



Neutral Citation Number: [2024] EWHC 1144 (Fam)

Case No: FAM02/24

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**ON APPEAL FROM THE FAMILY COURT AT BLACKBURN**  
**District Judge Buckley**  
**Case No. 1650885117181029**

Sessions House  
Lancaster Road, Preston PR1 2PD

Date: 15/05/2024

**Before :**

**MS JUSTICE HENKE**

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**Re: RA (Appeal: Validity of a Marriage: Finding of Fact)**

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The **Appellant** appearing as a **Litigant in Person**  
**Ravi Sethi** (instructed under the **Direct Access Scheme**) for the **Respondent**

Hearing dates: 20-21 March 2024  
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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 15 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS JUSTICE HENKE

This appeal was heard in public, subject to a privacy order made on 20 March 2024 which restricted the publication of: the names of any party; the name of any child (whether or not a party); the name of any witness; the name of any other person named in the evidence before the court; and the publication of any information which may lead to any such person being identified. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**Ms Justice Henke :**

**Introduction**

1. On 20 and 21 March 2024, I heard an appeal against an order made by District Judge Buckley on 18 January 2024. I reserved judgment. This is my reserved judgment. Within the judgment I refer to the parties as Appellant and Respondent. I do so to preserve their anonymity. This appeal was heard in public, subject to the following restrictions on publication which remain in force:
  - (a) the name of any party;
  - (b) the name of any child (whether or not a party);
  - (c) the name of any witness;
  - (d) the name of any other person named in the evidence before the court; and
  - (e) the publication of any information which may lead to any person falling into (a)-(d) above being identified.
2. The central issue before the learned District Judge was whether the parties, who were Islamically married on 4 August 1999, were married in a civil ceremony at X Registry office on 14 December 2009. Having heard the evidence, the learned District Judge found that the Respondent was not present at the marriage on 14 December 2009 and accordingly the parties were not legally married. It against that decision and the orders that flow from it that the Appellant seeks leave to appeal with appeal to follow before me.

**The Relevant Background**

3. The parties started a relationship in 1995. It is common ground that they were married Islamically on 4 August 1999. The Appellant contends that she and the Respondent were married in a civil ceremony at X Registry Office on 14 December 2009. The Respondent denies that he ever participated in any such ceremony. The Appellant and Respondent agree that they finally separated in 2013. The Appellant sought an Islamic divorce in January 2022 which was granted in April 2022.
4. The parties have two children who were the subject of Children Act proceedings in which the evidence concluded on 8 June 2022 and judgment was given on 10 August 2022. The Appellant is their mother; the Respondent is their father. One of the children was born in the Spring of 2001 and another in early 2010.
5. The learned District Judge who heard the Children Act proceedings found that there was no ongoing pattern of coercive and controlling behaviours by the Respondent but did make findings against him. Those findings were summarised by District Judge Buckley as follows: -
  - a. *In May 2009 the father assaulted the mother by punching her on her arm, shoulder and back of her head.*



both parties were represented by direct access counsel. Both parties had the benefit of a McKenzie friend. District Judge Buckley had the benefit of two bundles. One for the fact-find which ran to 411 pages and another prepared for the recently concluded Children Act proceedings between the parties of 763 pages. He had before him the judgment which had been given in the Children Act proceedings. In addition, he had police disclosure which he had received in two tranches, and which ran to over 113 pages. At the hearing, the learned judge heard oral evidence from both the Appellant and Respondent. In his judgment he states that both were *robustly* cross-examined before him. He had written closing submissions on behalf of both parties. The learned District Judge then reserved his judgment which was handed down on 18 January 2024.

