

X v Y ZW22P00438

Final hearing 15-17 January 2024

The Parties and Representation

1. This judgment is delivered at the end of a 3 day final hearing listed at the west London family court. The parties are: X the father; Y the mother; and the child, A (a boy aged 6) represented through his r16.4 Guardian (CG). The Father has been represented by Counsel Ms Gillan. The Children's Guardian has been represented by Counsel Ms Haworth. The Mother has appeared in person, assisted by a McKenzie Friend.
2. Over 3 days I heard evidence from: The Mother; The Father; CG (twice, once at the start of the hearing and also at the end considering some of the matters that were given in evidence), and Z, the Mother's husband. I read a Bundle of documents which included evidence of Dr B dated 22 November 2023 a Chartered Psychologist and Cognitive and Behavioural Psychotherapist instructed by the r16.4 Guardian to give expert evidence.

The Conduct of the Hearing

3. It must be recorded at the outset of the judgment that none of the witness statements in this Bundle fully comply with the rules.
4. The derogations from the rules of the father's evidence are more minor, in that he required an interpreter throughout the hearing and yet his statements were in English and there was no statement of truth from a Translator nor any copy of any witness statement in his own language. I was informed that he met his solicitor and gave his evidence to them in Punjabi, the Solicitor (being bilingual) translated it immediately into English and the Father considered his English good enough to sign the English version. On a couple of occasions it was clear that his written evidence did not accord with his oral evidence and when this was pointed out to him he readily accepted there were errors in his statement. It was therefore unfortunate that he had signed a witness statement in a language in which he is not fluent.
5. The Mother's witness evidence derogated even further from the rules set out in PD22A. There was no statement of truth on any of her written evidence, usually it was in the form of a letter. Much of her witness evidence was philosophising, contrary to the Presidents Memorandum on Witness statements dated 10 November 2021. Her evidence was written by her husband and whilst both she and he contended that the factual matters came from her, as he put it "the rhetorics" were all him. Given Z has a highly idiosyncratic and distinctive way of speaking, it would have been clear to anyone who heard either the Mother or Z give evidence even for a matter of minutes that he was the author of the written documents. But he readily confirmed that he wrote on behalf of the Mother and as he put it "everyone loves my writing".

6. Notwithstanding the failure to comply with the rules I was urged by all parties to accept all the statements into evidence and to take all into account, and I have done so. I further asked the Mother to confirm that each of the documents bearing her name were true to the best of her knowledge and belief at the start of her oral evidence and she did.

Background

7. This is an application for Child Arrangements (dated 25 March 2022) made by X the Father. The respondent is the Mother Y. As will become clear, the making of a child arrangements order is not the only issue before the Court. No formal Specific Issue Order application has been issued but it has been clear to all from well before the start of the trial that the first issue to be decided by the Court is whether the child is told that the Father is his biological father.
8. I have not required any party to formally issue a Specific Issue Order but I have treated this final hearing as a hearing of both an oral application for a Specific Issue Order made by the Guardian and the Father's application for Child Arrangement Orders. The Guardian (and her position is supported by the Father and opposed by the Mother), invites me to make a Specific Issue Order today, but not to make any child arrangements orders at this stage, thus the proceedings would not conclude at the end of this hearing. The Mother seeks a dismissal of the Father's application and a conclusion to proceedings.
9. The child at birth was named "A X" but his name has since been changed by Mother to "B Z". He is known as B to family, and the wider community. In this judgment I shall call him A, as he has been called throughout the hearing.
10. The Father has parental responsibility by virtue of his name appearing on the birth certificate as A's father. Additionally, the parties entered into an (unnecessary) parental responsibility agreement on 26 July 2017.
11. The factual background to this matter is somewhat unusual. The Mother was living with her husband, Z, when she met the Father. They lived in a home in West London with their two children V and W. V is now nearly 16 and W is aged 13. A relationship formed between the Mother and Father and she fell pregnant. In August 2016 the Mother required her husband to vacate their family home in West London and, it is common ground, the Father moved in to live with her, V and W. At that time V and W were aged 8 and 6 respectively. They lived together from August 2016 until at least November 2016.
12. The Father and Mother separated prior to the birth of A and it was Z who attended the birth not the Father. This was in circumstances where there was some doubt about the paternity of the child initially owing to the relationship having started whilst she was

still married to and living with Z. A DNA test was undertaken by Cellmark and the report dated 28 July 2017 is clear that the Father is the biological Father with a 99.9999% probability.

13. The Father's involvement after A's birth has been the subject of dispute, (and I will address this in the judgment below) but it is common ground that by 2019 he was no longer in a relationship with the Mother and Z had returned to the family home (again) to live, and he has lived there since. It is also common ground that the Father has not spent time with A since the end of 2018. The precise date is not agreed, Father says it was October 2018. In his witness statement he asserted it was 30 October 2018 but the mother was in India from mid October 2018 until early November 2018, and the Father conceded the date must have been before that holiday.
14. At some point, and it is unclear precisely when, the Mother and Z decided that they would pretend to all that A was the son of Z. This has necessarily entailed lying to the child about his parentage, lying to both V and W, lying to the community, their friends, A's school and anyone else with whom they interact. They decided to change A's name as part of creating and maintaining this lie, and lied to various authorities such as the Local Authority, and the Court in an attempt to obtain paperwork that enabled them to successfully conceal A's parentage from him and from everyone else.

