have been overlooked as he is depressed".
29. A little further on, "The MP was having issues with his wife. He has previously had MH", I assume mental health, "issues and this has had an effect on MP's own mental well-being". the Mother denied that she was aware that the Father was worried about her mental health and she said in answer to the questions that "He", the Father, "was just feeling low". She did not know if that related to her mental health and it must have come from the Father. Yet the day after the Mother reported the Father missing, that would have been on 16 June, she had a meeting with her psychiatrist and the psychiatrist wrote a letter to the GP which records:

"She is subject to ongoing stressors. Money is tight and her husband is out of work and doesn't know how to manage when she is low, particularly when she communicates her suicidal intent which occurred at the weekend when she was ready to find a truck on the A40, and her husband had a mental breakdown and disappeared from the house for several hours and was returned by the police".

30. The Mother was forced to concede in cross-examination that she, as she put it, "may have mentioned it" to the psychiatrist. That is in direct contradiction to the evidence that she had earlier given that she did not know that the Father was worried about her mental health and that was affecting his mental health.
31. Next, in relation to the third allegation which is of physical abuse and, in particular, the Father throwing her to the ground and pinning her to the floor on three to four occasions, there was the following exchange in cross-examination. Ms Wentworth said:

Q: "In your first statement, there was no mention that this occurred in front of the children or of bruising?"
A: "No".

- Q: “In your second statement at page 432, you say there was bruising and it occurred in front of the eldest child occasionally. That has been embellished?”
A: “I was asked to provide more detail”.
Q: “You failed to mention that in your first statement?”
A: “I mentioned it in the second”.

I intervened, “But it’s being said that it’s an important thing to miss out”:

- A: “I don’t know how to reply. At the beginning, I was asked to give a summary and I went into detail”.

32. A question from Ms Wentworth:

- Q: “In the third statement you now say all the children were there on all the occasions?”
A: “I think the third statement is not worded correctly. There would be occasions when C1 was present or when C2 was present”.

At which point, I intervened again, “C2 wasn’t mentioned at all in the second witness statement?”. the Mother said, “It was mostly in front of C1”. I remind myself again of the President’s guidance on witness recollection but I do find it very troubling that the first witness statement which was in support of the Mother’s application for a prohibited steps order for the Father not to remove the children from her care did not mention that she suffered physical injury or that any child was present which would have clearly been highly relevant to the application. Added to that is the extension of the allegation to include all the children being present all the time which she had to row back on in cross-examination. This is more than mere story-creep in an attempt to iron out wrinkles; it seems to me a positive exaggeration of the allegation.

33. Penultimately, in relation to the Mother and when she was being asked questions about the broader allegation of abuse by the Father of C1, she was taken to her third witness statement at page 169 in which she said that “He often had bruises on his back, arms and legs as a result of the punches that the Father subjected him to”. In cross-examination, she was taken to the police disclosure at page 320 which records as follows: “Appearance: not seen by police as C1 was at school at the time of reporting. According to [the Mother] there has been no visible injury as a result of [the Father’s] punches”.
34. When she was asked about that, the Mother said she did not recall but that is from a report to the police of 3 July so it is more contemporaneous evidence than her witness statement. She had gone to the police, chosen to report the allegation to police and it would have been thought that she would be likely to present them with the full picture, namely, as she

alleges now, that C1 often had bruises on his back, arms and legs as a result of the Father's behaviour, and yet the picture that is presented to the police contradicts that. Similarly, the allegation was not made in the first witness statement in support of the prohibited steps order or the second witness statement in support of the non-molestation order application.

35. Lastly, insofar as the Mother's credibility is concerned, in relation to allegation seven; that is an allegation of emotional abuse and intimidation, there was the following exchange in cross-examination about an incident which happened on 27 August 2023. the Mother said: "the Father asked me if he could get his tools. He was pushing his way in".

Q: "He didn't ask to come in?"

A: "His actions showed different".

Q: "He didn't ask to come in?"

A: "He didn't ask me to get them for him".

Q: "You've just said that he did?"

A: "He asked to come inside. He asked to get the tools and he pushed his way in".

36. I am not sure that that was an answer to that last question but what that demonstrates is an inconsistency between the Mother saying that the Father had asked her to get the tools and she then later saying he had not. At best, there seemed to be significant confusion in the Mother's recollection of that incident.

37. I can deal with the Father more briefly because I found his evidence more straightforward. During the course of cross-examination though, there was an exchange about how often he had commented on the Mother's eating habits. It was put to him that that had happened regularly which he denied. He was taken to page 193 which was an earlier statement made in these proceedings in which he said there were numerous conversations regarding her weight/eating habits. He said it was "numerous but not regular" and so I asked him how often it had happened and he said, "Once every six months regarding her weight, and once a month regarding her eating habits". I found his evidence on that point and also in relation to allegation seven insofar as it related to 27 August 2023 particularly evasive.