9. For the reasons given in his judgment, the learned District Judge found that *on the balance of probabilities the Respondent was not present at a marriage ceremony which took place at X registry Office on 14 December 2009*. Accordingly, he ordered that the Appellant's divorce petition and her application for financial remedy be dismissed. A written copy of the judgment given by District Judge Buckley was to be served on the Registrar at X Registry office. The learned District Judge refused the Appellant's application for permission to appeal.
10. On 5 February 2024, the Appellant renewed her application for permission to appeal. By that application she asked the court to set aside the order of 18 January 2024 and sought a stay. Having read her Notice of Appeal it is apparent that the Appellant was concerned that without a stay, the judgment could be used against her in other proceedings between the parties, such as non-molestation proceedings. She was further worried that the Respondent would dispose of assets because there could be no financial relief application without a valid marriage.
11. The Appellant's application for permission to appeal came before HHJ Leona Harrison on 1 March 2024. She considered it on the papers. She transferred the appeal to the High Court, made directions for the filing of skeleton arguments and appeal bundles, listed the appeal in open court subject to the usual Reporting Restriction Order and made participation directions. HHJ Harrison did not grant the requested stay.
12. Thus, the application for permission to appeal with appeal to follow came before me on 20 and 21 March 2024. At the hearing the Appellant had the benefit of a McKenzie friend and the Respondent, the benefit of direct access counsel and a McKenzie friend. The hearing did not proceed as smoothly as the carefully crafted directions of HHJ Harrison had anticipated. Despite directions aimed at an agreed and page limited bundle for use at the appeal, a second appeal bundle of 221 pages together with a bundle of authorities were submitted late on behalf of the Respondent. The Appellant told me she had not had time to consider this material. Much time was thus lost as the Respondent's counsel kindly highlighted those documents which were additional to the appeal bundle the Appellant had submitted and the Appellant read the additional papers submitted on behalf of the Respondent. The net result was that oral submissions did not begin until the afternoon of the first day and ran comprehensively into the second day. At the conclusion of the oral submissions, I reserved judgment.

### **The Grounds of Appeal and the Appellant's Arguments**

13. The Grounds of Appeal have been settled by the Appellant. The Appellant has elided the Grounds into her skeleton argument. She expanded upon them in her oral argument before me.
14. Having read those documents carefully and listened to her oral arguments, it seems to me that the key issues raised by her are as follows:
  - a. The learned District Judge was wrong in law to state that the marriage certificate in isolation cannot be relied upon.
  - b. The learned District Judge reversed the burden of proof placing the onus on her to prove a valid marriage even though she had a certificate of marriage.
  - c. The learned District Judge erred by failing to apply the law on the presumption of marriage.
  - d. The learned District Judge failed to consider properly or at all that the Civil marriage was a further example of the control he had over her during their relationship and that his denial of the Civil marriage was economic abuse as it prevented her applying for financial relief.
  - e. The learned District Judge failed to take into account adequately or at all the following: -
    - i. the marriage was 'low key' because the Respondent wanted it that way due to his 'lifestyle choices', including polygamy;
    - ii. the parties were living as husband and wife both before, during and after the date of the marriage certificate;
    - iii. the parties were married under Islamic Law which was accepted;
    - iv. the Respondent had displayed threatening and possessive behaviour and refused the Appellant a divorce over a number of years before these proceedings;
    - v. the Respondent had a financial incentive to dispute the divorce.
  - f. What the Appellant describes as procedural irregularities in relation to how he treated aspects of the evidence before him.
  - g. What the Appellant describes in her document as aspects of credibility including failing to give weight to previous findings of serious domestic abuse that had been made against the Respondent and the Respondent's previous conviction for perverting the course of justice in 1994.
  - h. The learned District Judge made factual errors in relation to the evidence placed before him.
  - i. Her right to a fair trial was infringed.