Application and Procedural History

15. This application was made on 25 March 2022. The matter came before the Magistrates on 4 August 2022 whereupon it was reallocated to the District Judges. It was listed for directions before Recorder McKendrick KC on 14 November 2022. Copies of the following documents had been provided to the Court for that hearing: the Cellmark DNA report; a Parental Responsibility agreement; the child's birth certificate. At that hearing, the mother disputed paternity, and her position as to the documents that had been provided was recorded in the Recitals of the Order of Recorder McKenrick dated 14 November 2022 as follows: *the respondent mother stated these documents are false being provided only to advance the father's immigration status.*
16. At that hearing a s7 report was ordered. The Mother was directed to file a witness statement with a signed statement of truth setting out "*why she disputes the paternity of the father notwithstanding the bundle copies of the Cellmark DNA report; the signed parental responsibility agreement and the birth certificate and her response to each of these three documents*".
17. The Mother did not file a witness statement in compliance with that direction. Instead the Mother filed a document entitled Abuse of Process under CPR 3.4 (2) (b) in which she argued that the proceedings were so unfair and wrong that the court ought not to allow them to proceed. And further in which she argued that she, *the accused*, could

not receive a fair hearing. This document did not address the issue of paternity, nor any of the three documents.

18. The matter appeared before me on 31 March 2023. I dismissed the Mother's application to strike out the Father's application as an abuse of process.
19. In accordance with the recommendations of the s7 report, I appointed CG as the r16.4 Guardian for A. Despite her best efforts, CG's report was an incomplete report. The Mother had changed the name of the child in 2020, CG contacted A's school but they could not respond as they did not know that A X and B Z were one and the same child. The Mother then refused to give the new name of the child to CG, so the school could not provide any information for the report. (In fact, the Mother had written the child's new name in an email to Father's previous Counsel dated 15 November 2022 in which she castigated Counsel, threatened to report her to the Bar Council and described using the child's birth name as "defamation". It seems the refusal to give CG the new name was nothing more than a petulant delaying tactic). The CG had not met with the child because the Mother had refused to allow it, had disengaged from Cafcass and would not respond to requests for information. An addendum report would be necessary.
20. I made orders dealing with those issues, ordered a further report, and made an order for indirect contact by way of photographs of the child to be sent to the Father.
21. The matter appeared before me 20 June 2023. The Mother had cooperated with the Guardian but had refused to comply with the order for photographs. At that hearing, the Court declared that the Father is the biological father of the child. I was entitled to make that Declaration as the Mother had failed to file any statement in accordance with Recorder McKendrick's Order, and the documentation provided by the Father, in particular the Cellmark report, were overwhelming evidence that he is the Father of the child.
22. I appointed Dr B as the expert in this matter. The Mother assured the court that she would cooperate with a psychological assessment. She gave her consent to the direction. Shortly after the hearing I received letters from the mother and Z disputing the terms of the Order. The Mother wrote that... *Its true that I put the Judge's qualification to question... The Judge doesn't know thus can't appreciate the broader and social repercussions if I succumb to her order. This judge has never judged this type of matter before where a husband comes from nobility...*
23. In light of previous breaches of Court Orders, I had invited the parties to write to me directly if there was non-compliance with the order. Consequently, when the Mother refused to engage in the psychological assessment (notwithstanding her strenuous submissions to the court that she would engage), I listed the matter for directions on

13 October 2023. At that hearing I made specific orders to ensure Dr B could do her work and those directions were supported with a penal notice directed at the Mother.

24. There was a Pre trial review in December at which the Court needed to address the issue of transparency. The Mother had been directed to provide statements to all parties and the court but had sent them only to the court and had sought the court to look at evidence but not disclose it to the other parties. I note that the Mother has not sent updating photographs to the Father in accordance with this Order, but I accepted her submission that this had been an oversight, owing to the number of Court directions with which she had to comply in a short period of time.

25. This hearing began on Monday 15th January 2024.

The evidence of the parties

26. I heard from CG the child's Guardian.

27. She told the court that her recommendations had not changed since her final analysis, notwithstanding having read the recent statements of the parents and the step-father. Her recommendations were as follows:

- i. A to be told of the identity of his father as soon as can be arranged, but with professional support
- ii. A s37 direction to Hillingdon children services, specifying that their assessment should cover future spending time arrangements, arranging and overseeing A being told about his father, therapeutic support that can be offered to A to support him in relation to this,
- iii. The Mother to engage in therapy.

28. She told me in response to Mother's allegation that she had colluded with Dr B, that she had never met Dr B or spoken to her.

29. She spoke of her concerns about whether the Mother's position was controlled by or heavily influenced by Z. It was her experience that, whilst Mother has been firm in her view that A should not know who his father is, the Mother had complied with some directions in these proceedings, and her position at times seemed more open to giving serious consideration to the application.

30. She had observed that there are a number of emails and letters within these proceedings, signed by Mother but she believed that Z has had some heavy input in what has been submitted. She told me that she did not find the Mother's views to be as strongly expressed as in her written evidence. For instance, in their first meeting the Mother strongly expressed her concern, but it seemed in the first meeting that she was thinking about contact, she was going to go home and talk about things with her husband. It was CG's evidence that she considered the Mother's views have hardened as the proceedings have continued.