38. Let me turn to the specific allegations then. I am not going to take them in the order that they appear in the schedule of allegations and I will renumber them compared to the schedule of allegations to reflect the earlier numbering that was in the schedule before me at the pre-trial review. Allegation four on that schedule which now appears as allegation three was an incident that happened at a festival in August 2023. the Mother's allegation is that the Father snatched the child from her pushchair and hit the pushchair into the

Mother's leg causing bruising. In her first witness statement at page 123, paragraph 12, she says:

“[In] August 2023, we were at a family event where the respondent and I attended separately. The respondent subjected me to physical abuse. C2 and C3 were supposed to stay with the respondent overnight after the event but C2 wanted to stay with me which upset the respondent. There was no space in the respondent's car so I decided that C3 would come home with me and the respondent could pick her up the next day. As I was walking back to my car with C3 in the pushchair, the respondent rushed towards me from behind and snatched her from the pushchair. The pushchair hit my leg leaving a large bruise”.

39. In her third witness statement at page 166, the Mother says:

“The father came up behind me and snatched her from her pram. As he did this, because he did so in such a rushed and aggressive manner, he pushed the pram into my leg causing it to bruise. The father and I argued because I was in pain”.

40. During the course of her oral evidence, the Mother said that there was a photograph of the bruising which was shown to the police; in fact, I think she said “given to the police”. However, it is not in the police disclosure and it has not been produced for this hearing. What those two witness statements imply, what it is I infer from them, is a deliberate ramming of her by the Father via the pushchair. There is no reference to that though in the transcript that is agreed of the audio recording. In fact, there is no evidence within that transcript of her saying she is in pain as a result of the Father's behaviour. In the police disclosure at page 341, in relation to this incident, it is reported as follows:

“Saturday, they went to a festival together as a family and they had an altercation whereby he picked their youngest child C3 out of the pushchair. Whilst doing so, the pushchair has hit [the Mother] in the leg. She confirmed that this was accidental”.

41. The impression I get from those pieces of evidence put side by side is that the Mother appeared in those first and third witness statements to be exaggerating the incident in this respect. the Father's evidence as to what happened on the day is that the Mother insisted on attending and he said that she had purposefully initiated a confrontation in front of the children. What seems to have happened is that the Father arrived at the event with other members of his family in a single vehicle, and the Mother was concerned how C2 and C3, who were due to stay overnight with the Father pursuant to an earlier agreement, would be travelling home given the car appeared to be full. Accordingly, she took it upon herself,

she says in the statement, to remove C3 and require the Father to collect her from her home the following day.

42. Given that the Father had and has parental responsibility and given that there was an agreement that those two children would stay overnight with him, at best that seems misguided on the part of the Mother. There is no evidence before me and she has not suggested that there were any previous concerns about the Father overloading cars or not ensuring the children were properly restrained within a car. It seems that she took against the Father on very slim evidence. That appears to have provoked a very strong reaction from the Father. In a sense, that might be understandable given that perhaps he had been looking forward to having C2 and C3 stay overnight with him. In cross-examination, he accepted that he went after the Mother and put his foot in front of the pram to stop it from rolling forwards as she was pushing it away with C3 in it. It seems that the incident escalated from there.

43. The transcript of the audio makes for, when seen through the lens of the children, very distressing reading. I am going to read out a number of parts and return to an analysis of it afterwards. First of all, at page 265, four minutes, 49, the Mother:

“If you don’t give her to me right now, I’m going to Children’s Court on Monday morning. I’m not fucking around with you. You keep pissing me off and you keep fucking doing whatever you want to do”.

44. At 266:

Mother: “You know if goes through the Court, you’re not going to see them for quite a while?”.

Father: “You do know what happens on both sides? If I don’t get to see them then no one gets to see them”.

Mother: “Oh, is it now?”.

45. A little further down:

Mother: “You fucking acted horribly [] and you’re not getting her tonight”.

Father: “And who is the judge of that? You also acted horribly, pulling them away from their father and making him (C2) upset now when he would always come to his father. You’ve already divided C1 and myself because you’re meandering and whispering in his ear. For one night”.

46. A little further down the page:

Mother: “Why did you have to pull C3 out of the stroller like that?”.

Father: "Because you were taking her away from me. You were deviating from the plan".
 Mother: "So why pull her like that []?".
 Father: "[], I did not pull her badly. You stopped the stroller and I picked her up nicely".
 Mother: "Why pull her like that? That was the question".
 Father: "Yes, I'm telling you, I didn't pick her out like that".
 Mother: "You did".

