



Neutral citation: [2024] EWFC 73 (B)

Case No: SE22P70049

IN THE FAMILY COURT AT SHEFFIELD

Sheffield Combined Court Centre

50 West Bar

Sheffield S3 8PH

Date: 02/04/2024

Before :

**HHJ BADDELEY**

Between :

F

**Applicant**

- and -

M

**1<sup>st</sup> Respondent**

-and-

C

**2<sup>nd</sup> Respondent**

(by her Guardian, Sharon Jones)

Miss Broughton (instructed by **GWB Hartills**) for the **Child**

The Parents represented themselves.

Hearing dates: 5<sup>th</sup> February 2024 and 2<sup>nd</sup> April 2024

## **Approved Judgment**

This judgment was handed down at 10 am on 2<sup>nd</sup> April 2024.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

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HHJ BADDELEY

**HHJ Baddeley:**

1. This judgment concerns a girl who is nearly five. She lives with her mother.
2. The mother is a litigant in person although she has received some assistance from a solicitor.
3. The father is a litigant in person.
4. The child is a party to the proceedings and has a Children's Guardian, Sharon Jones of CAFCASS, represented by Kerrie Broughton.

Chronology

5. The parents' brief relationship began in July 2018. It had ended prior to the father departing the UK on 28th September 2028.
6. The mother reported to the police that the father had raped her on 20th November 2018.
7. Upon discharge from hospital following her birth, the child went to live with her mother and maternal grandmother.
8. The father returned to the UK on 6th October 2019. He was interviewed by the police about the mother's allegations, with the police taking no further action.
9. Two referrals about the child being left alone were made to social care in May 2020. The Children's Hospital then reported concerns about the mother's mental health in September 2020. There were further referrals about the mother's deteriorating mental health. She was sectioned in early December 2020.
10. The local authority issued public law proceedings on 18th December 2020. The Court made an interim care order and the child remained in the care of the maternal grandmother. The initial Social Work evidence documented a history of domestically abusive and controlling relationships in terms of the mother's background. There were concerns that the mother had admitted to permitting the father access to the child into September 2020 and the Local Authority were concerned that this posed a risk both to the mother and to the child.
11. The father did not participate or engage in those proceedings and no assessments of him were undertaken.
12. During the proceedings there was an improvement in the mother's mental health, she remained well and continued to engage with services and attended all available contact and family time sessions. A psychiatric assessment was undertaken by a jointly instructed expert, Dr Pilgrim, whose opinion was that the mother had had a psychotic episode but had responded well to treatment and was well. It was not possible to say whether her psychotic episode had resulted from her Graves' disease and hyperthyroidism or an acute mental illness.

13. The final order was made by HHJ Lynch on the 11th November 2021 providing for the child to be placed under the supervision of Sheffield City Council for 12 months, with the child being back in her mother's care.
14. The father's application in these proceedings was issued on 18th January 2022, very soon after the conclusion of the care proceedings.
15. The mother made allegations of domestic abuse and it was decided that these needed to be determined at a fact-finding hearing. Those allegations were:
  - i) Allegation 1 - The applicant was manipulative, coercive, and controlling and would make misogynistic comments, threats of harm and would eavesdrop on telephone conversations made by the respondent and would go through her iPad.
  - ii) Allegation 2 - The applicant would force the respondent to give him oral sex when he had had sex with other people.
  - iii) Allegation 3 - The applicant sexually abused the respondent by raping her and that the child was conceived as a result of rape.
  - iv) Allegation 4 - The applicant spoke about the child in derogatory terms and threatened to take the child to an African country, discipline the child with physical chastisement and sacrifice the child and marry her off to one of his friend's sons.
  - v) Allegation 5 - The applicant made threats of physical harm to the respondent that she would never walk again, that he would have people beat her, follow her, and put 'stuff' in her cigarettes.
  - vi) Allegation 6 - The Applicant has served 7 years in prison in an African country for killing someone. The Applicant has forced a woman to have an abortion.
  - vii) Allegation 7 - When the Applicant reported him to the police, the Respondent asked her to drop the charges which she did.
16. The matter was listed for a finding of fact hearing on 1 June 2023. However, the mother did not file a statement in support of her allegations and did not attend court. The order recites that the mother told the Guardian on 31st May 2023 that she did not intend to actively participate in the proceedings (save for sending a signed statement to the parties and to the Court). The Court recorded that it was "satisfied having considered the evidence, that it cannot make any of the findings sought by the respondent mother against the applicant father and that findings sought by the respondent mother... are not found, on which basis the case will now proceed on the basis that [the father] does not pose a risk of harm to the child as alleged by her".
17. The father was granted parental responsibility and the court ordered the local authority to prepare a report under S37 Children Act 1989. That report recommended that there should be supervised contact for two hours every four weeks initially and thereafter that this should be increased.