### **The Arguments in Reply on Behalf of the Respondent**

15. On behalf of the Respondent, I had a skeleton argument which set out his response to this application for permission to appeal with appeal to follow. That document was expanded upon in oral submissions from Counsel instructed on his behalf. The oral submissions were extensive and provided the Respondent's answer to each of the matters raised by the Appellant.
16. In relation to the application for a stay, it was argued on behalf of the Respondent that none was necessary. A number of reasons were given for this assertion, the strongest being that the Respondent had not disposed of any assets, and the Appellant and the children of the family continue to live in the Respondent's property.
17. Permission to appeal was opposed on behalf of the Respondent on the basis that the arguments advanced on behalf of the Appellant have no real prospects of success - FPR 2010, r.30.3(7). The arguments are not realistic, rather they were said to be fanciful - Re R (A Child) [2019] EWCA Civ 895.
18. I was rightly reminded by Counsel for the Respondent that an appeal is against an order, not a judgment - Vaughan v Vaughan [2007] EWCA Civ 1085.
19. Applying FPR 2010 r.30.12(3), I may only allow an appeal if I find the decision to be:
  - a. Wrong; or
  - b. Unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
20. On behalf of the Respondent, it is submitted that the learned District Judge was best placed to make the decisions he did. He had a wealth of documentary evidence before him, and he saw both the Appellant and Respondent in the witness box. The Appellant and Respondent were both represented before the District Judge, and he had the benefit of considering the detailed arguments that they advanced in closing. I was reminded that this court must bear in mind the advantage that the first instance judge had in seeing the parties and the other witnesses - Piglowska v Piglowski [1999] 2 FLR 763.
21. This is an appeal against a finding of fact, and I must avoid a narrow textual analysis. I must treat the findings of the judge at first instance with the appropriate respect. I must remember that an appellate court is severely handicapped in judging the credibility of oral evidence, even if transcripts are provided, because it has not heard and seen the witnesses giving evidence or observed their demeanour. Whilst an appeal against a finding of fact is *notoriously difficult*, where the appellate court is convinced that the judge was wrong then it is the appellate court's duty to interfere - Sherrington v Sherrington [2005] EWCA Civ 326. In AA v NA (Appeal: Fact-Finding) [2010] EWHC 1282 (Fam), Mostyn J expressed the view that an appellate court would only be able to say that a fact finder has plainly got the wrong answer if:
  - *Their conclusion was demonstrably contrary to the weight of the evidence.*

- *The decision-making process can be identified as being plainly defective so that it can be said that the findings in question are unsafe.*
- *In the second category they include “errors of principle as to, say, the burden or standard of proof, or a failure to take into account well-established principles as to the weight to be given to proven lies or litigation misconduct in reaching the factual findings.”*

22. The Respondent joins issue with the Appellant’s grounds. I have read the skeleton argument prepared on his behalf in detail. In oral argument, Counsel on behalf of the Respondent replied to each Ground of Appeal assiduously. I do not purport within this section of the judgment to reiterate all that has been said on his behalf, but I take its totality into consideration. Within this paragraph I simply highlight some of the key submissions in response. Firstly, for the reasons given the learned District Judge did not state that the marriage certificate in isolation cannot be relied upon. The judge correctly stated the law and applied it. He did not reverse the burden of proof and paragraphs 37 and 68 of his judgment demonstrate that he did not. The court did have in mind the Respondent’s conviction for perverting the course of justice even if it was not mentioned in his judgment because it had been raised in argument by Counsel for the Appellant before the District Judge. In any event, it was almost 30 years old at the time of the hearing.

### **The Judgment Below**

23. Given the nature of this appeal, I have considered the judgment of the learned District Judge carefully. He sets out in his judgment the positions of the respective parties. He then describes the hearing before him before turning to the background of the case. Thereafter he identifies the law he will apply when making his decision. He then describes his impression of the Appellant and the Respondent as witnesses. At paragraph 60 of the judgment and for the reasons he sets out in the preceding paragraphs he concluded that the Appellant’s *credibility has been wholly undermined and I do not find her to be a credible witness*. In relation to the Respondent, the judge found him to be *an honest and straight-talking witness*. He then turned to the findings he had made. At paragraph 70 he found in relation to the marriage certificate that there is *nothing to suggest that this is not an authentic document*.