47. Page 267, continuation from what I have just read:

Father: "My foot was in the front of the front wheel as it stopped and I lifted her out of normally".
 Mother: "You did it harder and you ripped her out".
 Father: "I didn't rip her out. You're just trying to justify things to not let her stay out".
 Mother: "I'm not".
 Father: "You are".
 Mother: "C1, C1, come here please. How did Dad take C3 out the stroller?".
 C1: "He unbuckled and took her out".
 Mother: "Did he do it nicely or did he do it fast?".
 C1: "Fast".
 Father: "Okay. Was the stroller moving or stopped?".
 C1: "It was stopped but like she was buckled in".
 Father: "Yeah, and I unbuckled her and took her out. Thank you".
 C1: "Yeah, but the pole was still over".
 Father: "Yeah, you can lift her up the same way as you would lift her out of the swing at the park".
 Mother: "How do you feel about the way he shoved you?".
 C1: "Not happy".
 Mother: "Hmm, C1 not happy".
 Father: "How do you feel about interfering with in between Dad and C3?".
 C1: "Well, you being unnecessary".
 Father: "Am I being unnecessary?".
 C1: "Yes, you are. You just took C3 out of the stroller when Mum was just going to take us home".
 Father: "So, she pulling you. Forcing you to take you home?".
 C1: "No, she was not!".
 Father: "Okay, then why was she speeding towards the gate and pushing fast?".
 C1: "Because you – because you were making – because you were arguing with her. She doesn't want to argue".
 Father: "I was not arguing with her".
 C1: "You were".
 the Father: "Telling her I'd like to see my kids is it not?".
 C1: "Yeah, but you didn't answer her question, so was Uncle [] and Auntie [] and them going to get home?".

Father: "I didn't know the answer, C1. That's why I said to her, 'Go and ask Uncle [] and Auntie []'. So how am I supposed to give an answer if I don't have an answer? Does that justify her taking and running away from Dad and taking you kids away from me?"

Mother: "Were we running or walking, C1?"

Father: "You were walking at a fast pace, weren't you? You were walking at a fast pace".

C1: "That was not running".

Father: "Yeah, but it's a fast pace isn't it?"

C1: "Yes, because she doesn't want you interfering".

Father: "Interfering with what? My own kids? I don't want you interfering. That's why I will apologise for pushing but you were pushing down an umbrella into C3's head and it was hurting C3. The other time, you were going to push her over".

C1: "I wasn't going to push her over".

Father: "Well, you were forcing her so I had to intervene, so I apologise for that but I asked you nicely not to stand between Mum and Dad. I know you're a big boy and I asked you to look after the family but this is between Mum and Dad. Okay, I know you're a big boy and I appreciate you looking after Mum. That's what I grew you up to be and taught you to do. Good boy. A good boy to look after the family but remember, Dad's still part of the family. You're still my kids. Okay? So why would you want to push me away? Mum's already doing that enough. I'm fighting all I can just to see you guys so why would you also want to push me away?"

C1: "We're not pushing you away".

Father: "Well you were. You were pushing between me and C3 and me and C2. Pulling C2 and pushing.

C1: "But you could of – you could've just like stopped for a second and then just" –

Father: "How could I have stopped?"

C1: "Went and gone and asked Uncle [] 'How are you getting home?'".

48. Lastly, on page 269:

Mother: "I've already given you an answer. That's it. Why you want to piss me off and make more issues?"

Father: "I'm not pissing you off".

Mother: "You are pissing me off"

Father: "So is C3 staying?"

the Mother: "If you're recording me again, then I'm going to take action".

Father: "I'm not recording you actually. I'm recording me. I'm allowed to record myself".

Mother: "Let me see" [scuffling sounds] "Let me see".

Father: "I said to you 'I'm recording me'".

49. Not only does that altercation occur in front of, as I have understood it, all three of the children but it involved the Father using force; his foot to stop the pram, removing C3 from the pram, and a physical interaction with C1 which I will turn to in due course. It also involves both of the parents involving C1, no doubt to his great distress. It does not, and I hope this is clear, reflect well on the Father and the Mother.
50. Based on the agreed transcript, I make the following finding: in August 2023, the Mother decided without the Father's agreement and unreasonably to prevent C3 from spending the night with the Father as had been agreed. The Father's reaction was to use force to stop the Mother from removing C3 in the pushchair by stopping it with his foot and removing her from the pushchair. A verbal altercation followed between the parents and in front of all three children including a threat by the Mother to go to Court, and if so, "You're not going to see them for quite a while". Both parents sought to involve C1 in the argument. Their actions are likely to have been emotionally harmful to the children.
51. I expressly do not find that the Father snatched C3 from the pushchair as alleged, nor that he hit the pushchair into the Mother's leg causing bruising. I accept that she might have collided with the pushchair but I do not find that was his intention. In any event, I do not find there was any bruising. There is no evidence of bruising save for her assertion and the evidence from the police disclosure was that any impact to her was, in any event, accidental.
52. The next and second of the allegations I am considering is allegation six. That is an allegation that between 2022 and 2023, the Father would punch C1 all over his body and smack his head in punishment, leaving the Mother to have to physically step in between them to protect the child. There is one specific incident that the Mother relies upon, namely in August 2023 and then more generally. Dealing with August 2023 first, in her first witness statement, the Mother says that the Father hit him twice in the arms. That is at page 123. In her third witness statement, she says, "The father smacked C1 twice on his arms". That is on page 166.
53. The Father's response to the allegation is that he had removed C3 from the pushchair when C1 tried to intervene so he "Simply put my arm out to move C1 out of the way", and then:

"Whilst I was picking C3 up out of the pram, C1 began grabbing her arms and legs and pulling her down. This is when the umbrella was pressing into her face. I simply put my arm out to move him away

and prevent him from continuously trying to grab and pull her as I was concerned that she would get hurt”.