31. Her recommendation is that A is told the truth about his parentage (as soon as possible?) to prevent or minimise the emotional and psychological harm that will be caused when he finds out. CG's overwhelming concern is that A will feel that he has been lied to his whole life but she added that it is a positive thing for A to have a relationship with his father during his childhood. He should not miss out. Her views were that if A is told about his biological heritage he could be exposed to that truth later in life and that could cause him significant harm. That if the disclosure of the truth was not managed and supported A could be subject to ongoing speculation at home, he could form his own opinions about what is going on.
32. Furthermore, it was CG's view that A has a right to know who his biological parents are and consequently, even if the risks of discovery are miniscule her recommendation that he is told about his parentage remained the same. She confirmed that it was her impression that the Father was very committed to A indeed.
33. CG gave brief further oral evidence on the last morning of the hearing. She had not had sight of the latest statement of the Father when she gave evidence because it had been omitted from the bundle in error, and she had listened to evidence on Monday and Tuesday afternoon and read a note of evidence from her counsel for Tuesday morning and some of the afternoon (when she was giving evidence in another matter), and she wished to supplement and add to her evidence.
34. She told me that she now believed that the Mother had significantly played down the post birth relationship and the Father's role in the family. That the fact that the Father had a pre-existing relationship with A was clear, for instance in that he was asked to look after him on occasion by the Mother (such as when she visited a clinic in Slough) and this further bolsters her view that the application was genuine.
35. Her concerns about the power dynamic between the Mother and Z had been heightened having considered her Counsel's note of his oral evidence. She gave evidence regarding one of her early meetings with the Mother. Information about this meeting had been set out in her June position statement, and she asked the Court to remind itself of the contents of that Position Statement. In that document, the Guardian described a meeting with the Mother at which the Mother said she was thinking of telling her eldest daughter the truth about X. She told the Guardian on that day that her daughter may already have some idea about the current situation. The Mother was mindful of the fact that it was her GCSE year and wanted to tell her at a later date.
36. Mother also told the Guardian on that day that even when A reaches 18 years old he should not know the truth it would be "evil" to tell him.

37. My impressions of CG were that she was thoughtful, a serious professional, unbiased and child focused. I found her evidence of great assistance.
38. I heard oral evidence from the Mother. She readily accepted at the outset of her oral evidence that many of the documents in the bundle which bear her name and even her signature were indeed drafted by Z. However, she was clear that she wholly agreed with their contents, as she put it, he was helping her with “putting things into words”. She told me of herself and her husband “we are one”.
39. On multiple occasions during her evidence she attempted to maintain the denial that X was the biological father of A but then on other occasions she seemed to reluctantly accept it. Her tongue slipped on more than one occasion referring to X as the father and then she would seek to recant. That X is the father has already been made as a finding by this court and recorded on my Order of 20 June 2023.
40. The Mother was adamant that she had no intention of allowing A to be told the truth about his parentage. She had to accept that there was a chance he would find out by looking at his birth certificate when he was an adult. But she was clear that there was no chance that he would discover the truth before then. She accepted she had attempted to change his birth certificate but been unsuccessful, she suggested that the Court could see fit to change it but I am clear that I have no power to rectify a birth certificate. It seems that the Mother had been holding on to this hope, and I had the impression that it was only during her evidence that she realised that this was a document which both revealed the truth and which could never be undone.
41. When asked about how A would react, when he inevitably finds out on some occasion as an adult, who requires his birth certificate for some purpose or other; the Mother told me she will tell him his father was “*a runner*”, that he was a “*criminal*” an “*immigration absconder*”. She did not have anything positive to say about the Father. She believed that when A is told this he “will not care”. She will say to him: “The man came in my life, it was a mistake”. Her view was that: “*I think he will be happy they were born there they understand the complexity of life.*”
42. As to the chronology of events, the Mother told me that she did not tell Z that she was in a relationship nor that X was living in their home in 2016 and how he discovered was that someone saw her looking pregnant and told him. Z attended the family home in west London as soon as he was able and found her pregnant and went upstairs and found X in the bedroom. It seems that this startling news did not come out in a controlled or managed way. The Mother did not face up to the need to tell her husband about her circumstances.
43. There were concerns in this case as to whether there was any domestic abuse within her marriage, in particular whether she was in a controlling relationship. Mother denies this, she attempted to explain away her attendance at the police station on 9

August 2016 in which she alleged that Z “*gets angry quickly is temperamental, controlling and moody*” and told the Police that she wanted a divorce but Z was “*threatening to take her children from her*” if she did by saying that X put her up to it.

