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No. ZC21C00194

IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Wednesday, 27 April 2022

Before:

HER HONOUR JUDGE HARRIS

(In Private)

B E T W E E N :

A Local Authority

Applicant

- and -

(1) M

(2) F

(3) A CHILD (via their Guardian)

Respondents

MR P. COUTTS (instructed by Legal Services) appeared on behalf of the Applicant.

MS R. WILSON (instructed by Dawson Cornwell) appeared on behalf of the First Respondent.

MS A. HASAN (instructed by TV Edwards) appeared on behalf of the Second Respondent.

MS J. BROWN (instructed by Creighton & Partners) appeared on behalf of the Guardian.

MS CHAPMAN (of Counsel) appeared on behalf of the Metropolitan Police Service.

J U D G M E N T

(via Cloud Video Platform (CVP) Hearing)

JUDGE HARRIS:

- 1 I am giving judgment this afternoon in the course of a final hearing of care proceedings relating to a very young child, P , born in May 2020, who is 23 months of age.
- 2 His parents are the mother who was born in 1984, so that she is thirty-eight; and the father who was born in 1976, so he is forty-six.
- 3 The parties before me are the local authority, represented by Mr Coutts; the mother represented by Ms Wilson of counsel; the father represented by Ms Hasan of counsel; and P and his guardian represented by Ms Brown of counsel. I will refer to the parents for convenience as “the mother” and “the father” respectively.
- 4 Also present are the maternal grandparents who are here from Spain. At my invitation, they have attended the hearing and have in fact been here each day throughout the hearing and I am very pleased that they have and have been able to hear the evidence.
- 5 I am giving judgment at this stage on the threshold criteria where there are still a number of contested matters because I consider that that will assist the parties in having a factual basis on contested matters when considering welfare issues.
- 6 I have read very large parts of the substantial bundle in particular sections C, E and all the police disclosure. I have heard oral evidence by agreement from the parents with the mother giving evidence first and then the father and then this morning I heard from his niece, who was able to give evidence about one of the incidents with which I am concerned.
- 7 The threshold document and the father’s response to it is in the bundle (E83-E95). The mother’s response is contained within a witness statement. Both parents, in fact, accept that the threshold is crossed. The mother accepts that the precipitating incident in this case - the incident which occurred on 22 April which I will refer to in a little more detail in this judgment - plainly meant the threshold was crossed. On that occasion in a state of florid psychosis, she used an implement - suggested either to be a knife or some scissors - to strike P in his chest area causing a number of superficial perforations. It is accepted, as it must be, that that incident caused him significant emotional harm at the least. Obviously, there was some physical harm but fortunately limited. The mother also accepts, as I understand it, that because she became ill in the period immediately preceding this event she would not have been in a position to provide P with safe care.
- 8 The father in the course of his oral evidence accepted that the repeated arguing between the parties with loud voices and verbal abuse in the presence of P would have caused him significant emotional harm.
- 9 What is disputed are the allegations the mother makes of domestic abuse, including coercive and controlling behaviour, against the father in the context of their relationship. The local authority submits that, if those allegations are made out, at least some of those incidents, if not all of them, occurred in P’s presence and that would have placed him at risk of physical harm in terms of being caught in the crossfire and would have caused him or at the very least placed him at risk of significant emotional harm, so the evidence I have heard has focused upon those allegations.

10 Also in the threshold is an allegation relating to the father's admitted cannabis use. It is said that, when he was intoxicated by cannabis use, it would have impacted upon his ability to provide safe care for the child and I will deal with that briefly in the course of this judgment as well.

11 The legal position is clear. The allegations are made by the mother. It is for her to prove them. The burden remains on her and the standard of proof is a simple balance of probabilities. I canvassed with the parties during submissions whether it was necessary for me to give myself a fully-fledged *Lucas* self-direction in accordance with the case of *A, B and C* [2021] EWCA Civ. 451. They all agreed that it was not necessary for me to do so. This case turns on the credibility of the two parents, save for me to say and remind myself which I do that the fact that a person lies about one or more matters does not mean that they are lying about everything.

The Background

12 The mother is Spanish. The father's family is Jamaican by origin, but he is British and was born and has always lived here. They met in August 2019 at a reggae festival in Spain and had what they both describe as a fling during the course of that festival. The relationship ended either at the end of that festival or shortly thereafter, but in September 2019 the mother realised that she was pregnant and made contact with the father and they decided to resume their relationship.

13 They were both living in separate countries, but there were meetings prior to the birth of P. In particular, they met in October 2019 when the mother came here for a long weekend. The mother says that the first allegation she makes against the father occurred during that weekend when she says that she provoked him in some way, he did not like her attitude and he pushed her to the floor when she was three months' pregnant. The father denies that incident occurred and I will obviously deal with it in the course of my findings.

14 They met again in November 2019, I believe for a week, in England and then the father went to Spain between 28 December 2019 and 10 January 2020 where he says that he received a very warm welcome from the mother's family.

15 The father then travelled to Spain again on 21 April 2020 to be with the mother in the period leading up to P's birth and they lived together in Spain in the maternal family home up until P's birth and thereafter until 25 July 2020 when they left for the United Kingdom. One of the plans was to ensure that P had dual nationality and there were issues with the mother acquiring pre-settled status. The second incident relied upon occurred during the period of stay in Spain by the father on 12 July 2020 in his car. Again, I will deal with that in more detail later in this judgment.

16 When the parents came back to England, I am quite satisfied that the environment can properly be described as a toxic one. These parents had never lived together for any substantial period; they probably did not even know each other very well. The mother was wholly isolated here because, other than the father and his family, she knew no one and all her family were in Spain. The father has a small studio flat, and they were confined together in the flat pretty much 24/7 because of the then lockdown. They had a new baby, they were both first time parents and I am satisfied that they are both quite volatile individuals. So that combination of factors together created an environment which was, in my judgment, detrimental to the welfare of this very new baby. It is common ground between them that

there were frequent arguments and, as I have said, the father has accepted that that toxic arguing would have caused P significant emotional harm.