24. Within the judgment the learned District Judge set out information that had been received from the Registry which included confirmation in relation to information which would have been provided prior to the ceremony: -

*"the superintendent registrar would have needed to be satisfied as to the name, age, nationality, residence and marital status of the person who was giving notice to marry. The Registration Officer's Handbook from 2009 instructs the registration officer to request documentary evidence from the person giving notice. The types of evidence included a UK issued birth certificate, a British passport, National ID card, or if the person was born abroad, a valid passport or Home Office travel document."*

25. In relation to any information as to the marriage ceremony attended by the parties to the marriage, the registry office confirmed: -

*"Marriages in England and Wales must be conducted in accordance with the Marriage Act 1949. After giving the required notices, the marriage would need to take place in the building specified in the notice, with the couple, two witnesses, and either an authorised person (if the marriage was in a religious building registered for marriages) or a superintendent registrar and registrar in attendance for a civil marriage. In 2009 the marriage register was completed at the ceremony with the couple, the witnesses, and the official(s) present all signing the register in the presence of each other."*

26. Having set out the information from the Registry, the learned District Judge set out that he considered that the Appellant *will have had access to the majority of the identification documents for both parties*. He also bore in mind that the Appellant herself had stated that the Respondent's signature on the certificate to the lay eye looked *extremely similar* to the Respondent's passport at the time which had been signed 9 years earlier. Then the District Judge examined the Respondent's signature on his Nikah of 20 November 2009 and *although making no positive finding regarding this issue, stated it does raise a question mark regarding the accepted similarity between the signature on the marriage certificate and the version on the identification document that would have been available at the relevant time albeit signed 9 years earlier*.
27. The learned District Judge then proceeded to state at paragraph 77 that *although this matter would normally start and end with the marriage certificate, given the dispute between the parties, I have considered all the evidence holistically, which has raised several questions and issues that I have balanced against this documentary evidence*. He set out each of them. Within that passage of his judgment at paragraph 83, the judge asks himself why the Respondent would commit himself to a marriage in December 2009 to a woman he had been Islamically married to for 10 years, when on 20 November 2009 he had married Islamically his second wife. Within the remaining paragraphs he then sets out the various anomalies that he finds with the evidence and the matters which he says undermines and contradicts the Appellant's case. Ultimately, he concluded that *the marriage certificate cannot be relied upon; the Respondent was not present at the Registry office on 14 December 2009 and that on the balance of probabilities that the two parties were not married in a civil ceremony at X Registry Office on 14 December 2009*.

### **My Decision and Reasons**

28. The application before me is an application for permission to appeal with the appeal to follow if permission granted. I have given the arguments that have been placed before me in writing and orally significant consideration. I have had experience of the sometimes-chaotic manner in which the Appellant presents her case and I have on this appeal experienced first-hand the effect of the late filing of documents. I sympathise with the learned District Judge who had to manage that chaos at first instance. Further, I acknowledge that the District Judge heard the evidence and had the opportunity, which I have not had, to watch and listen to the evidence unfold. I thus treat his decision on the facts with the very greatest respect. However, having said that, for the reasons which follow in the subsequent paragraphs I find that his decision is wrong and cannot stand.
29. The existence of a marriage celebrated in England and Wales may be established, without further or other proof, by the entry of the marriage in a register, kept pursuant to statutory provisions, and by certified copies of the entries in such registers. In respect of certified copies from the General Register Office, they must be sealed or stamped with the seal of



that office. In respect of other certified copies, they must be signed and certified as true by the officer in whose custody the register is placed.