18. The mother then filed a statement detailing her allegations of domestic abuse. She attended court at the hearing to consider the Section 37 report on 6 October 2023. The court ordered an addendum Section 37 report. The mother was specifically requested to clarify why she had failed to attend previous hearings, her proposals for contact between the child and her father and whether or not she sought to litigate her allegations against him.
19. The next hearing, on 18 December 2023, was listed before me. The mother failed to attend. The mother's case appeared to be that she would only consider offering family time between the child and her father if the findings she seeks were found by the court. The father said that he did not seek family time with the child until those findings were litigated. No contact was taking place.
20. I determined that it was necessary to give the mother a second chance to engage with the fact-finding process, given the very serious nature of her allegations and that both parents were saying that this issue was preventing progress. I ordered the mother to attend this hearing, and a penal notice was attached to the order, in an attempt to ensure that there was an effective hearing. My order recorded that "in the event that the mother fails to attend... evidence will be heard, and the court will determine the findings sought against the father and in the alternative, whether to find that she is deliberately seeking to frustrate his attempts to have contact with his daughter." As both parties were litigants in person and this case was issued before the provisions of the Domestic Abuse Act came into force (so it was not possible to order that a Qualified Legal Representative undertake the cross examination), I further directed that both parents should submit their cross-examination questions to the court in advance.
21. It was the Guardian's suggestion that I widen the scope of the fact-finding exercise to consider whether the mother is she is deliberately frustrating the father's attempts to seek to spend time with his daughter.
22. The mother sent some very concerning messages to the Guardian prior to the hearing on 5th February 2024, making the following comments:
  - i) "I will not be coming to court anymore. I've just had a word with you about triggers and this lunatic just loudly banged on my door again, with the child being that. Until you start taking me serious you can attend court on your own. Don't come to my house as well tomorrow, we won't be in...let me know when it gets to the point where I get sectioned, as you threatened before or arrested. The next person to come, I beat them up, rightfully so."
  - ii) "I've had a word with our family friend about what's been going on and how you have been following me everywhere & she thinks it's wise I let you come & open up about how I've been feeling but she needs me to record our conversation as I've opened up to [the social worker] about my desire to sue the people that have been involved as part of our case since I've been pregnant..."
  - iii) "As you can see, I've called you a couple of times. Let's see if you're going to twist it in your documentation, like [the social worker] & claim I wasn't engaging. I'm not going to be one of those mothers you're going to bully into

not coming to court any more. Instead of de-escalation, you minimise, dehumanise & use the trauma people open up to you to drive people mad. I'm ready for you this year. I'm not having you lot, write any more lies about me & my child, neither am I tolerating micromanaging & microaggression. You will see me in Court on Monday. Enjoy your weekend & thank you & [the child's solicitor's] minion for trying to ruin ours."

23. The mother was also abusive to the process server who was trying to serve her with a copy of the hearing bundle, calling her a bitch in a message and reportedly saying "Never come to my fucking house again" repeatedly.

#### The Hearing

24. The mother attended the hearing on 5th February. She had not sent in her cross-examination questions and wrote out some questions on the morning of the hearing.
25. The Guardian applied for an adjournment so there could be an inquiry as to mother's mental health, given the messages sent over the previous weekend. The father opposed the application. The mother said that she was unsure about whether she wanted the hearing to go ahead. I gave a separate judgment, dismissing the application as there was no evidence to overturn the presumption of capacity and that further delay would be contrary to the child's interests.
26. I heard from both parties in person. Special measures were put in place for the mother, with her attending behind a screen.