- 17 There were then further allegations of domestic abuse by the mother, in particular on 13 November 2020 and on 29 January 2021. During the period of the summer leading into the autumn, the mother was very keen indeed to return to Spain. As I have said, she felt isolated and unhappy here and I was required to determine certain facts in November last year when I was dealing with the question of habitual residence. I found as part of my judgment that the father withheld P's passport from the mother and I disbelieved him when he said that the passport was available on a table in a file for the mother to access. I do not have a note of my judgment, although I did ask for one, but it is submitted by Ms Wilson that this behaviour was an example of controlling behaviour by the father and I agree.
- 18 I also, as I have said, found the father to be untruthful on that occasion and that is a factor which I need to take into account when looking at his evidence today, although of course it does not follow because he was untruthful on that occasion that he has been untruthful during this hearing.
- 19 Following the incident on 29 January 2021, the mother felt that the relationship had no future. She left the father's home and went to stay initially for one night with the father's niece, and then moved on to stay with his sister, for about a month.
- 20 I should add that during the period, when she was staying with his sister, the father was attending on a virtually daily basis to see P and it is not suggested in fact that there was any particular incident of concern during that period. But no doubt things would have been calmed by the fact that there was a third party, namely the father's sister, present.
- 21 On 28 February the mother made a report to the police. When she made her report to the police, she had no interpreter; her English is reasonable, but not particularly fluent; she has had the assistance of an interpreter throughout this hearing. She made it clear that she did not wish for the father to be arrested. She wanted the incidents recorded and the police's impression was that, primarily, she wanted help to return to Spain.
- 22 The father was then arrested on 3 March 2021. It is said that because the father had been arrested at the behest of the mother, or as a result of her complaints, that the paternal family turned against the mother and effectively evicted her from the sister's property, throwing out her belongings. That is in issue by the paternal family and it is not necessary for me to make any findings about the precise circumstances relating to that.
- 23 The case was closed by the police. The mother was unwilling to make a formal statement or to support a prosecution and they took the view that it was one person's word against the other. The father was, however, subject to a domestic violence protection notice and then the Magistrates' Court made a domestic violence protection order for four weeks from about 6 March.
- 24 The local authority had become involved as a result of the mother's report to the police and, on their advice, the mother made an application for a non-molestation order on 29 March 2021. In fact, within a very short time she withdrew that application on 7 April 2021.
- 25 On 7 March she sought disclosure from the police under Claire's Law and on 10 March she was moved to emergency accommodation.

- 26 The father, meanwhile, brought private law proceedings on 15 March seeking, amongst other things, a prohibited steps order preventing the child from being removed from the jurisdiction and that was granted on 23 March.
- 27 Meanwhile, the mother had made contact with the father and they had met up to enable the father to see P and, on 15 April, the mother returned to the father's home. It does not appear that the authorities were aware of that and, in particular, when the social worker spoke to the father on 21 April he made no mention of the mother being in his home. He says that the social worker abruptly ended that phone conversation, but, nevertheless, she was not advised that the mother was there.
- 28 The father describes the mother behaving strangely in the day or so before the episode of 22 April and she describes herself as feeling very strange and effectively mentally unwell.
- 29 On 22 April in the morning, the mother was feeding P and the father came in to find that the mother was attacking P by striking at his chest with an implement which the father says was a paring knife. The mother is unable to say what it was, it could have been a knife or some scissors.
- 30 The father, rather than calling the emergency services and/or the police, initially called on his family members - his sister in particular - and a call was made to his solicitors who then, understandably, advised for the police and the emergency services to be called.
- 31 P, fortunately, sustained only what have been described as either four or five superficial perforations on the middle of his chest and it is accepted by Ms Wilson on behalf of the mother that those must have been caused in the incident. The father describes P as being inconsolable as a result of this incident. The mother was arrested and then was sectioned under s.2 of the Mental Health Act and it was this alarming event which was the precipitating factor for the local authority to bring care proceedings.
- 32 P had remained living with the paternal family, but, on 6 May 2021, an interim care order was made and P has been in foster care now for the best part of a year.
- 33 The mother was discharged from the s.2 in mid-May at some point and then moved, I believe, to two successive recovery centres.
- 34 The parties have had the benefit of a significant amount of assessments. The father has been assessed by a Consultant Clinical Psychologist, Dr Campbell, who has also produced an addendum report. The mother has been assessed by Dr McClintock, who has produced a full psychiatric report. In addition, there have been a number of family members assessed as well, in particular the maternal grandparents, who were assessed in Spain.
- 35 The local authority care plan, which I will be considering for the rest of this week, is for P to return with his mother to Spain to live together with the maternal grandparents and for they, together with the mother, to hold a child arrangements order, namely, a "lives with" order. The father strongly disputes that care plan and seeks for P to live with him.
- 36 Before I make my findings on the precise incidents, I will deal with my findings about the parties generally and the impression they made on me. The mother gave her evidence in a clear way. She gave no sign of having any mental health difficulties and presented as well.

She gave an account which was consistent. She was not undermined in any meaningful way under cross examination and, in my view, she has given a broadly consistent account over time. I have read all of the police disclosure and, although she had the disadvantage of not having an interpreter for the early visits to the police, the account that she gives is broadly consistent.

- 37 Generally, I found her to be an honest witness. That does not mean that I was satisfied she was telling me the truth on everything. An example is that, when she was found to be mentally unwell in Spain in August 2017, it was thought by the doctors there that the psychosis was likely to be induced by use of marijuana or cannabis. She told me in evidence that she was not using heavily and that she was only smoking one joint a day during the festival where she became ill, but I note she told the parenting assessor that she was using heavily. A second example is in relation to her evidence about what professionals saw to be a deterioration of her mental health in May 2021. There were concerns by staff at the centre where she was living that she was not taking her medication properly. She has always been very against the medication, she does not like the effects on her. I was not satisfied that she was necessarily telling me the whole truth about what happened during that period in particular in relation to her medication and that would certainly explain a relapse. But having said that, more generally, I found her evidence to be credible.
- 38 Other factors that I rely upon in reaching that conclusion are these: I found that she did not seek to exaggerate her case against the father and was fair in a number of the concessions that she made. For example, she told me that the incident where the father put his hand round her neck that he did not keep his hand or hands there for a long time, he removed them quickly - she gave the estimate of a minute - but I do not believe from the rest of her description that it was anything like that long and that this was more about her difficulty in assessing time. Further, when she spoke about the incident in Spain in the car in July 2020 she said that she could not be sure whether the father intended to injure her or not. Those concessions suggested to me that she was being fair and not seeking to embellish her allegations.
- 39 I also take into account that, after the incident of 29 January 2021, she actually felt that she had to leave the father's address and one must ask whether someone with nowhere secure to go would have left the address if little or nothing had happened and I take that into account as well.
- 40 The fact that she did not want to see the father prosecuted, in my judgment, is another factor which lends weight to her credibility. If someone is making malicious allegations, my experience is that they would be pressing the police to take action. She was concerned about the effect of an arrest on the father's relationship with P and that does not suggest to me that this is someone making malicious allegations.
- 41 The text message that she sent to the father's niece after the incident of 29 January further suggests clearly, as contemporaneous evidence, that something which she found disturbing or distressing had occurred.
- 42 Turning to the father's evidence, he gave evidence in a clear way. Whilst he became increasingly passionate in speaking, in particular, about the events of 22 April and can be described as perhaps becoming assertive in his evidence, I did not detect any aggression in the way he gave evidence. However, in common with both Dr Campbell and the guardian, I found that he tended to minimise his responsibility and was unwilling or reluctant to

acknowledge the role he had played in the events which unfolded, although as I have said he did ultimately make the concession that the arguments between the parents would have caused P harm.