30. The best evidence of a civil marriage ceremony in England, and indeed a religious ceremony, is a certificate which sets out the date, place and parties to the marriage ceremony L-K V K (No 3) [2006] EWHC 3281 (Fam). However, an entry in the register of marriages is only *prima facie* - not conclusive - evidence of all the facts required by statute to be entered therein. In Islam v Islam [2003] 2 FLR 1208, the signature of the purported husband on the marriage certificate was held to be, on the balance of probabilities, a forgery. The marriage was invalid.
31. I consider that the learned District Judge correctly set out the law within his judgment. The District Judge did not state that the marriage certificate in isolation cannot be relied upon. Instead at paragraph 69 he reminded himself that the best evidence of a marriage having taken place is the marriage certificate itself. However, rightly, he also stated that whether or not a valid marriage had taken place was a matter for him on the totality of the evidence. The learned District Judge did not, as the Appellant asserts, reverse the burden of proof placing the onus on her to prove a valid marriage even though she had a certificate of marriage. However, I find that he did fall into error.
32. The District Judge erred in relation to the central factual issue. At paragraph 70 of his judgment, he found there was nothing before him to say that the marriage certificate was not an authentic document. Then at paragraph 75 he found that that the Appellant would have had access to all the identification documents which would have been needed by the Registrar. He then speculated that the signature on the marriage certificate may not be the Respondent's, but he did not go on to find that it is a forgery. Later in his judgment, the District Judge concluded (paragraph 134) that the Respondent was not present at X Registry on 14 December 2009. The problem with that conclusion is that if the Respondent was not there, his signature on the marriage certificate must be a forgery. If the signature is not a forgery, then the Respondent must have been present. The learned District Judge's findings on this central issue are thus inconsistent and cannot stand.
33. Further, a significant proportion of the learned District Judge's judgment is devoted to assessing the parties' credibility. Paragraphs 47-66 and paragraph 112 of the judgment all relate to the Appellant's credibility. He deals with the Respondent's credibility in particular at paragraphs 61-67 and 83. Reading the judgment as a whole it is clear that the learned judge's assessment of the credibility of the parties was pivotal to his decision making. In my view that assessment was flawed. The assessment ought to have taken into account the Respondent's previous conviction for perverting the course of justice. The issue and its relevance to the judge's assessment of the credibility of the Respondent had been raised in argument on behalf of the Appellant at first instance. However, the conviction and its potential impact on the assessment of the Respondent's credibility is not mentioned anywhere within the judgment. Given the nature of the offence, even allowing for the significant passage of time, I consider that that was a material omission in the context of a case where if the marriage was not valid, it must have been a fraud. Had the District Judge considered the conviction, he could then have proceeded to determine what if any weight to attach to it.
34. Further the learned judge erred in his consideration of the respective motivations of the parties. At paragraph 83 of his judgment the District Judge asked himself why the

Respondent would want to enter into a civil marriage with the Appellant the month after his Islamic marriage to his second wife. However, the learned District Judge erred in that he failed to consider any positive reasons why the parties might want to enter into a civil marriage at that time. For instance, he failed to consider that at that time the Appellant was heavily pregnant with the parties' second child and may have been feeling insecure given the recent second Islamic marriage of the Respondent. Further, whilst the judge did place the marriage in the context of recent domestic abuse of the Appellant by the Respondent and thus queried why she would want to marry him then, he failed to factor in that the parties remained husband and wife until 2013. Further, the judge failed to consider whether in December 2009 the Appellant would have even contemplated the possible advantage of a civil marriage should she and the Respondent separate in the future. It seems to me that that should lead to a necessary consideration along the lines of: 'if she entered into this marriage for financial advantage, why she did not seek divorce until 2022 and why, when she did, did she seek the Islamic divorce first?'. Further, and I consider materially, nowhere in the judgment does the learned judge consider whether the Respondent has denied participating in the December 2009 marriage to defeat the Appellant's claims for financial relief.

35. The above are all material omissions which cannot be ignored. Accordingly, I make the following order: -

- a. The Appellant is granted permission to appeal.
- b. The appeal is allowed.
- c. The order of District Judge Buckley of 18 January 2024 is set aside.
- d. I have considered whether on all the evidence I have before me, I should substitute my decision for that of District Judge Buckley. However, I have not had the benefit of hearing the evidence and I do not have transcripts of their evidence at first instance. In such circumstances, I consider it would not be appropriate for me to substitute my decision for that of the District Judge. I have therefore decided that the fact-find shall be remitted for re-hearing by a High Court Judge of the Family Division.
- e. The case shall be listed at Sessions House, Preston before Mrs Justice Gwynneth Knowles for a pre-trial review on 1 July 2024 with a time estimate of two hours.
- f. A copy of this judgment and attendant order shall be sent to the King's Proctor who shall be invited to intervene and, in the event that that invitation is accepted, shall attend the pre-trial review listed above.

36. That is my judgment.