54. When the Mother was cross-examined on her description, having said that the Father hit and smacked C1, she accepted that she should have said pushed or shoved which is, in my judgment, quite a different characterisation of the behaviour of the Father. In cross-examination, the Father accepted that he used what he described as “a gentle movement of the arm in order to remove C1 from the situation” as he put it. He mimed the action for me which showed an extensive sweep of the left arm, pushing C1 out of the way. I would not have characterised it as gentle having seen how he demonstrated it. However, what he described in the witness box was consistent with what is reported in the transcript.
55. In cross-examination, the Father said C1 came back again and he then used the same movement to move him away. He said that he did not ask C1 to stop because he had what he described as a split second to make sure that C3 did not fall, and because C1 was pulling down on her legs, and her face was impacting on the umbrella which he had tucked under his left arm. I have already considered whether or not there was an umbrella and conclude in the absence of a challenge to the Father when he referred to an umbrella in the course of the transcript of the audio recording, there was. I also find that the Father’ demonstration of sweeping C1 away with his left arm is far more likely whilst he had C3 in his arms and an umbrella under one arm than him hitting him or smacking him. It is also difficult to see how he could have done either of those in the circumstances that he has described.
56. Accordingly, on the Father’ admissions, I make this finding: in August 2023, the Father pushed C1 away to enable him to remove C3 from the pushchair and prevent injury to C3. The actions were not excessive or abusive in themselves but in intervening in the way that he did, he put C3 and C1 at risk of physical harm.
57. Insofar as the allegation is generally put, in her first witness statement, the Mother says at page 122, paragraph eight:

“Towards the end of 2022, the respondent’s treatment of me and the children worsened as he began to physically abuse C1 as punishment, punching him all over his body and smacking his hands whenever he did something the respondent did not like. I would have to have physically stepped in between the respondent and C1 to protect C1 at times as the respondent seemed to lose control and not know when to stop”.
58. She added to that in her third witness statement at page 169 by saying:

“C1 often had bruises on his back, arms and legs as a result of the punches that the Father subjected him to. There was one occasion when the Father punched C1 and he fell against the banister and he hit his face causing him to bruise above his eyebrow”.

59. Whilst the Mother alleges that C1 suffered bruising, there are no photos of that and it is in direct contradiction to that which is reported to the police which I have already noted when considering the Mother’ credibility more generally. It is also contradicted by the Mother continuing to allow direct contact between C1 and, indeed, all the children and the Father up until the end of August 2023. She was asked about that in cross-examination and she said she felt that she was not able to stop that contact taking place because she was not in a position to do so. She told me that the risk of injury to the children was mitigated by the majority of the time that they spent with the Father being at the paternal aunt and uncle’s house and she was trying to deal with the situation amicably. I find that explanation for not reporting bruising or generally to the police lacks credibility in circumstances where she, on 3 July 2023, reported the Father having punched C1.
60. The Father’s evidence was that he would chastise C1 by the use of a tap to his arms or legs, and that would be consistent with the police observation when the Mother did make a report to them on 3 July 2023, same page, page 320 where they record: “What are the views/reactions of the parents/carers? [The Mother] did not seem overly concerned about [the Father] punching C1. However, she did say she was worried C1 may lose respect for him”.
61. In cross-examination, the Father accepted that he was stricter in parenting the children than he should have been, although he said physical chastisement was limited to reprimanding them on the bottom or an arm with an open hand. He was taken to a Child and Family Assessment dated 19 September 2023 in the bundle at page 279, in which hearsay evidence of what C1 said is recorded. He is recorded as saying that on one occasion, the Father hit him with fists whilst in Wales. There is no context given for that allegation. The social worker who interviewed C1 has not been called to give evidence. C1, of course, has not given evidence and there has been no exploration of C1’s propensity to tell the truth or otherwise.
62. When that allegation was put to the Father, he said that, in fact, C1 was confusing things and he had fallen in Wales in a static caravan, as I understood it, when he was running away from the Father who was attempting to or about to chastise him. Given the absence of evidence setting the context for what C1 is reported to have said, let alone any evidence

as to what it is reported C1 said, I really have to accept the evidence of the Father at face value. However, the Father then went on to say this: “There was one occasion when I chastised him, not with a fist but with my hand. It was a closed hand.”