43 I have to consider the evidence of Dr Campbell and the issue of propensity. The father has an unfortunate forensic history. The PNC that I have seen refers to fourteen convictions for thirty-two offences going back to when he was fourteen. Seven of those convictions relate to offences against the person. It is pointed out, quite properly, on his behalf that the last conviction related to an event or events in 2014 - the conviction being in 2015 - and that he has not had any criminal convictions since that period and that is plainly right. However, Dr Campbell takes the view that the long history of offending and in particular offending in the context of domestic abuse or aggression are relevant. What he says at para.53 is this (E142):

“I believe his presentation and history indicate that he poses a risk of interpersonal aggression and very possibly some form of violence including in the presence of his son. This is on the basis of his reported history of such problems along with little evidence that as yet he has undergone any process of change. I would judge that the level of risk is medium.”

44 Dr Campbell produced an addendum report answering, in particular, a number of points made on behalf of the father where he accepted that there had been a process of maturation in that the father was more aware of his triggers and would seek not to react to provocation in an aggressive way, but he referred to his view that that was not always successful and he pointed out that the relationship with the mother in common with previous relationships where there had been domestic abuse involved allegations by her of domestic abuse.

45 I do not propose to make a comparison or look at any alleged similarity in his behaviour in relation, for example, to the last conviction in 2015 where he was convicted of harassment of a previous partner, but I do take into account as some support for the mother's case that he does have this history of aggression in interpersonal relationships when I consider her allegations. In my view, whilst this is not primarily the basis for my findings, it must provide some support for her allegations that she was subjected to similar behaviour.

46 I do accept, as I have said, that the father has made some changes, as Dr Campbell did, but it seems to me that there is still some way to go. As I have said, his lack of acknowledgment of responsibility for his actions has been of concern to the guardian, to Dr Campbell and to myself.

47 I also found concerning his very strident suggestions, which he has made in writing and during this hearing, that the mother has admitted to being an attempted murderer and has referred to her as such and as a kidnapper to professionals including the guardian. Of course, the incident of 22 April must have been deeply distressing to him - he is a loving father - but it seems to me to demonstrate a lack of empathy and understanding that this was a woman who was seriously mentally ill and her actions took place within the context of that psychotic episode. It is also of concern that he has been pressing so heavily, as indicated by his recent communication with the officer in the case, for the mother to be prosecuted. As I have said, I find those statements and actions to be concerning.

48 I also found some of his explanations to be less than credible, for example, of the mother tripping over her own flip flop or falling from the sofa. There was a repetition of

explanations involving the mother inadvertently causing herself to suffer the fall or otherwise being responsible for her own injuries and, as Ms Brown says, these are the sort of explanations that are familiar to me in cases of domestic abuse where someone is in denial about their behaviour.

- 49 I will turn now to consider the specific allegations that are made. The first allegation, as I have said, is October 2019 where the mother says that the father pushed her to the floor. She has repeated these allegations consistently, including to the police. She was three months' pregnant at the time. The father says that the mother was gesticulating in his face and, as she was coming towards him and he moving backwards, she tripped over her flip flop and he tried to break her fall. As I have said, there is something of a theme here of the mother being the author of her own misfortunes.
- 50 Ms Hasan relies upon texts that the mother sent to the father both before and after this long weekend, which are very loving in tone and make no reference at all to this incident. Ms Brown on the other hand refers me to a number of plausible explanations for the mother drawing a veil over the incident: She was pregnant; this was early in the relationship, she plainly wanted the relationship to continue; she may have regarded this as a one off being prepared to give the father the benefit of the doubt; and I can see a number of reasons why she may not have wished to refer to that episode in her texts.
- 51 I am satisfied that the incident did occur as the mother described and it is a particular concern because, obviously, she was in the early stages of pregnancy. I have already said that I find both parents to be of a somewhat volatile disposition. The father, however, in my view, still has a short fuse and when the mother does start berating him or raising her voice or (to use his words) disrespecting him, I find that on this occasion as on others he has been provoked and unable to regulate himself not to use physical aggression.
- 52 The next incident is the incident in Spain on 12 July 2020. This was an incident where the father was driving on an A road or motorway without a hard shoulder with the mother in the back and P next to her in a car seat and he was driving at about 80km per hour. Again, they had an argument. The father to drown the mother out turned up the radio to a loud volume and the mother told me that she was concerned about the possible impact to the baby and his hearing. She therefore moved from the back of the car through the central gap between the seats in the front to attempt to turn the radio down. She says she did not touch the father. The father says in touching the seat, she pulled on his shoulder.
- 53 She accepted under cross examination by Mr Coutts that this was a potentially dangerous manoeuvre, it would distract his concentration when he was driving on a fast road, and I agree that this was not a sensible manoeuvre and was a potentially dangerous one.
- 54 She then describes the father twice attempting to push her back by throwing his left hand back. She says, on the second occasion, he caught her face. The movement of his hand had some force behind it. Her eye was caught and she started bleeding under her eye. As I have already referred to, she said that she was not sure whether his actions were intentional or not by which I understand her to mean that was this a forceful attempt to move her back perhaps using too much force or was this a deliberate assault on her. The father wears rings on his left hand, I have seen them and it is not disputed that it is likely that the rings or one of them caught her under the eye.

- 55 The father did stop at the next service station - that is not in dispute - to attend to the mother. Her father later took her to hospital, but she did not disclose how she sustained the injury. That is understandable for reasons of not wanting to upset her father or shame or embarrassment and Ms Hasan does not attach any weight to that failure to disclose to the father and the hospital.
- 56 On this occasion, I am prepared to give the father the benefit of the doubt that he was not deliberately seeking to assault her. But what he did do, in my judgment, was to throw his hand back in a way which was overly forceful because he was wound up by what she was doing and this caught her eye. Therefore I find that he was likely to have used more force than he needed to, but this was not a deliberate assault on her. It arose out of her rather foolish behaviour in coming forward to the front of the car in the way I have described.
- 57 The third incident is 13 November 2020. This was yet another argument between this couple. On this occasion, the mother was complaining that the television was on too loud. She describes the father pushing her onto the bed, taking hold of her neck while she was holding P and she described moving herself across the bed to the corner where the bed met two walls. I have already referred to the fact that if she was untruthful, she would not have been fair in describing that the hand around her neck was for a short time only - she could not say if it was one hand or both. She did say on the first occasion that he did not squeeze her neck, but later on in her evidence she said he did. But generally, she was not trying to overegg that occasion and I accept the point made by Ms Brown that her description of what was happening with physical movements of her trying to get herself to the corner of the bed away from the father really suggested she was remembering an experience that she had undergone.
- 58 The father for his part said, effectively, he was acting in defence. The mother was attempting to go at him or hit him. He had to hold her wrists to protect himself from her hitting him. She then attempted to kick him in the genitalia, and she fell back onto the bed. He was able to release her wrists in a fairly short time and she desisted from her assault. I do not accept that account. As I have said, I found the mother's account with the physical movements in the witness box to be very persuasive and I am satisfied that this incident occurred as she said not least also because she did not seek to overegg the pudding. This was a very troubling incident because any holding of the neck, even if it is for a short time, is frightening and concerning to the court and, of course, the mother was holding P.
- 59 It was said by Ms Hasan that this father would never have exposed P to being directly involved in such an incident. I accept that when he is calm he would never dream of behaving in that way, but the difficulty is when he gets involved in incidents such as these he becomes dysregulated in my view and behaved in a way which he would not behave in if he was in a calm frame of mind.
- 60 In relation to the incident of 29 January 2021, the mother alleges that when she told the father that she wished to return to Spain and remove P that he threatened to kill her if she did so and she has made that allegation consistently. This allegation generally is perhaps of a piece with the findings I made in November about the father controlling the passport and could be seen to be an example of controlling behaviour. I will explain why as I make my findings.
- 61 The mother then texted the father's niece, saying this was a family emergency and the niece answered by saying (I paraphrase what she said) that she would not herself want to be in