44. She also told the police (that same visit) that she had been in a relationship with someone else for “5-6 months” and that would mean the relationship started earlier than she had admitted to this Court.
45. She told me she did not accept the dates for the relationship that X contended for, but she accepted that he lived with her from September to November 2016. At one point in her evidence she conceded he lived with her in 2017 again, but for no more than 1 week. She had to accept that she resumed a relationship with X in 2017 because it transpired (and I will return to this later) she became pregnant again by him after the birth of A in 2017.
46. The Mother told me that she does not accept that either of her older children V and W understood that she was in a relationship with the Father, even though he was sleeping in her bedroom. She told me she does not accept that V will have any understanding or suspicions as to the true parentage of A and if she did she would not say anything. The Mother was reluctant to accept that the relationship had persisted throughout 2018. When asked about a text message she sent the Father in December 2018 telling him she had just filed for divorce online, she said that the contents of the text message wasn’t true, she was “bluffing” which I observed meant that she was lying to the Father although she bristled at that and refused to accept that that was a lie.
47. At the same time she also sent a photograph to the Father of a signed divorce petition but she seemed to say that this was all part of a bluff because the Father kept “calling her up and crying” and she wanted him to stop. She was referred to messages where she told him she loved him. She was dismissive of those messages.
48. The Mother accepted that she resumed her relationship with Z ultimately and they made a decision that he would be A’s father. They set about trying to erase the Father from A’s life. She accepted she tried to change the birth certificate, but it was not possible. She wanted to arrange for Z to adopt A without the Father’s knowledge or consent, it was not possible to arrange this. She discovered that it was possible to change the child’s name and so she did so, changing both his surname and his first name. She accepted that the new first name is culturally different from his birth name.
49. She explained her position regarding the Father as follows: “*I had to get rid of him, he was a liability to me, he was a leech sitting on me*”.
50. She repeatedly emphasised that she believed that the Father was only pursuing contact because he wanted to support his immigration application. Although she accepted

that even after his paperwork came through in 2018 he was still asking for her to divorce her husband and still (“*ringing her up and crying all the time*”). The Mother alleged that he had pursued her and impregnated her all as part of a plan to regularise his status in the UK (it being common ground that he was living in this country illegally from around 2009 to 2016).

51. Further on the topic of immigration, the Mother told the Court that she had supported him in his immigration application introducing him to a solicitors firm and helping him with documentation, but also that immediately following their first separation she and Z wrote to the Home office in strenuous terms to try to ensure that he was deported.
52. The Mother alleged that the Father drank too much, but said that she had not mentioned that in her earlier statements and letters, because her focus in those documents was on her family. She talked of the shame that the Father would bring on her, “*He will make me a prostitute*”. And, she was very upset that X could be allowed to come in and ruin her “perfect life”. She could see no benefit to A of knowing the truth. She was very focused on her outrage and upset as to how these proceedings made her feel – she repeatedly referred to herself as being on trial, alleging bias on the part of the court and the professionals. She said, *he is as pure as holy water and I am a criminal*. She regularly returned to her assertion that she was being made to feel like she was a criminal. When asked about A’s right to know who both his parents are she said, “*He doesn’t have any rights- I am his mother and he is only 6 years old he has not rights, I give him the rights*”.
53. Not as part of her main evidence but later in the hearing, after hearing Z had given evidence, the Mother had to answer some questions from the bench about another issue and she confirmed the following: she was made pregnant again by F after the birth of A; she had an abortion; she did not accept that she did not tell X beforehand and said he knew because he came with her to the clinic in Slough; she could not recall the date or the month; she was upset that the Father had referred to this event in his last statement to court received by her only on Friday 12 January because this was “their secret” and Z had never been told about it. The consequence of X referring to the second pregnancy and abortion in his final statement was that Z had now discovered this and he was very upset.
54. Mother accused the professionals of trying to snatch her child away, she was understandably and visibly upset about this. She told the court she would not cooperate with London Borough of Hillingdon.
55. At the very end of the hearing I asked her to confirm her position on the DNA testing. Initially she said she would not accept the results. That X was not the biological father. Only upon my making it very clear that whilst she appeared before this court maintaining that black was white it was impossible for the court to rely on anything

that she had to say, did the Mother shift position and accept that biologically X is the father of this child.

56. Z gave evidence. He was an erudite, interesting and unusual witness. He relied on historical precedents to explain that an English court ought not be deciding the matter, explaining that *there is a difference as to how Indians think of their lives and how English Caucasians think of their lives*. He quoted in Latin from the first lines of the Bhagavad Gita. He ventured into matters of theology. He was absolutely resolute that he was the father of A and he did not accept the DNA Cellmark testing. He was more eloquent at arguing that black is white than Z. To support his argument he asked the Court to consider the parentage of Jesus. He reminded the court that he did not need DNA testing for his other children to know he was their father, why would he need DNA testing for A? He was unshakeable from his arguments, specious though they obviously are. It became entirely clear to the Court why it was that the Mother was sometimes accepting the obvious truth of the DNA report and at other times hopelessly attempting to maintain that Z was the biological father of A.
57. Z spoke of this as a “battle”. A battle he was conscious they appeared to be losing. He poignantly described the day upon which he burst into the family home having heard his wife was pregnant and he found X. He described his indignation when X called Y “his girlfriend” and his anxiety because Y was not supposed to have further pregnancies after a medically complicated birth when W was born. He said *“As long as live I will not let my family be destroyed.”* He further said *I cannot see a woman going down the drain because she has fornicated it is not going to happen*. He said he did not consider the Father dangerous, saying *he is not a threat he is a simple man in desperate circumstances. He is not my enemy his is my countryman but he has destroyed my family*.
58. Z also told the Court that the Mother had tried to leave him “a million times”.
59. I heard evidence from the Father. Father was highly emotional throughout his oral evidence, indeed he was highly emotional throughout the final hearing. He told the court he worked in construction. He asserted that he can speak English and well enough for contact, but it was clear that his English was not good enough for a hearing.
60. As to the chronology, his evidence was that he lived with the Mother from August 2016 until 2 months before the end of the pregnancy, and then after the birth in March 2017 they reunited, that from when his name was put on the birth certificate there was a period of 4 or so months he lived with the Mother. During that time he described his interactions with A saying he changed nappies and he played with his son. He further told the Court about his contributions to the home, he did a lot of work to the home because it was not in a good state: he changed the carpets to wooden flooring; he wallpapered; he purchased furniture including new beds and he bought a new tv

and bunk beds and a playstation for the children. His case was that whatever he was earning he gave the Mother. He described a loving relationship with V and W; he said when he lived with the Mother he loved her children and they loved him and the Mother used to tell them that “*he was the world’s best uncle*”. He and the Mother shared a bedroom. When A started talking he would call him “dada”. He believed that the children or certainly V understood he was in a relationship with the Mother because, aside from what she would have observed, Z complained to them that your Mother has kicked me out and is living with someone else. He had a particularly good relationship with W, he said “*she was a very nice girl*” and she would comfort him when he was crying.