63. He demonstrated, I think again with his left arm, a fist in his left hand. He said, “That would be around May 2023 which is why the Mother and I then discussed different parenting strategies”. He said he was not sure which arm or hand he used. I asked him what had prompted that behaviour by him and he said he thought that C1 had hurt one of the siblings. I asked him why he chastised C1 with a fist and he said, “Just a swift action”. I confess I did not understand that answer. I asked him if it was in anger and he denied it, and so I asked him what he meant by a swift action. He said, “I deemed his action deemed a harder or firmer reprimand”. What I understood him to be saying is that rather than using his normal method of an open palm to smack or tap a leg or bottom, he felt that a firmer hit to C1 was required.
64. I found the Father’s assertion that he did not use his fist one that is difficult to accept in circumstances where he demonstrated what he had done by showing me his hand in a fist shape. I find on his admission that is exactly what he did. I would characterise what he described to me as a punch or a hit with a fist. I have to accept, given there is no other evidence, the Father’s evidence that he did not act in anger in doing that but it was a form of chastisement. His evidence, as I understood it, was that it was a reasonable chastisement, but it is difficult to align that assertion with the fact that he clenched his hand into a fist and was hitting a child who was then aged 11. In the circumstances, on those admissions, I make this finding: that in around May 2023, the Father chastised C1 by using a clenched fist to hit him, going beyond reasonable chastisement. Having set out the shortcomings of the Mother’s evidence and the absence of contemporaneous supporting documentation, I do not make any other findings under this allegation.
65. The next allegation I turn to is the last in the schedule. I label it “number seven”. What is alleged is that firstly, the Father refused to return one of the children to the care of the Mother, physically grabbing her and not returning her until later in the evening. Secondly, he threatened to return to the property after the end of the relationship and did attend without warning on a number of occasions, most recently on 7 September 2023. In the course of the written and the oral evidence, there seemed to be three specific allegations that are made: firstly, on 7 July 2023, the Father sent a text message threatening he was

going to return to the home. Secondly, on 27 August 2023, he refused to return C3. Thirdly, on 7 September, as alleged, he visited the former family home.

66. I am going to take the allegations chronologically. First of all, the text message on 7 July 2023. I have seen a copy of an exchange of messages on that date. It is at page 182 of the bundle. For context, the Mother says in a message to the Father, “Hi, I suggest going forward you stay with [Uncle] and [Aunt]”. Pausing there, I think that is the maternal uncle and aunt:

“...until you can sort yourself out some accommodation. I’ve spoken to [Aunt] and she is okay with that. I will pay the rent next month and you can pay the utilities as support for the children. From next week onwards, we can arrange visits with the children”.

67. There are then three short responses that are not relevant from the Father before he says, about 40 minutes later at 10.10pm:

“I’m coming home tomorrow afternoon and I suggest you have your things packed and only your things. I will speak to [Aunt] in the morning to ask if you may stay here until you find yourself accommodation! I’m not going to amuse your games no more”.

68. Of this allegation, the Father, at paragraph 30, page 239 of the bundle says:

“I deny threatening to return to the property after the end of the relationship and attending on a number of occasions without warning. There have been occasions where I have asked the applicant to see the children which she didn’t engage or respond to me. I therefore felt I had no alternative but to inform her that I would return home to see the children and it was nothing more than this. There was no order in place preventing me from attending the jointly-owned property and I simply wished to see the children”.

69. I find that evidence entirely disingenuous in light of the text message at 22.10 on 7 July. It is plain from that he intended more than just attending the property to see the children. He said he is coming home and the Mother, in terms, must pack her things only and leave the property. It was plain from the earlier message that the Mother did not welcome the Father’s attendance at the former family home, and his response was threatening and gave the Mother less than 24 hours’ notice. On the basis of those text messages, I make the finding that on 7 July 2023 the Father sent a text message to the Mother demanding that she “Have your things packed and only your things” and leave the former matrimonial home on less than 24 hours’ notice.

70. Turning to 27 August 2023, at paragraph 13 of her statement at page 123 of the bundle, the Mother says:

“On 27 August 2023, the respondent was returning the children to my care after having contact with C2 and C3. The respondent wanted to come inside to get something but I refused and told him I would get whatever he wanted for him. This was how we had previously dealt with the respondent needing things he had left behind by mistake. The respondent was angry that I refused to allow him in the house so he grabbed C3 and left, telling me that if I wanted her, I could come and get her. I was shocked by this and it was clear the respondent was using C3 to blackmail and coerce me into doing whatever he wanted. I did not know what to do but thankfully, the respondent returned later in the evening during the time that time that he had C3”.

71. The police report in relation to this is at page 352 of the bundle. On that date at 17:03, there is a log that records: “Caller’s ex-partner came to drop off child then refused to allow child out of the car. Male then tried to enter caller’s address and slammed the front door into her. Male is now driving away”.

72. As stated above, there was some confusion in the Mother’ witness statement concerning this incident. However, when the Father was cross-examined, there was this exchange:

Q: “You turned up on 27 August. You had the children in your care?”.

A: “Yes”.

Q: “The boys ran inside and you dropped C3 at the door?”.

A: “Correct”.

73. Just pausing there, that was the case being advanced on behalf of the Mother, accepted by the Father, and different, I note, from what is reported to the police although nothing turns on it. He was then asked:

Q: “You asked for something?”.