such a violent situation and that she would come round. When she came round, the mother was seeking by standing on a sofa to take belongings out for presumably herself and P from a floating cupboard. She says that the father in seeking to stop her from doing that was pulling her by the hair and by her jumper with the result that she fell onto the floor or he pushed her onto the floor. After that occasion, she left with the father's agreement to stay with the niece for the night.

- 62 The father says that the mother pushed him and she lost her footing on the sofa and fell. Again, another description of the mother causing the incident to herself.
- 63 The niece gave evidence this morning remotely and she told me that things were quite calm when she arrived and that the father had agreed in her presence to the mother leaving for a night to stay with her, but that the parties should meet the next day to discuss issues. She described the mother as being antagonistic by saying that she did not know how long she would be leaving for, a day or two or possibly for good. She said that there was a struggle at the cupboard and that, as a result of that struggle with the father trying to stop her accessing the cupboard and she trying to get clothes, she fell and the father sought to catch her.
- 64 I obviously have to evaluate the niece's evidence. It is plain from the assessment of her that she thinks very highly of her uncle and is very loyal to him. What was significant to me in her evidence was her reference to the mother potentially kidnapping the child by which she was referring to the mother saying she would be going potentially for longer than a day. The significance of that is that the father has repeatedly referred to the mother as a kidnapper in the context of this incident when she removed P to live with the father's family for four weeks or so. The fact that the niece used exactly the same terminology, in my judgment, suggests that the perception of the mother by the father is shared by the paternal family and in particular the niece, and I found it significant that she used that word.
- 65 Plainly, there was a struggle at the cupboard because the father did not want the mother to take any more belongings and it would be wholly consistent with that struggle for him to attempt to pull her away from the cupboard to prevent her from accessing the belongings. I found the niece to be slightly sullen in the way she gave her answers and somewhat guarded. As I have said, I consider her attitude towards the mother as described to me to be relevant. I consider that she was giving evidence to support the father, her uncle, to whom she is extremely loyal and I prefer the mother's evidence about what happened namely that in this struggle at the floating cupboard the father pulled her hair and her jumper and she fell to the ground.
- 66 P would have been present in this very small studio flat for most, if not all, of these incidents and in one incident he was implicated. I am quite satisfied that his exposure to these incidents, in addition to being exposed to very frequent and no doubt loud arguments, would have caused him significant emotional harm. He, as a tiny baby, would have been alarmed and frightened by what he saw and heard his parents saying and doing.
- 67 Turning now to the other allegations in the threshold. I do not propose to say very much more at all about the incident on 22 April; I have already referred to the bare bones of the incident.
- 68 Dr McClintock who assessed the mother expressed particular concern about this incident because P was implicated in the mother's delusional psychotic thinking. She believed that she had to harm him or even kill him to release her mother or her parents who were in some

way embedded within him. I share that concern. I consider it is a very concerning incident because the child was part and parcel of the mother's delusional thinking. Plainly, even in her delusional state, the mother must have held back because fortunately he suffered only superficial injuries. But I share Dr McClintock's concern about the aetiology or origin of that incident.

- 69 I am not going to address any other evidence I heard about the mother's mental health because that forms part of the welfare hearing. I am not going to find conclusively that this was a knife that was used. I do not consider that it makes much difference whether it was a knife or scissors, either could have been used to cause significant harm. Fortunately, whatever was used did not and I say that because I consider that the father has sought to portray the mother in the most negative light in the context of this incident in the way that I have referred to earlier in this judgment. So I refrain from making any specific finding nor is it necessary for me to do so, I have already found that the mother caused the injuries that I have described.
- 70 The other matter that I have to consider concerns the father's cannabis use. The father is Rastafarian by faith and he makes it clear in his written evidence that his use of cannabis is part of his faith and has a spiritual aspect. He says, and indeed the testing supports the fact, that he has not used cannabis since May (he said March and May at different times, but let us say May) 2021. However, I do have to consider his cannabis use in the period up until these events and in particular when the parents were living together in the flat. Taking the evidence overall, I am satisfied that he was using cannabis frequently and heavily. I say that because there is evidence from different professionals, the police and the hospital in Spain, that the environment which he was in smelt of cannabis and he too smelt of cannabis. I find it very significant that, even the day after the baby was born, he was rolling a joint within the hospital itself, although it is not suggested he smoked the joint in the hospital. But the hospital staff did smell cannabis.
- 71 Equally, immediately after the incident on 22 April, his first reaction when his sister arrived was to go and light up a joint to settle him. In my judgment, that suggests someone who was quite heavily involved with that drug at that time. Again, the police describe the environment and himself as smelling of cannabis.
- 72 The mother also refers to him smoking heavily during the period they lived together and, indeed, the psychiatrists in charge of the mother's care consider that one potential cause for the psychotic episode may be significant exposure as a passive person to the cannabis in this very small environment. So I am satisfied that the father was using heavily and frequently and that this would inevitably, as a psycho-active drug, have had an impact on his ability to provide care for the child. Obviously, the mother was there to step in but that is a finding which is sought and which I find is made out.
- 73 I consider that I have dealt with all the matters within the threshold, although not perhaps necessarily adopting the precise numbering of each allegation.
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CERTIFICATE

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This transcript has been approved by the Judge.