#### The Mother

27. I put the father's cross examination questions to the mother and asked some further questions of my own. Miss Broughton then put some questions on behalf of the child.
28. The mother confirmed that she was pursuing all her allegations save for Allegation 6. She wanted to clarify Allegation 4 by saying that she meant that the father wanted to know the child as his daughter so that he would not sleep with her. Also, in relation to Allegation 3, that she could not be sure that the child was conceived out of rape, as there were occasions where the sex was consensual.
29. Her evidence was that the father used her to produce a British child for him so that he would be able to get British citizenship. The mother is British.
30. She said that she reported the father's rape to the police in July 2018 by telephone but was unable to provide any evidence from the police of this call.
31. She could not say how many times she had been raped, only that the first time was in July 2018 at the father's flat and the last time was on 5th September 2018 at the mother's flat. She said that she "checked out" of the relationship when the father raped her.
32. In response to the question that I put on behalf of the father ("Could you please describe what happened that led to [the father] raping you? If he raped you on more than one occasion, please describe the trigger for all rape incidents?"), the mother replied "No. I am not willing to elaborate unless I have got support... I don't have any

proof... he knows what he has done... there is only one proof – a video of him apologising to me.”

33. In response to the father’s question, “Has [the father] ever coerced you into becoming pregnant for him,” the mother said, “he knows this, so I’m not going to answer this.”
34. In response to the father’s question, “Did you tell [the father] when you found out you were pregnant” the mother said that she lied to him by saying that she had had an abortion, thinking that he would leave her alone if he thought that she wasn’t pregnant.
35. The mother described the father asking her to change her outfit when he took the child shopping, saying that she looked like a “slay queen.”
36. When asked to describe the father’s coercive and controlling behaviours, the mother replied “I don’t want to. I’m not bothered. I don’t think I have really healed. I don’t want to give him that much power.” She did give an example of the father telling her that she walked like a man and that everything he says is to chip away at your confidence and self-esteem.
37. When asked if the father tried to stop her from seeing or speaking to anyone, the mother replied that he didn’t say that she shouldn’t see her friends, but he started asking her friends out.
38. The mother said that the father told her friend that the child would be an imbecile because the mother was uneducated.
39. When asked about financial control, the mother said that when she was pregnant, the father wanted her to prostitute herself to look after his needs. She did not do this.
40. The mother’s response to Miss Broughton’s first question was “You have been testing me since I was pregnant. I’m not in the mood. Next...”
41. When asked about the video that she said showed the father apologising to her for the rape, she said that the police had seen it and then said “get to the point please. You are not going to re-traumatise me. It did happen.... I know you are far up his ass.”
42. The mother refused to look at the copies of messages passing between the parents that the father had exhibited to his statements. She denied that she had sent the messages at C44 saying “Try again. You are reaching. Chill out. You are acting like you are in [the father’s] payroll.”
43. Miss Broughton referred her to a message at C51 dated 28th July 2018 which states, “And I exxagarated (sic) about you raping me [2 x emojis].” The mother’s response to Miss Broughton was “You wish. You wish I would say that. They are not from me.”
44. Miss Broughton then referred the mother to the messages at C76 dated 21st August 2018 which read “1st time I met you, I said I thrive on revenge. You should’ve taken me serious (sic). You think I make empty threats. I did when I loved you. But since you know the real me now. No need to pretend. Let the devil start pulling strings in peace...” The mother accepted that this was her message, saying that she uses the phrase “I thrive in revenge” a lot.