61. The Father was not certain that W understood the relationship between the Father and Y nor that X was A’s father. I found this a sensible concession, given the differing ages between V and W. The Father accepted that Z was important to A, and that he cannot disappear from his life. He described having framed the photos he was sent of A and hanging them on his wall. He talked of conversations he had with his own mother in which he was evidently calling her for support about this situation. He was absolutely clear that he had loved and been in love with Y, that he loved his son, that even if it was not for the visa he wanted to see his son.
62. The Father told the court he would engage with professionals and bear further delays if it meant seeing his son.

My impressions of the witnesses

63. It is impossible for the Court to rely on the Mother’s evidence or assertions without documentary evidence in support. She has lied to the court, and to the people in her life so often and so entirely that I can say without exaggeration, hers is a life mired in deceit. It must be exhausting for her.
64. The Mother lied to the Court in November 2022 when she told it that the Cellmark birth certificate and parental responsibility agreement were false and had been provided only to advance the Father’s immigration status. The Mother either lied to the Police in August 2016 when she went to them complaining and making allegations about Z or she lied about that police visit to this court on oath. The Mother says she lied to the Father when she told him that she had filed a divorce petition, going so far as to provide a photograph of a signed divorce petition. The Mother repeatedly told the Father she would divorce Z and to wait, and now tells the court she was “bluffing”. The Mother lies to the child about his father, and to both her other children. The Mother deliberately set about attempting to obtain false documentation for A. She tried to change his birth certificate. She changed A’s name in an attempt to cover her tracks or “wipe the slate clean”. Perhaps similar to her allegedly false reporting of Z to the police in August when X displeased her in November 2016 she says that she collaborated with Z to send a letter to the home office which said “*He dragged me to an immigration lawyer’s office in Southall names M law chambers [I*

pause here to remind myself that her evidence before this court was that she arranged the appointment of M Law for the father herself] *where I felt coerced to say and write various things of X as his sponsor most of it is lie, I was made to be present in order to solidify his immigration case*". She then goes on to say she lied on his immigration application, meaning she lied again to authorities either in the aforementioned immigration application or in this letter to the Home office. Perhaps both.

65. When she wanted to enter into a step-parent responsibility agreement with the step-father behind the Father's back she wrote to the central family court (letter dated 24 February 2020) as follows:

he made me register my baby's birth with him as father following the DNA result. I thought that I had no choice and I was doomed. I received my baby's birth certificate and the man took it and left. Only a few weeks later he sent me photo of his immigration card with stamp of British Home office allowing him a residency. I did not see him ever since [my emphasis].

66. This was a lie.

67. Some of her evidence before this court was highly improbable and I am not satisfied she has any reasonable belief that it was true. Such as her description of a judge refusing to grant her a divorce because her marriage was worth saving. I have seen a letter sent to Bury St Edmonds Divorce section, in which she withdrew her first petition by writing in.

68. It is clear that she has accepted previously that V might know the truth, both in a conversation last year with the Guardian and also in a letter dated 17 April 2018 which reads: *I have wasted considerable amount of time and besides my daughter is growing up to understand my miscreant*. However, when that sentence from her own evidence was put to her she could not give a sensible answer as to what she meant when she wrote it.

69. I also noted that she talked over the court, she talked over counsel, she refused to answer questions as they were put to her.

70. And, it seems, she has been lying even up to the date of this trial to Z over the fact that she became pregnant again in 2017 by the Father and had an abortion. Z did not know about this, he is against abortion and he was visibly upset about this.

71. I am sorry to say that I find the Mother to be manipulative and deceitful. And that is clear from her conduct not just within these proceedings but also towards those close to her over a number of years.