J U D G M E N T

JUDGE HARRIS:

1. I am giving judgment today at the conclusion of a final hearing in care proceedings concerning a young boy called P, who was born in May 2020 so that he is 23 months of age.
2. In addition to the parties being present with their representatives, I have also given permission by agreement for Ms Chapman, counsel for the Metropolitan Police Service, being present as well as the officer in the case who attends by phone. It is obviously much more convenient for the police and may assist them in their decision-making going forward if they receive the judgment earlier rather than later because they are entitled to see the transcript of the judgment under the Rules.
3. This judgment needs to be read in conjunction with the judgment I gave on Wednesday, 27 April this week, which dealt with the threshold. That judgment also dealt with the factual background and my findings in relation to the parties on their evidence about the threshold and so, therefore, the judgments must be read together.
4. I am dealing now with the welfare stage of the proceedings, having heard further evidence. That evidence is the evidence from Ms Khan, the allocated social worker, and from Ms Gross, the child's guardian. Both parents were given the opportunity to be recalled to deal with any welfare issues which they did not consider had been covered in their previous evidence. They did not wish to be recalled and I took the view also that it was not necessary and that the evidence before the court was complete.
5. First of all, I will deal with the legal principles which govern this application. It includes an application for permission to remove the child permanently from the jurisdiction which is the local authority care plan for the mother to return to Spain with P, but these are public law proceedings and, whilst there is considerable congruence between the principles applied to relocation hearings in the private law context, the principles applicable to public law proceedings are those that I must apply with an eye to the case law on relocation.
6. P's welfare is my paramount consideration. I must carry out a welfare evaluation of the internal pros and cons of the competing realistic options and then place those options with their internal pros and cons side by side to make my overriding welfare evaluation on which of those options best promotes P's welfare.
7. In doing so, I must apply the welfare checklist. I must also have regard to the Art.8 rights of the child and both his parents. The child's rights, obviously, take precedence over the parents. I must have regard to their rights and also to the question of proportionality. I observe that those principles are very similar to the principles which are applied in relocation proceedings and I refer, in particular, to a very helpful summary of the legal principles relating to such proceedings set out in the judgment of Mr Justice Williams in the case of *V v. M* [2020] EWHC 488 starting, in particular, from para.43 onwards to para.50 and I have those principles in mind as well.
8. I need, first of all, to deal with two preliminary issues before I go to the substance of my judgment. Firstly, Ms Hasan on behalf of the father has said that in considering the realistic options I need to weigh up the pros and cons of placement with extended paternal family members because they have received positive special guardianship assessments. The other parties submit that the realistic options to be considered are either a placement with the

mother in Spain with a shared child arrangements order for her and her parents or a placement with the father in London.

9. I do not consider in the context of this case that placements with the paternal relatives, despite their positive special guardianship assessments, are realistic options to be balanced against a placement with either parent. That is not just because if there is a placement which meet P's welfare needs with his parents that should obviously be preferred to a placement with other relatives, but also because of the particular circumstances of this case.
10. In relation to the first paternal relative, she has no subsisting relationship with P and has only met him on one or two occasions. She lives away from where the father and the rest of the paternal family live. That would mean that P would be away from the base of the wider paternal family including the father.
11. The mother has said that she would stay in this country if P were not placed with her. I consider that that would place her mental health at significant risk, and I will deal with that aspect in more detail when I deal with the father's case, and that it is unrealistic to expect her to remain in this country. If her mental health were affected that would obviously have an impact upon her relationship with P, albeit not as a parent with whom the child lives full time.
12. Further, the placement would have to be tested out for a period of at least twelve weeks which would be productive of further delay in proceedings which have already endured for a year and it may or may not be successful given that the first paternal relative and P have no subsisting relationship.
13. In relation to the second paternal relative, as I have said, she too had a positive special guardianship assessment. She knows P better than the first paternal relative and has had a number of meetings with him over his short life. But she has never had the full time care of a child. Again, there would need to be a placement with her and I note that the special guardianship assessment refers to a placement with her under a Family and Friends Kinship arrangement (i.e. under an interim care order) before consideration could be given to a special guardianship application after, I believe, it is suggested about six months. So the same issue with the mother having to remain here would apply and, again, that placement is untested. It may or may not be successful, so productive of further delay for P as well as uncertainty.
14. Finally, there is an issue in this case which I will return to in the judgment as to the ability of the paternal family to promote the relationship with the mother and to provide P with a sensitive and balanced narrative of his life history to date. Concerns about those issues, which were not covered in the special guardianship assessments, are matters I will consider when considering the father and the mother's case. So for all those reasons, I am not going to conduct an evaluation of those two possible placements as realistic options.
15. The second point that I need to deal with before I deal with the substance of the matter is an important point. The thrust of Ms Hasan's case put very eloquently on behalf on the father is that he and his family have a very powerful sense of grievance in relation to how he has been treated in the context of these proceedings. He considers that he has been discriminated against by the actions of the local authority and that he has been marginalised and not taken seriously by them as an option for P's care, and he says that that has been their stance from the beginning and that has not changed.

16. Ms Hasan referred me in the course of the evidence to a letter to the Spanish Consulate sent by the previous social worker, which is to be found at F62-F63. I do not need to quote from that email, but what it was doing was asking for an urgent passport for P - who was correctly said to be Spanish born - to be urgently repatriated to his home in Spain. It goes on to say:

“The mother and baby are currently in the United Kingdom and fleeing domestic violence from the baby’s father. The police in the United Kingdom have also been involved.”

17. That raises a number of concerns because it does not reflect any understanding of the legal structure underpinning P and his life. For example, there is no consideration of whether P may be habitually resident here which would give this court jurisdiction over him and there is no consideration of the father’s position as a parent with parental responsibility. This is something which the local authority, in my view, need to address with their social workers and, indeed, I have seen a similar approach occurring in other cases.

18. Therefore, the father says the local authority have not changed their stance since this original letter. He relies too upon the parenting assessment carried out by the allocated social worker, which he says made assumptions on a number of occasions in the course of that assessment that domestic abuse perpetrated by him against the mother was an established fact and I refer to E194, E197 and in particular E198 of that report. To quote from E198 only, it says, amongst other things:

“On the account provided by the mother it is highly likely that P could be caught in the crossfire of domestic violence between the mother and the father which could result in serious harm.”

Under the analysis of “Protective and Risk Factors”, it says:

“The father lacks insight and has minimised the domestic violence which has occurred in his relationship with the mother”

That is one of a number of examples. Again, the local authority need to be cognisant of the fact that they should not be making assumptions before findings are made or they should prepare a report on an either or basis. Thus I accept that there are justifiable concerns about that issue and the letter to the Consulate.

19. Having said that, after a detailed analysis of the evidence, I have made clear findings that the father has been responsible for domestic abuse perpetrated against the mother and I have found virtually all of what she has alleged to be true. Therefore, the argument that the report is undermined by the matters I have referred to becomes less powerful because in the event findings were made and domestic abuse is a risk in the case.
20. Having said all of that, I note that there has been complete parity in the treatment of the parents in relation to their contact with P. Both of them have enjoyed contact at a high level on three occasions per week for the same time period and, indeed, recently, the restrictions on the father’s contact have been loosened something which was a cause of great distress to the mother because hers had not, as I understand it. So whilst these matters are matters to be deprecated and should be picked up by the local authority for future cases, I do not find that their case as a whole is undermined or fatally flawed by them.

21. I have carried out an objective evaluation of all the facts and I take into account the matters which I have just referred to in doing so. As I have said, I do not consider in other respects that the father has been discriminated against. The point about contact and the desire to promote both parents' relationships with P equally being a point in mind. So therefore, while there are flaws as I have indicated, I do not consider that this is a case where the local authority has simply dismissed the father out of hand in the way that is suggested.
22. I will now turn to the substance of my judgment and I am going to consider the case on the basis of the welfare checklist. I am going to then bring together the threads and the findings I have made in the context of the welfare checklist to carry out my comparative evaluation of the two competing options.