45. Miss Broughton referred the mother to a message dated 25th September 2018 (C79) referring to there being a recording of a neighbour calling her a whore and threatening with a weapon and seemingly saying that the neighbour “nearly raped me too.” The mother replied that that was a reference to a neighbour who she said was sent by the father and who kissed her.
46. Miss Broughton asked the mother about an entry in her GP record of a message from a midwife in October 2018, which recounted an incident in which the mother was said to have got into an argument with a taxi driver about the payment of the fare and the mother was shouting and screaming abuse and that the taxi driver was about to rape her. Further, that the mother told the health professional that she was trying to say that she had been raped previously in a refuge. The mother’s evidence was that she had said that she had been raped by the father and that this must have been mis recorded. At this point, the mother said that she was “not in the mood for this nonsense” and accused Miss Broughton of “ganging up with a perpetrator”.
47. At the conclusion of her evidence, the mother said “My brain is fried. I can’t take any more. I just want to get out.” She left Court and did not remain to hear the father’s evidence or submissions.

#### The Father

48. The mother did write down eight questions for me to ask of the father. These did not however deal with the fact-finding issues that I was dealing with at the hearing but with financial and welfare issues.
49. In response to one of the questions, the father played a voice note from the mother from 27th July 2018 in which she said “...I’m not going to report you to the police. I only said the things before because I thought they would make you change your mind and say sorry. I wanted you to stay... I end up getting frustrated when I get anxious and say things I don’t mean.”
50. Miss Broughton then asked questions to test his evidence.
51. The father still has the original messages that he referred to in his evidence on his phone. There were hundreds of messages passing between the parents. It was clear that these were the original messages. Someone creating false messages would not have gone to the trouble of creating so many false messages. They had all the hallmarks of being genuine. I find that the messages relied on by the father were sent to him by the mother.
52. The father denied all the mother’s allegations. He said that the one mistake he made was not telling the mother until August 2018 that he had booked his flights to leave the UK in September 2018.
53. He said that sex was always consensual and denied ever carrying on during consensual sex where the mother had asked him to stop.
54. He said that he knew that the mother was alleging rape before he left the UK – she had accused him of being a paedophile and told him she was going to report him to the police within 2 weeks of the start of the relationship.

55. The father did recall that he and the mother had sex at the mother's flat on 5th September 2018, which was his birthday. They did not use contraception. He said it was consensual. They then argued about food and the father walked home in the middle of the night. He said that the mother came to his flat on the next day and got angry with him when she saw a condom in his bag. She accused him of sleeping with other people and smashed his headphones.
56. The father's evidence was that he considered that the relationship ended when he left the UK on 28th September 2028. He said that the mother did not initially believe he had gone abroad and accused him of having an affair. He said he had to send her a video of himself from overseas to prove to her that he was there. He received a message from a friend when he was overseas that the police wanted to speak to him. He discovered for sure that the mother was pregnant when she sent him the ultrasound scan picture.
57. The father described having contact with the child in the mother's presence:
- i) Over Christmas 2019 at the maternal grandmother's home.
  - ii) On 5th May 2020 when the father visited the mother at her flat, at her invitation.
  - iii) On 5th September 2020 at the maternal grandmother's home.
  - iv) On 21st September 2020 at Meadowhall.
  - v) On 25th September 2021
  - vi) On 16th October 2021.

#### The Law

58. I bear in mind the following when determining where the truth lies in respect of these allegations: -
- i) Firstly, the burden of proof lies with the person making the allegation.
  - ii) Secondly, the standard of proof is the balance of probabilities. The court must ask itself whether it is more likely than not that the event occurred.
  - iii) 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. However, the court can have regard to inherent probabilities. The court must have regard to substantial evidence and give it such weight individually or in combination, as it considers to be justified.
  - iv) Fourthly, the court must take into account all the evidence and consider each piece of evidence in the context of the other evidence. There is a survey of a wide canvas. The parents' evidence is of the utmost importance. I need to assess credibility and reliability.



- v) Fifthly, the court must be careful to bear in mind a witness may lie for many reasons, such as: shame, misplaced loyalty, panic, fear, distress – and the fact that a witness has lied about some matters, does not mean he or she has lied about everything. If the lie was for an innocent reason, it may be ignored; but otherwise it may be used to support the truth of allegations providing there is other supporting evidence. The leading case of R v Lucas [1981].
- vi) Finally, hearsay evidence may be admitted but given appropriate weight.