A: “I asked for a brake calliper kit”.

Q: “You attempted to come into the property? The Mother said she’d get them for you?”.

A: “Negative. I asked for some tools and she ignored me so I repeated it several times and she continued to ignore me”.

74. I then asked, “Then, what did you do?”. A: “Put C3 down and the Mother closed the door on me. I put my foot in the door”. I asked the question “Why?”. A: “The brakes were making a noise and it was to prevent the door closing in my face”. Question from me: “So that you could do what?”, by which I meant, “Why put your foot in the door?”. A: “Retrieve my tools”. Question from me: “You had asked her and she’d ignored you?”. A: “Yes”. Question from me: “What were you going to do?”. A: “Ask her”. Question from me: “Continue to ask her?” A: “Yes. Also to stop the door hitting from my face”. Question from me: “Couldn’t you have stepped back?”. A: “I could have”. Question from

me: “Why didn’t you step back?”. A: It was rushed. It wasn’t to force my way into the house. It was an opportunity for her to explain”. Question from me: “Wouldn’t it have been better to step away?”. A: “At that moment, it could have been an option to step away”.

75. Then a little later in his evidence, in cross-examination, it was put to him by Ms Rowe, Q: “You took C3 with you and drove off?”. A: “She ran towards me with her arms up. I took her with me and drove”. My question: “Even though you were returning the children?”. A: “Yes, but not immediately. I didn’t deem it fit for the Mother to be behaving like this so removed her and me from the situation”. Question from me: “Why didn’t you just leave on your own?”. A: “C3 ran to me and was in my arms. The mother proceeded to phone children’s social care”. Question from me: “Why not leave then on your own?”. A: “My brakes were making a bad noise and she was told we both have parental responsibility, so she called the police and they said the same thing. C3 was in my arms whilst this was going on”. Question from me: “So why not leave C3 there and drive off on your own?”. A: “I needed the brakes”.
76. I found the Father’ evidence incredibly evasive in relation to this incident and he demonstrated a significant lack of insight into the effect that his behaviour, as he accepted it, would have had on C3 in particular. He accepted he could have stepped away. He accepted he did eventually drive off with C3 in circumstances where he was supposed to be dropping all of the children off. It is bound to have been confusing to C3 and the other children at the very least.
77. Accordingly, I make this finding in relation to 27 August 2023: the Father returned the children after a period of agreed time with the Father. The Father placed his foot in the door preventing the Mother from closing it because he wanted to collect brake callipers from the former matrimonial home. His action resulted in the Mother calling children’s social care and the police whilst the children were in the house and C3 was present in the immediate vicinity. Rather than withdraw having dropped the children off, the Father removed C3 contrary to the agreement and returned her later in the day.
78. Lastly under this hearing, 7 September 2023. In relation to that, the Mother says that the Father came to her front door at 8.00pm. She refused him entry so he climbed over the fence and attempted to force his way into the house. She reported the matter to the police and the call log at 377 records as follows. “Call summary: [the Father]”, and then it gives the date of birth, “at the door and ringing the bell; fully aware he has conditions not to”.

79. It is not clear to me what those conditions were. The only evidence that I have been directed to is from a police summary of a call from the Mother on 31 August 2023 at page 365 of the bundle. It is recorded as follows: “On Tuesday, 29 August, []”, that is the Mother, “told []”, that is the Father, “via two emails and a WhatsApp that she does not want any contact from [him] including child arrangements”. In cross-examination, the Father accepted he attended the former family home. He wanted to collect work equipment. He rang the doorbell. The mother refused to engage with him so he climbed over the fence to collect them. I think it was ladders.
80. Whilst I note the admission that he climbed over the fence, I do not find, on the balance of probabilities, that that was emotionally abusive or intimidatory behaviour. It was, perhaps, ill-advised, but in the circumstances, there was nothing to prevent him returning to the home. He rang the doorbell first. He did not get any joy from that and he climbed into the garden to attempt to retrieve his equipment. However, it was not intended to be abusive or to intimidate the Mother, as I find it on the balance of probabilities; rather, motivated by a desire, probably misguided, to obtain the equipment and leave.
81. I turn now to the first allegation. the Mother alleges coercive and controlling behaviour from June 2010 until the present day. In particular, she says that the Father would question her as to where she was going, who she was with, and demand that she called him back when out to check on her, and he would criticise what she wore and demanded that she changed her clothing. I am entitled to take into account my findings already set out in this judgment, in particular in relation to the text message of 7 July and the findings I have made against the Father in relation to the August festival, and my findings in relation to the incident on 27 August which I have just addressed. However, I observe that there is no supportive documentary evidence by way of, for instance, text messages demonstrating the coercive or controlling behaviour that the Mother alleges.
82. In the course of her cross-examination, she said that that evidence was provided to her solicitor. Of course, it is not for me to know what did or did not happen between her and her solicitor, but I do find it surprising that given that this is the first of her allegations and easily proved by the disclosure of apparently controlling or coercive text messages that they have not been disclosed. She was asked in cross-examination if it was understandable that the Father may want to ask her how she was or ask her to call him when she was out in order to check that she was okay and she said it was understandable.