P's wishes and feelings

23. P is not yet two years of age and obviously is not verbal. I consider, however, that he has a close and loving relationship with both of his parents and if it could be possible that he would wish to have a continuing relationship with both of his parents.

P's physical, emotional and educational needs

24. Fortunately, P is a delightful little boy. He has no special needs; I am pleased to report. He is developing well in all respects and, therefore, he has no specific physical, emotional and educational needs other than this very important exception: He has had an exceptionally disrupted life for a child who is not yet two. I do not need to outline in this judgment all the moves that he has experienced in his short life, but they would have been immensely disrupting to him and prevent him from feeling settled and secure.
25. He also has been subjected to domestic abuse as well as considerable verbal abuse in the context of serious and loud arguments between the adults. It is accepted in terms of the threshold that P would have suffered significant emotional harm as a result of the arguments between the parties and I found that he would also have suffered significant emotional harm as a result of the domestic abuse I found and was at risk of physical harm.
26. Then there is, of course, the incident of 22 April. Despite his young age, that must have been an exceptionally frightening and distressing experience for him and I am satisfied that that too must at some level have left its mark. Therefore P does have vulnerabilities as a result of his life experiences to date despite his ostensible excellent physical, social and emotional presentation.

The effect on P of any change of circumstances

27. P has been in the care of his foster carer for a period of a year now. He has formed a close attachment to her not surprisingly and has thrived in her care. Whatever order I make today will involve a very significant change of circumstances for P whether he goes to live with his father in London or he lives with his mother in Spain. There will need to be a significant adjustment for him which is likely to take some months, if not longer, whichever home he goes to.
28. In addition, a move to Spain obviously involves a change of physical environment because P has currently been living in London for the last year. He would remain in London with his

father and therefore in more familiar circumstances, whereas Spain represents a new environment. He would have no conscious memory of the first three months of his life that he spent in Spain. Therefore, change and disruption is inevitable whichever order I make.

His age, sex and background

29. P is a dual-heritage child. On his father's side, his father is black British with family origins in Jamaica. His mother is white European emanating from Spain. Therefore, there are two languages at play here and one of the important matters I have to consider is the need, if P goes to Spain, for his English language to be fully promoted by the maternal family with an aspiration that he be bilingual so that he can speak freely and fluently with his father who does not speak Spanish, although he may have a few words.
30. A happy feature of this case in terms of P's background is that both parents are adherent to the Rastafarian faith and they both agree to P having an Ital diet. They both agree that he should not be vaccinated against COVID and, therefore, unlike many other cases, there is happily agreement in terms of how he will be brought up in the context of his cultural and religious beliefs. This is a positive factor in this case which needs to be noted.
31. The key welfare checklist factors, in my judgment, are plainly the risk of harm and the capability of each parent to meet P's needs and the evidence in this case is understandably focused upon those issues which are inter-related and overlapping. I have dealt with the harm suffered by P in the context of my threshold decision and I need now to consider the question of future harm.
32. It has been submitted by Mr Coutts and indeed the guardian that both parents present risks as to future harm for P and what I have to consider is where that harm can best be managed and, of course, the degree and extent of that risk of harm. I need therefore to analyse, which I did not do in my threshold judgment, the risk of harm on the mother's side relating to her mental health issues and I propose to do that first.
33. As well as the episode in April 2021, there is in the mother's background previous mental health difficulties. There is in the bundle a report from the hospital in Spain where the mother was admitted, I believe, for about two weeks in August 2017. On that occasion, she suffered a psychotic episode while she attended a music festival in Spain. I believe it was the same music festival as where she met the father some years later.
34. It was the view of the doctors that that psychosis may well have been drug induced or at least the use of cannabis would have played a part in it and I note that the mother told Dr McClintock and the social worker that she had smoked heavily, although that was different from the evidence that she gave me and I consider it likely that she had smoked heavily as that is what she said. She was advised not to use cannabis. She did not comply with that advice in the sense that she resumed using cannabis not as a heavy user but socially and on an ongoing basis. The report also says (E1):

“The family have stated that the patient has experienced similar clinical episodes in the last months, but she has not been treated or had any outpatient follow-up as the patient and her partner have been reluctant.”
35. Ms Hasan cross examined the mother on this issue. She dissented from the suggestion that there had been previous concerns. We do not know anything about the seriousness of those

concerns. They obviously were not so serious that the family considered that she needed hospital treatment and/or she may have been reluctant as the note says, but there is a suggestion there that there were previous concerns in the preceding months.

36. Then of course there was the florid and acute psychotic episode which occurred in April 2021. Dr McClintock in his report emphasises the seriousness of that episode because the deterioration occurred so quickly and because P was involved in the mother's psychotic delusions in that the mother considered that she needed to kill P in some way to release her parent or parents who were trapped within him. Dr McClintock was right, in my judgment, to emphasise the very serious concern that that episode gave him and, indeed - and Ms Hasan drew attention to this point - he saw in the hierarchy of concerns the risk presented by the mother as being more prominent than any risks arising from domestic abuse. In saying that, he obviously had no detailed knowledge of the domestic abuse and I have heard a lot of evidence about it and have made findings.
37. He made clear recommendations that the mother would need to be on antipsychotic medication for at least six months and he also took the view, given the involvement of P in the episode, that there may need to be consideration given to medication for the foreseeable future (para.10(8)(c) at E120):

“My overall view is that, whilst two brief episodes of psychosis would normally necessitate treatment with antipsychotic medication for at least a six month period, in the case of the mother the implications for herself and the child of a further episode of psychosis are so great that she should consider remaining compliant with medication for the foreseeable future.”
38. In fact, the mother ceased taking her antipsychotic medication by July 2021. I have three reports from her treating team in the bundle. The first one is from October 2021, and I will return to that in a moment. Before I do so, I also read and heard evidence about a relapse which took place in May 2021 when the mother was living in a recovery centre. I read a very disturbing contact note dated 25 May 2021, P's first birthday, which plainly indicated to those involved in the contact and indeed to me reading it that the mother was mentally unwell.
39. I then also read within the police disclosure the evidence of those involved in her care at the recovery centre which described significant concerns for her mental wellbeing, strange behaviour, muttering and walking backwards. There was also a concern by one of the staff that the mother was not compliant with her medication. The guardian was also attempting to meet with the mother at that point and she was able to describe in her report and to me the mother's very worrying behaviour which made it impossible for her to meet with her. Surprisingly, the treating team report of October 2021 which is a full report made no reference to this May 2021 relapse. They make it clear that they did not consider that the mother needed to resume antipsychotic medication when they met with her in October having been informed she had ceased it in July. Therefore, there is a difference of view between the treating team and Dr McClintock.
40. Their more recent reports from February and April (F92 and F93 respectively) are short reports. They refer to the mother remaining well; to having no concerns about her mental health; that she had continued to engage well with support and contact with the team, including relapse prevention work. The second report refers to her good insight into her condition.