### Discussion

- 59. I have considered all the papers in the court bundle. I am aware that there may be relevant evidence that has not been included in the bundle, given the mother's limited engagement with the proceedings. I did not have the full police disclosure, notwithstanding that police disclosure orders have been made. The mother wished to rely on a video which she said supported her case because it showed the father apologising to her. She did not produce this video however and I was unable to view it.
- 60. I do have the relevant documents from the previous care proceedings. The Guardian has been through those papers to identify the ones to be released into these proceedings and included in the bundle.
- 61. This was the second fact finding hearing in this case. The mother did not attend the first one. It would not be proportionate to give her a third chance. The Court has to draw the line and conclude the fact-finding exercise now on the evidence available. These proceedings have been ongoing for two years and the disputed factual issues have been a barrier to contact moving forward. The mother was on notice that the Court was going to hear evidence and make findings at this hearing.
- 62. The mother represented herself throughout these proceedings but did take legal advice at one point. Her case was not well prepared. She did not appear to understand that, because the burden of proof rests with her, it was her responsibility to obtain the evidence that she needed to prove her case. As Miss Broughton said in her closing, she appeared to assume that everyone was aware of the content of the documents that she referred to, even though she had not served them in evidence.
- 63. In my judgment, the mother has fallen a long way short of satisfying me that it is more likely than not that any of her allegations are true.
- 64. The mother was a very poor witness who answered Miss Broughton's questions with abuse. She would not give any detail about to her most serious allegation of rape or as to the nature of the controlling and coercive behaviour that she alleged. I am aware that, if the mother has been raped, it would be a very traumatic experience for her to give evidence in Court about it, even in circumstances where special measures had been put in place so that she could not see the father and where the parents could not question each other directly.
- 65. However, the Court must deal with the evidence with which it is presented and make findings on that basis. It is simply not enough for the mother to say that she knows that her allegations are true and that the Court must accept that.

66. The documentary evidence that I have seen in this case casts very considerable doubt on the veracity of the mother's case:
- i) The social work statement in the care proceedings records that the mother's allegation to the police in 2018 was that the rapes happened over a 5-day period. That is inconsistent with the mother's case now that the first rape was in July 2018 and the last one was on 5th September 2018.
  - ii) In her voice message on 27th July 2018, the mother said "...I'm not going to report you to the police. I only said the things before because I thought they would make you change your mind and say sorry. I wanted you to stay... I end up getting frustrated when I get anxious and say things I don't mean."
  - iii) The mother said that she "exaggerated (sic) about you raping me" in a message sent on 28th July 2018 – and added two emojis – a sad face and a confounded face.
  - iv) The mother apologised to the father for "accusing you of all sorts etc" in a message on 31st July 2018.
  - v) In a message on 21st August 2018 the mother said "I thrive on revenge... let the devil start pulling strings in peace..."
  - vi) The mother has made other allegations of rape or attempted rape – it is documented that she accused a neighbour of nearly raping her and appears to have accused a taxi driver of being about to rape her.
67. The mother's actions appear to bear out what she said in her 27th July 2018 voicemail message where she said that she says things she doesn't mean when she gets frustrated and anxious.
68. The father's evidence was much more plausible. He answered questions in a straight forward way. He was a much more convincing witness.
69. I accepted his evidence about the contact that he had with his daughter after his return to the UK in late 2019. Had the mother's allegations been true, it is unlikely that she would have contacted him to invite him for contact.
70. The Guardian asked me to consider whether the mother is deliberately frustrating the father's attempts to seek to spend time with his daughter.
71. In my judgment, there is insufficient evidence to enable me to make this finding.
72. The mother has had mental health difficulties. The way that she has conducted herself in these proceedings and her behaviour in the days leading up to this hearing raise questions as to the current state of her mental health.
73. I do not have any recent medical evidence.
74. It may be that mental health issues are at play here and it is not possible for me to say that the mother is deliberately frustrating the father's attempts to re-establish contact.

Conclusion

75. My order shall record that, after hearing evidence from the parents, the Court finds that none of the mother's allegations of domestic abuse are made out.

Guy Baddeley

Circuit Judge