Findings

72. I have been asked to make a finding as to the role of the Father in A's life. In considering this I have heard the parties' oral evidence and I have had to consider photographic evidence, submitted on behalf of the Father.
73. The Mother in evidence minimised the Father having seen A after his birth. She said at one point that he only saw him when he came to register the birth (April 2016) and on one other occasion, the day when she said all the photographs were taken which was in October 2017 at the home of a friend or relative of the Father. She accused the Father of showing photographs from the same day and pretending they were different days. On another occasion in her evidence she accepted he stayed with her for no longer than 1 week.
74. The photographs that I have seen, I am satisfied show: the Father celebrating Diwali in the Mother's home on 19 October 2017; being in the home and spending time with A on 22 October 201; spending time with A in July 2017; attending the event on 28 October 2017 with Mother and A as conceded by her and there are photos in the bundle C205-207 which are of some family event but not the 28 October 2017 because different clothes are being worn, I am satisfied that the Father has correctly dated the event July 2018.
75. I am satisfied that Mother has minimised the role of the Father entirely. I prefer his version of events in the main although I have to be cautious given that his recollection like that of all witnesses will have been affected by time and be imperfect, for instance he accepted that he cannot have seen the child for the last time on 30 October 2018 and that it must have been earlier that month. Whilst it is clear to me that some of the Father's recollections are imperfect and his statements were prepared without the necessary Punjabi version to read, I do not believe that he has been deliberately attempting to mislead this Court, as I am entirely satisfied the Mother has been.
76. A finding is sought on behalf of the Father that his reasons for making this application are genuine love and affection for his child. I am satisfied that this is correct. I have taken into account the messages flowing backwards and forwards between the parties, the Father's feelings are evident in them, both towards the Mother at that time and his son. I have considered the evidence of the Father doing work and making contributions to the family home, I am satisfied he did this because he wanted it to be his home too, he wanted to build a family with the Mother. I also take into account the Mother's own evidence that after he received her visa he was still ringing her up and crying, wanting her to get a divorce. Her evidence about this was unattractive because if accurate it appears she was stringing the Father along for some months, telling him they would reunite when she did not intend so to do, but importantly this evidence reveals genuine feelings for the Mother and A as his visa was in place. I take into account the Guardian's assessment as to motivation and the inherent probability that a relationship was built up between the Father and A between his birth and when the Father last saw him (when he was aged 1 ½ years old), that the

photographs show affection for the child and happiness on the face of the Father, and it was obvious in the evidence that Father was proud of A, as he should be: his “beautiful son”, his “lion”. I accept that the Father loves and misses A.

77. In arriving at this finding I have taken into account that there was a significant gap between the last contact between Father and A and the making of this application. But it is clear that the Father attempted to arrange mediation in 2021 (see letter from relate April 2021) which was rejected by the Mother. The Father tells me that he was waiting for some time in 2019 because the Mother told him to wait and she would sort it out, I am satisfied that she did say that. I accept he was stuck in India for 6 months during covid, the Father described a period of ill health in the latter part of 2019 and the Father tells me it took time to work and earn the money for this application. He has been represented throughout despite his very modest earnings.
78. I have been asked to make a finding as to whether V knows or suspects the truth. This is relevant because it increases the likelihood of the secret being revealed during A’s minority – I find it inherently improbable that V does not have some understanding of the secrets being kept in her family. Secrets that she is being required to keep also. I find the Mother’s assertion in evidence that this 16 year old did not do PSHE and therefore would not know of these things, wholly unlikely. I find the assertion of total ignorance at odds with earlier statements of the Mother, for instance to the Guardian and the letter written to the Local Authority in 2018. V was 8 when her brother was born. X lived with her Mother for 4 months in 2016 and lived with the Mother again in 2017 when V was 9 and the Mother and the Father carried on their relationship up until 2018 when V was 10. It is wholly unlikely that she does not remember this man that she does not know who he is.
79. Counsel for Father asked me to make a finding that the Mother was not telling the truth when she alleged the Father made a threat to her in 2016. This hearing was not set up as a fact finding. The Court however wishes to make clear that it does not find the Mother to be a credible witness and therefore it would not consider making findings on the allegations she makes against the Father without the opportunity of seeing all other categories of evidence. But the allegation that the Father made a threat in 2016, having considered PD12J does not, in my view, need to be the subject of fact finding.
80. Both the Guardian and the Father raise concerns about the power dynamics between the Mother and Z and whether he is controlling as she alleged he was to the police in August 2016. Again, this court was not set up to deal with that allegation. The police disclosure was not in the bundle. And Z was not given notice that a finding was being sought against him. It would be wrong to make a finding against any individual absent notice. The Court does have concerns that Z has, throughout, put words in the mouth of the Mother that are debasing to her. For instance, in November 2016 he wrote in a letter under her name the following: *I feel disgraced to say I am 4 months*

pregnant and don't know with whom. I slept with X at my home during the afternoon on 30th June (my birthday) on my husband's absence and slept with my husband that night [C106].

81. I cannot see why that personal detail was relevant to the home office. It is not the only detail in correspondence with authorities which seems likely to have been included solely to embarrass the Mother. For instance, in a letter written to Judge McKendrick KC on 30 November 2022, it is written that the Father *has debased me and himself to an animalistic state.*
82. I find that it is unlikely that the Mother will be able to give independent answers to professionals. Any professional working with the Mother must be careful not to engage in written correspondence with her, she will not be the author.
83. The Father seeks a finding that the Mother has engaged in alienating behaviours. I have no hesitation in making that finding. The Mother and Z have sought to entirely erase the Father from his child's life. The alienating behaviours are so extreme as to warrant setting out as follows: the Mother has attempted to arrange an adoption of A behind the Father's back; she was writing to the Local Authority in April 2018 saying *I must have my husband father my son and alter his birth certificate.* It is extraordinary that she was writing in those terms as for months after the April 2018 letter she was promising the Father they would be together.
84. I have seen a letter dated 24 February 2020 to the Central Family Court which refers to correspondence dating back to February 2019 (a date I checked with the Mother in evidence as the correspondence was not in the bundle). She attempted to enter into a parental responsibility agreement with Z. Notwithstanding the requirement for the "other parent" column to be completed on a Step-Parent Parental Responsibility form (as correspondence from the Central Family Court had evidently emphasised to the Mother) she managed to persuade staff at this Court, West London Family Court, to witness and stamp such an agreement. It is not known what representations she made in order to achieve that end, I find that the agreement is not valid because it requires all parties with parental responsibility to have consented and the Father did not consent. And I am satisfied that fraudulent misrepresentations were made to the Court in order to obtain its stamp, and "fraud unravels all".
85. On 28 September 2020 she changed the child's name both first name and last name without the Father's consent. The changing of his first name, it would seem, is significant, because it is culturally different from the name of B. In several documents including the Mother's written closing submissions (undoubtedly written by Z), there is emphasis upon Z's ethnic and cultural heritage. Z's cultural heritage being that he is noble. And it is clear to me that A is being brought up to believe that he too is part of this caste and the change of his first name I find is part of that.