41. I heard detailed cross examination of the mother about these periods and it was clear to me from her answers that she did not accept, even with the benefit of hindsight, that she had relapsed in May 2021 and was clear that her behaviour on 25 May 2021 was an emotional reaction to P's first birthday and her being apart from him. Therefore, I have formed the view that the mother's insight is not as good as the treating team have described it as being, although I accept that there is some insight. I find that it is not as good and complete as the treating team believe and I note that that was the view of the guardian in her oral evidence. Therefore, that is a factor that the family - if I accede to the local authority's care plan - need to have strongly in mind.
42. Finally, to bring matters up to date, although there is no medical evidence about this, the guardian in her report referred to concerning behaviour by the mother not necessarily amounting to a psychotic episode - she is not a doctor in any event - but behaviour which she described as agitated and as the mother being emotionally labile and having difficulty in focussing. The guardian said that that was when she spoke to her on the phone on 31 March and that she was fine when she saw her in contact on 8 April, on both occasions without an interpreter. She did confirm that when she actually had a formal interview with the mother subsequently with an interpreter, the mother presented perfectly well. But the picture does suggest someone who is vulnerable to further episodes of relapse.
43. She plainly would be strongly advised not to use cannabis. To her credit, there is no evidence that she has used cannabis for the period of these proceedings and she says she has not used it since her pregnancy. There is no evidence one way or the other by way of testing for that period, but there is testing during these proceedings. It is plain that she needs to avoid the use of cannabis given her vulnerability.
44. As I have said, I am not as confident as the mental health treating team. The position seems to lie somewhere between what Dr McClintock said and advised and what the treating team say and, therefore, there is plainly an ongoing risk and the mother is vulnerable in that respect. The issue is then whether and how that risk can be managed.
45. In considering this risk, the second part of the equation obviously is a consideration of the role of the wider maternal family and I have before me the benefit of a full assessment of the family in Spain and a view on their ability to protect. I am not going to go into detail in terms of their physical and financial circumstances and matters of that sort. Suffice it to say, that they are a very close knit and cohesive family. The grandparents have four children, so the mother has three siblings. They have four grandchildren other than P and they all live locally. As I have said, they are a particularly close-knit family meeting up regularly and enjoying close family relationships. The grandparents are heavily involved with the grandchildren in Spain including providing regular ongoing care and the view of the assessor is that not only did they seek medical care for the mother in August 2017, but now they obviously have significant further information and experience as a result of these proceedings and they are likely (I am paraphrasing here) to be hypervigilant to any change in the mother's presentation. That is not just the grandparents, that is also the wider family.
46. The view of the assessor, the local authority and the guardian is that they all expressed confidence in this closely knit family to be able to recognise early signs and to step in and the guardian spoke about a low threshold for intervention. The guardian also spoke about a cohesive and integrated family support network and she took the view that the network was sufficiently robust to protect P in the event of a deterioration of the mother's mental health.

47. Obviously, I have not heard evidence from the grandparents. No one suggested I needed to. I note they have been present each and every day listening carefully to the evidence through an interpreter and supporting their daughter. I am satisfied that the professional view of the assessor, the local authority and the guardian that this close family network of intelligent people with insight would be able to step in at an early stage and indeed they are likely to be far more insistent about stepping in than they were in August 2017.
48. I make it clear that is not to say that the mother does not have a role in this. As I have said, I found that she does have insight into her condition but her insight is not complete and she would be assisted by further psycho-education and further reflection. Thus I do take into account that the mother, having gone through this ordeal and put P through this ordeal, would herself be much more vigilant about signs of deterioration. I do not say that the grandparents are alone and the family will not have the mother's own contribution, I am simply saying that the mother's insight still is not complete.
49. Those are my findings on that particular risk: it exists; it is real; the mother is vulnerable, but I consider that this particular family unit can step in and protect their much loved grandson and nephew.
50. Turning to the risks on the father's side: the primary risk on the father's side is what the guardian described as "a risk of emotional and physical harm resulting from the father's unaddressed difficulties in managing his angry and aggressive impulses". Those were the guardian's words and I endorse them.
51. I have covered this ground to some extent in my threshold judgment, so I will try not to repeat myself unduly. I note, however, very sadly, that the father had a troubled background - he was within the care system himself between the ages of twelve and seventeen - and he has a considerable number of previous convictions which I recorded in my last judgment; a number of those relating to offences against the person. His last conviction which did relate to domestic abuse, as widely defined, against a former partner goes back as long ago as 2014. However, Dr Campbell who assessed him suggested that the presence of complaints of domestic abuse by his then current partner, the mother, which I have now found to be well founded, suggest that, whilst the father has matured and is better at managing his impulses and is less likely to respond to triggers, there is still a propensity for unregulated, angry and aggressive behaviour.
52. Dr Campbell addressed a number of further questions in particular by the father's representatives in an addendum report, but he remained clear in that view. He refers, first of all, to his earlier report and says (E286):

"The issue I would draw particular attention to for this assessment is the father's propensity to anger and aggression. This view of him is supported by his offending history along with the recent non-molestation order. It is relevant that he said his offending history is very much in the past when his last conviction was in 2015. These words come across as a somewhat unrealistic or inaccurate distancing of himself from his own not wholly historic behaviour."

At para.9 (E287), he said this:

“A key word here is ‘propensity’ which from my understanding refers to a general inclination or likelihood. In his past, the father has shown what might be viewed as a propensity to anger and aggression given his offending history. In my view, anger and aggression when it persists over time is likely rather than not to amount to a propensity.”

53. He then goes on to say what I have just said that there has been a process of maturation, but that he has not always been successful in addressing this dysregulated behaviour. He also said this and I highlight this:

“My concern is that he comes across in his detailed statement as more or less taking no responsibility of what went on between them. In my view, given his history of showing a capacity for anger and aggression, it is implausible that he did not at some level contribute to the conflict he had with the mother by which I mean contribute to making it worse.”

I have indeed now found that he was responsible for domestic abuse. He concluded at E289 that the propensity for aggression does continue.

54. The failure to acknowledge responsibility in himself together with a minimisation of the behaviour was evident to Dr Campbell, to the guardian and also to myself. That is obviously a risk factor in itself because it suggests that the father may only be at what is often described as the pre-contemplation stage of change. Even after my judgment, the thrust of the father’s case that the mother was the danger and he was not did not change at all nor did the thrust of the cross examination of the guardian and the social worker. Perhaps it is over-optimistic to expect him to respond to my judgment so quickly, but I simply note that feature of his case.
55. Evidence of his difficulties in controlling his anger and aggression also comes out in small episodes and Ms Brown cross examined him about his behaviour towards the contact supervisor when she described him as behaving in an unnecessarily hostile way towards her (I189) and, plainly, I find that if he is challenged in any way there is a risk of a hostile response.
56. The guardian saw this unaddressed risk as a serious and ongoing risk. She said that the risk has reduced because the parents are now separated, although there is still a risk of P being exposed to volatility and verbal aggression in their relationship but a lesser risk of physical aggression. But what she pointed out, correctly in my view, is that the risk of such behaviour in a future relationship remains present as does the risk in inter-personal relations generally not in the context of an intimate relationship - the small piece of evidence about the contact supervisor being an example. - The guardian says that, unless this propensity is addressed, there is a real continuing risk to P of emotional harm in terms of being exposed to such behaviour but also a risk of physical harm in being caught up in the crossfire if such behaviour occurred particularly within a domestic context. I agree with the guardian’s views, and I agree with those of Dr Campbell, and I consider that this is a real and continuing risk.
57. Obviously, the risks I have identified in the case of the mother and the father are very different in their nature and quality. But one key difference is that I have already found that I consider that the risk on the mother’s side can be managed in part by her developing insight, albeit incomplete, but also by the wider maternal family.