83. The Father, for his part, in one of his earlier witness statements at page 193 of the bundle, accepted that there had been numerous conversations regarding the Mother's weight/eating habits because he was concerned about the amount of junk food that she was consuming. In cross-examination of the Mother, there was the following exchange:

Q: "He would sometimes make a comment on what you wore but not a negative comment?"

A: "I perceived it to be negative".

Q: "It was not intended to be?"

A: "He might have not intended it to be negative. I felt it was hurtful and demeaning. If I approached the Father to say I didn't like the way he put it across, he would say he didn't mean it to be".

84. I remind myself that for behaviour to be abusive in the form of coercive and controlling behaviour, it has to be intended to be, and on that very limited information and in the absence of being able to form a view based on the underlying messages that are relied on I simply cannot make a finding on the balance of probabilities as I am invited to by the Mother.

85. Next, I consider the allegations of physical abuse. Allegation three: between September 2022 and June 2023, what the Mother alleges is that the Father would throw the Mother to the ground and pin her to the floor in the presence of the children, and that occurred approximately three or four times between September 2022 and June 2023. I have already set out some concerns I have about the Mother's evidence in relation to this allegation. I remind myself of those. In addition, there is no report of any of these incidents to the police, which given that there are a number of allegations made by the Mother in the course of an interview, which is summarised at page 380 in the police disclosure which took place on 8 September 2023, I find very surprising.

86. the Father, for his part, in an earlier witness statement from October 2023 at page 132 of the bundle says this:

"There was a single event around March 2022 when [the Mother] was in one of her inebriated states to which I had removed a bottle of wine from her possession. She was about to leave the house and I did the responsible thing and quickly removed the bottle out of her grasp. [The Mother] then wrestled me to retrieve the bottle. She did not succeed so then stated she would get another bottle and proceeded upstairs to seek another from my gifted brandy collection. At the top of the stairs, I attempted to prevent her from getting another bottle. I held one of her legs to prevent her from stepping up further to which she turned and sat on the second-from-the-top stair and pulled away. This was when the overwhelming stress of constantly keeping her safe

from herself and me walking on eggshells had reached a limit. I recall holding her against the ground and stating loudly, 'Enough is enough'. I did held [sic] her for a while until she calmed down”.

87. I approach this evidence in this way: there was no imperative for the Father to admit that incident in March 2022 because it falls outside the period when the allegations are made by the Mother, namely, September 2022 and June 2023. The fact that he has done so in circumstances where it might be construed against him, does lend it, when it is coupled with the other denials, a ring of truth. I do accept that there is no supportive evidence of a problematic relationship with alcohol on the part of the Mother, but in the circumstances, in the absence of any corroborative evidence, I am not satisfied that these three to four allegations which the Mother makes are proved.
88. Next and finally, I consider the allegation of verbal abuse; it is the fifth allegation. From 2010 to the present, the Mother says that the Father would call her names in the presence of the children and make remarks about her weight after giving birth and tell her that she was not a good mother. She records the allegation in this way in her statement at page 122, paragraph 10:

“The respondent’s abuse took its toll on my mental health and I began to experience suicidal thoughts as I felt I could not continue being subjected to this abuse and was fearful that it would worsen for me and the children. At the end of June 2023, after a particularly intense argument between the respondent and I, I went to my car to get away from him and I needed to prioritise my children’s welfare as they had witnessed the respondent’s abuse towards me. I told the respondent I wanted him to leave the house as I wanted to separate from him, and as I was the main caregiver of the children, it was sensible that I remained in the property with the children. The respondent did not like this and exploded with rage and started to shout and scream at me. I was scared that he would become violent towards me and the children so I called the police who attended and asked him to leave for a couple of hours. After some time, the respondent returned, gathered his belongings and left to live with his brother”.

89. At paragraph 18 on page 167, she says:

“During the relationship, the Father would subject me to verbal abuse in the presence of the children by calling me abusive names such as ‘crazy’ and ‘delusional’, and he would insult the way that I looked in order to belittle me. Again, I was concerned about the Father seeking to degrade me in front of the children”.

90. The Mother says she reported the allegation to the police but there is no specific allegation that I have been referred to in the police disclosure. The allegation generally is denied by

the Father. He does accept that there were conversations about her weight and eating habits. I have already touched on that. However, he says it was not as a criticism of her but in relation to her health. I have been referred to a series of text messages in their raw form at page 221 of the bundle. They follow the Mother telling him that she had been diagnosed with possible gallstones. The messages are somewhat sarcastically worded and perhaps clumsily worded, but they do present consistent evidence to support the Father's assertion that the conversations about the Mother's weight related to her health rather than being criticisms of her appearance.