86. On the key issue as to whether it is likely that A could discover his biological identity in an uncontrolled, unplanned and unmanaged way (this is the case of the Guardian) or whether there is no chance that this will happen (the Mother's case), I find that there is a chance that this discovery will occur in his childhood and if not it, I am certain it will occur in his young adulthood. Secrets will out, as the Mother ought to know given her husband's discovery of her second pregnancy and abortion on the eve of this trial. Or the terrible scene they all described in evidence when Z burst into the home in 2016 to confirm that his wife was pregnant, finding the Father in the marital bedroom. I have found it is highly likely that V understands and knows the truth. I find it is likely that W has some concerns and suspicions about what is going on. I am aware that important documents (such as the original birth certificate, change of name document or even documents generated by these proceedings) could be happened upon. It is not possible for me to quantify the likelihood that discovery will take place during A's childhood, but I find that it is a possibility. All adults in this country occasionally require their birth certificate for one thing or another, I take judicial notice of that, at the very least, the Mother is going to have to explain that document to A then.

The Law – Discussion and Analysis

87. In determining this application, I am bound by the paramountcy principle. That is to say the welfare of the child is my paramount concern. I am engaged in a search to determine what orders, if any, are in the best interests of A. I must consider Children Act 1989 s1 (2A) which provides that *unless the contrary is shown, the involvement of [a] parent in the life of a child will further the child's welfare*. Further, to assist me in arriving at a determination of a child's best interests there is a checklist of factors in s1(3) known as the 'welfare checklist'.

88. Further, that A has the right to know his parents is not merely the opinion of the Guardian. Article 7 of the UN Convention on the rights of the child is that the child has "as far as possible, the right to know and be cared for by his or her parents".

89. That right, in this jurisdiction is, of course, qualified by the application of the paramountcy principle. The child has the right to know, unless it is not in his best interests.

90. In Ms v RS and BT and AS and BS [2020] EWFC 30 MacDonald J, the Court held as follows:

The identification of the child's parentage is a fundamental aspect of the child's identity and will engage the child's right to identity under the UNCRC Arts 7 and 8 and the ECHR Art 8 (Gaskin v United Kingdom (9189) EHRR 36). In Re H (A Minor) (Blood Tests: Parental Rights) [1997] Fam 89 the Court of Appeal referred to Art 7 of the UN Convention on the Rights of the Child in concluding that every child has the right to know the truth of his identity unless disclosure is clearly contrary to his best interests. There must be cogent reasons for denying the child that knowledge. The child's long-term

interests may also be better served not just by his knowing the truth about parentage but also by the fact that the adults involved will be able to plan their future lives in light of the true situation (see Re E (A Minor) (Child Support: Blood Tests) [1994] 2 FLR 548). Within this context, it has been held that in most cases it is in the interests of the child that paternity doubts should be resolved on the best evidence and that the child should be told the truth as soon as possible and that there are few cases where the best interests of the children can be shown to be served by suppression of truth (Re T (A Child) (DNA Tests: Paternity) [2001] 2 FLR 1190).

91. The Mother, in this case, argues that there are three principle reasons why it is not in A's best interests to know the truth about his parentage. Those reasons are: the Father is not a suitable father, he drinks, his family are criminals, he is a criminal, he is an immigration absconder; the Father is only making this application for the purposes of his immigration matters and when he has his immigration status regularised he will abandon his interest in A; finally that the impact on her and her family as a whole will be too great and too shameful.
92. As to her allegations about the unsuitability of the Father to play any role in A's life, I reject those. It is clear to me that he has much to offer A, not least his love and devotion. The way in which the allegations have come out have the tenor of a desperate attempt to bolster a weak and failing legal case.
93. As to the Father's motivations, I have already made a finding in that regard. It is a matter of fact that the outcome of these proceedings will be relevant to the Father's immigration matters but I do not accept the Mother's submissions on this point. I have found the Mother's focus on the Father's immigration status unhelpful and at times, concerning. The repeated references to the Father's immigration are at times, offensive, for instance in the document dated 29 April 2022 which describes the Father as *an illegal immigrant acting subhuman* and a *Punjabi peasant* and seeking the court to begin *outright condemning this practice of these immigrants coming to the UK, luring middle aged women and destroying their well-established nest to get a Passport to stay*. I reject that characterisation of the Father and the undertones of racial discrimination have no place in these proceedings.
94. I can understand and empathise at the Mother's fears concerning the effect that the truth will have upon her "perfect life", and the truth will impact upon A. That this situation is entirely of the Mother's own making, does not invalidate this point she makes. She loves A and fears the ill effect on her relationship with him, and upon her family unit as a whole. But I am impressed by the conclusions of Dr B and accept her evidence that:
The child needs to know his biological father, and the sooner and more naturally that this is done, the easier it will be for the child to adjust [para 1.11 report dated 22 November 2023]
and later at para 1.12

children need to know their biological heritage where possible as this is part of their identity where possible, as this is part of their identity, and the consequences of finding out at a later stage often have major repercussions on the child.