91. He says to the Mother, having explained the possible diagnosis, "Did you tell them your husband been telling you to stop eating junk for ages?". Then, "Did you tell them 'Guess my husband been talking on deaf ears till now?'". They are not well worded. They are, perhaps, clumsy and sarcastic, but they are consistent with his oral and written evidence to the extent that there were discussions about the Mother's weight and related to her health and her appearance.
92. In light of my findings that the Mother has not proved allegation one, that is coercive and controlling behaviour, and allegation three, the physical abuse, I am not satisfied she has proved this allegation on the balance of probabilities. It is her word against the Father's and whilst I have made findings against the Father, they relate, insofar as abuse against the Mother is concerned, solely to the period after the end of the relationship.
93. I will summarise my findings in a moment but I am invited to make a further finding, having not found all of the allegations the Mother makes proved, that those allegations which I have not found proved have been fabricated by the Mother. There is a difference between the Mother not being able to prove an allegation and actively setting out to fabricate an allegation. I have not made any findings the Mother has lied to me. I found that she has exaggerated incidents and while some of the allegations have not been proved, others have been proved. No doubt, towards the end of this relationship and perhaps for much longer, this was a very unhappy relationship. Inevitably, when parents look back, there is a tendency to reinterpret what has led to that and naturally to attribute blame to the other, and reinterpretation may be incorrect but it can still be done entirely innocently.
94. To make a finding of fabrication requires more than innocent reinterpretation of what has happened in the course of the unhappy relationship. To some extent, the absence of corroborative evidence in support of many of the allegations that the Mother makes tends to suggest a lack of fabrication. That is to say, if someone is setting out to paint a negative

picture of someone else through lies, then it is likely that those allegations would be supported by good, corroborative evidence. I am not satisfied, and the burden rests with the Father, that he has persuaded me that those allegations which I found have not been proved have positively been fabricated by the Mother.

95. By way of summary then, my findings are as follows, taking them chronologically:

- 1) In around May 2023, the Father chastised C1 by using a clenched fist to hit him going beyond reasonable chastisement.
- 2) On 7 July 2023, the Father sent a text message to the Mother demanding she “Have your things packed and only your things” and leave the former matrimonial home on less than 24 hours’ notice.
- 3) In August 2023, the Mother decided without the Father’s agreement, and unreasonably, to prevent C3 from spending the night with the Father as had been agreed. The Father’s reaction was to use force to stop the Mother from removing C3 in the pushchair by stopping it with his foot and removing her from the pushchair. A verbal altercation followed between the parents and in front of all three children including a threat by the Mother to go to Court, and if so, “You’re not going to see them for quite a while”. Both parents directly involved C1 in the argument. Their actions are likely to have been emotionally harmful to the children.
- 4) In August 2023, the Father pushed C1 away to enable him to remove C3 from the pushchair and to prevent injury to C3. The actions were not excessive or abusive in themselves but in intervening in the way he did, he put C3 and C1 at risk of physical harm.
- 5) On 27 August 2023, when the Father returned the children after a period of agreed time with the Father, the Father placed his foot in the door preventing the Mother from closing it because he wanted to collect brake callipers from the former matrimonial home. His action resulted in the Mother calling children’s social care and the police whilst the children were in the house, and C3 was present in the immediate vicinity of them, and having dropped the children off, the Father removed C3 contrary to the agreement and returned her later in the day.

96. Having made those findings, I will, subject to hearing any further submissions, direct a section 7 report and list a dispute resolution hearing and potentially a welfare hearing. I am also required to consider today whether the non-molestation order made without findings or admissions by District Judge Devlin should continue, either for a set period,

and the Mother through counsel invites me to extend it for a period of 12 months, or perhaps alternatively for the duration of these child arrangement order proceedings.

97. The question of whether or not it should be extended depends on the view I take of the findings that I have made. The application for a non-molestation order is supported by the second, third and fifth findings that I have made. In brief terms, the Father sending an abusive text message, the Father's behaviour in August, and the Father's behaviour on 27 August 2023. As far as the law is concerned, I have to be satisfied that in all the circumstances including the need to secure the health, safety and wellbeing of the applicant or any relevant child, there has been evidence of molestation, that the applicant and the child need protection, and judicial intervention is required to control the behaviour subject to the complaint. That is by reference to section 42(5) of the Family Law Act 1996 and the case of *C v C* [1998] 1 FLR 554 and *C v C* [2001] EWCA Civ 1625.
98. The Father's behaviour in August and on 27 August 2023 is particularly important. Coupled with him attending the property and climbing over the fence to retrieve his belongings on 7 September, which albeit I have not found was intimidatory behaviour but was misguided, I am satisfied that there is evidence of molestation by him of the Mother. I am satisfied that by reason of the incidents that I have referred to, and in relation to which I have made findings, the Mother does require protection and an order is required. I have reviewed the terms of the order and I will hear submissions, if necessary, on it, but it appears to meet the needs of the case and the applicant, that is the Mother. As to the duration, it seems to me that it should be until the conclusion of the Children Act proceedings or further order. Subject to any party wishing to press me further, that is the order that I will make.
99. That is the conclusion of my judgment.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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