95. The Supreme Court considered this issue in re H & A [2002] EWCA Civ 383 the facts of which differ somewhat from this matter, in that the application was for testing to confirm whether a putative father was the father of 5 year old twins. In this instance, we are certain of paternity and there was a relationship between the child and the father whilst the child was in his infancy. In H & A 2002 the parties had been having an extra marital relationship and children had been born. The Mother had concealed the relationship from her husband, even until during the lifetime of the proceedings. The putative father sought testing to confirm whether or not he was the father, the mother resisted the paternity testing, supported by her husband who saw himself as the father. The first instance judge refused the application for paternity testing because he accepted the mother's argument that it would have a "disastrous effect on the family if it proved the husband was not the father of the twins. The Supreme Court overturned the decision, giving significant weight to *the advantages of establishing scientific fact, which allows for planned management, against the risks of perpetuating a state of uncertainty that breeds gossip and rumour, with its risk that at some unpredictable future date the twins might be exposed to either a malicious taunt or an unintended indiscretion with shocking consequence.* (§21) and their observation that *unpalatable truth can be easier to live with than uncertainty.* (§27)
96. The Mother's case before this Court has been to say that the discovery is not in A's best interests. I have formed the clear view that she is so preoccupied with her own needs, emotions that she is unable to assess the needs of her child with clarity or truly discern them.
97. I share the concerns of Dr B and the CG that this secret may well be revealed or discovered, and that if A learns of his parentage without the support recommended by the CG, in an unmanaged and unplanned way, it will cause him significant emotional and psychological harm.
98. I am satisfied that when I ask myself the question, should this Court uphold A's right to know his parentage, or will that knowledge be contrary to his best interests? The answer, is that his right prevails and indeed it is in his best interests for to know. There are no cogent child-focused reasons for denying him that knowledge.
99. In arriving at my assessment of A's best interests I have considered the factors in the welfare checklist:
- a) It has not been possible to consider A's wishes and feelings, as they cannot be expressed without knowledge of the application.
 - b) His physical, emotional and educational needs – most pertinent to this application are A's emotional needs. In my judgment he has a need for a

strong and supported relationship with both parents and with Z. I am keenly aware of the dangers to A's emotional needs if the process of notifying him of his true parentage is not managed carefully. I am concerned that if not managed carefully his relationship with his mother could be damaged. I am satisfied that there is a risk of discovery during his minority of the secret, and that if he were to learn the truth in this way it would significantly impact his relationship with his mother and with Z. Paragraph 1.23 of Dr B's report states that the risk of damage to these two very important relationships will increase over time. Whilst I am fully aware that the Mother and Z do not accept the expert's opinions, I find them compelling and I am concerned to ensure that A's relationship with both his mother and Z suffer as little damage as possible.

- c) The likely effect of any change in circumstances is going to be significant, that is an inescapable truth. But more importantly I accept CG's evidence that this change must be managed in a planned and supported way.
- d) His age, sex, background and relevant characteristics. A is 6. As he grows older the impact of the news is likely to be more damaging. I consider it relevant under this heading to consider the difference between the cultural heritage that A will believe he has as the purported son of Z, which is different to the heritage that he does have as the biological son of X. In multiple documents the pride and the unique history of Z is emphasised to the Court. And later it is written "The applicant has no heritage or value". The importance of A's cultural heritage is twofold: firstly I accept that the Mother's fear of shame and impact upon the family is heightened because of cultural implications, although strangely that did not prevent her from having a relationship of total duration 3 years with several periods of cohabitation outside of marriage. Importantly if not told, A will be raised to pride in a cultural heritage that is not his own, and there is a danger (seeing how the Father is referred to throughout the paperwork and in those closing submissions) that he will not be brought up to be respectful and proud of his real heritage. I can foresee this exacerbating confusion that he will feel about his identity upon discovery of the truth.
- e) Harm he is suffering or likely to suffer: I am satisfied having heard all the evidence that the Mother's position, in which she sets her face against this court means that she is causing or at risk of causing significant emotional and psychological harm to this child if she cannot change her position in relation to A's needs and right to know who his father is if she cannot acknowledge his need to have his identity supported.
- f) How capable are the parents of meeting A's needs? The Mother has a need for individual therapy to create a significant cognitive shift changing her behaviours and attitudes towards the Father and her understanding of what the child needs (see paragraph 1.26 of Dr B's report) in order to be fully capable of meeting A's needs. The Father is largely untested in this capacity.

100. I have read and I agree with and find the conclusions of Dr B compelling.
101. On the specific issue order my decision is that A must be told the truth about his parentage as soon as it can be safely arranged.
102. All that the Mother and Z have told me means that I am abundantly satisfied that they are not likely to accept this decision. I am also satisfied that they are not emotionally equipped to approach and manage the disclosure to A without considerable professional support, even were they to have a change of heart. I am making a s37 direction to the London Borough of Hillingdon, as recommended by CG. And I agree with the respectful suggestion of CG that the Court requests the appointment of a senior social worker, or one with considerable experience.

District Judge Murphy
West London Family Court
19 January 2024