58. In contrast, there is no clear protective factor to manage the father's risk. His family are intensely loyal to him; they all share the same perception of the dynamics of this case that he is the injured party, the victim, and that the mother represents the real danger and, in her oral evidence, the guardian made clear that she considered they would have difficulty in challenging his view. I agree with that but I also consider they probably would not, in the first place, challenge his view as they appear to accept it. There may be an exception with his aunt who referred to him in uncomplimentary terms in an audio tape that I listened to, but the other members of the family appear very much to share the father's narrative of the case and the history of events. Therefore, unless he takes steps to address this risk himself - I note he has in the past in 2014 and 2015 undertaken courses, but they have not been adequate to cause a significant shift in this propensity - that risk remains and, as I have said, I do not currently see what protection there is.
59. Ms Hasan on his behalf argued that a supervision order would provide protection because he would be monitored by the local authority. I note two things about that submission: firstly, that a supervision order generally only extends for a year, although it can be extended for up to three years; and, secondly, by the nature of this sort of behaviour it occurs in a moment and the local authority would not be there 24/7 to provide protection. I do not see a supervision order as addressing this particular issue.
60. The father - and of course this is no fault of his - also suffers from physical difficulties in that he has degenerative disc disease and there are problems with his hip. The guardian referred to this in her oral evidence and saw this as an added difficulty for the father in dealing with a child who is getting increasingly bigger and more active. The father points out that this has not caused difficulties in contact and there is no evidence that it did, but I note that contact is for obviously a limited period and I also note the impact on someone's psychological wellbeing of being subject to pain and limitation of movement. That is not to say, and I stress, that a parent with physical difficulties cannot parent a child more than adequately. It is simply to refer to the fact that there is this further difficulty, it could impact on the father psychologically in terms of his wellbeing with a consequential potential impact on P and it may also prove more of a difficulty as P gets older and bigger. I refer to it not as a central element, but as a potential super-added difficulty.
61. I note also, and again this is not a key point in the case, that, whilst the father has been passionate in his denunciation of the mother and her actions in April, he himself did not act intuitively protectively when this incident occurred. He contacted his sister first and it was his solicitor who was contacted by the family who advised him to call an ambulance. That is not a major deficit, but it causes me some concern about his intuitive ability to act protectively not least in a context when he has been so vehemently passionate about the mother's actions.
62. The other risk, in my judgment, relates to the use of cannabis and this risk impacts on both parents. Both parents to their great credit have not tested positive for any drugs during these proceedings; that is particularly impressive in the father's case because I found in my judgment that he was a heavy and frequent user of cannabis up until these proceedings started and the fact that he has been able to stop over a number of months is impressive.
63. Having said that, the mother has used cannabis when she has been advised not to because of her mental health vulnerabilities. She went on doing that until she was pregnant with P. She too has tested negative. But I do consider in relation to both parents that when the scrutiny

of the court proceedings is over that there is a risk that both of them may resort to using cannabis again. The father describes it as a spiritual element of the Rastafarian faith, the mother may have the same view and I do have a concern that there is a risk - perhaps greater in the case of the father because the mother's family will be astute to note if the mother is using cannabis - and perhaps greater in the case of the father because he used heavily during the early part of P's life. I raise that and find that to be a further potential risk, perhaps slightly greater in the father's case, for both parents.

64. The second key issue which I consider under the question of risk of future harm is, of course, the issue of the ability to promote each parent's relationship with the child. The mother has been very clear, even in the most miserable period of the parties' relationship when she left the father's home and had been subjected to domestic abuse, that the relationship between the father and P is very important.
65. I note that she was against there being a non-molestation injunction because she was concerned it might impact on the father/son relationship. That could be said to be a criticism of her as being not sufficiently protective, but it also denotes how she views the father/son relationship. Also she made it clear to the police that she did not want the father to be charged or make a formal statement because she was concerned about the father/son relationship. I consider that, despite their difficulties, she has been and will continue to be fully supportive of that relationship.
66. On the father's side, the position is somewhat different. The father and his family in the family group conference that they attended in January put forward extremely generous proposals for contact for the mother. However, the views of the father, fully supported by his family who were all largely present at that meeting, were that the contact would need to be strictly supervised because of the risk that the mother presented, potentially by them. But more importantly even was their joint attitude towards the mother which comes out both loudly and clearly in the family group conference minutes itself and, of course, also in the father's repeated statements to the same effect to different people.
67. Some of the things that the family said during the conference were as follows: At F78,

“Due to the mother's historical mental health and the uncertainty of P's safety, our immediate concern is that the mother has harmed P, made false allegations against the father and is so mentally unwell that she and the local authority has denied P the start in life he deserves. So until it can be proven that P is safe, the mother's contact with him should be supervised as neither the father nor our family want to be in this position ever again.”

Then later on under appendix 2 at F81:

“Issues of concern for the family group conference:

- (1) Our social worker offered bias and raised concerns e.g. key observations of why there is reference to unproven domestic violence allegations on the father's side listed here in issues/concerns, but nothing of the fact of grievous bodily harm/attempted murder committed on P by the mother by way of stabbing him five times not listed on the mother's side.”

Then further on:

“Why has the mother though she is P’s mother and ordinarily could be given first priority to raise him if there is a separation of the parents, however, because she harmed P and could have killed him had the father not been there to intervene also with her historic mental instability, why has she been assessed positive and the father who adores and protects their son been assessed negative?”

68. The father also has made clear on a number of occasions that he views the mother as an attempted murderer and he refers repeatedly, and other family members echo this, to her having kidnapped P for the period of just over a month when she was placed in accommodation by the local authority and he did not know where she was.
69. This leads the guardian to conclude that she has grave concerns that the family, if P was in the primary care of his father, would have the ability to provide what she described as a sensitive balanced narrative of the life events which have affected P to date. I have not referred to the father’s recent email to the police officer, but it was on familiar lines pressing her to ensure there was a prosecution of the mother and again referring to her admission of attempted murder.
70. I agree with the guardian’s analysis that there is a real risk that the family, despite their ostensibly generous contact proposals, being unable, firstly to promote the mother’s contact because they see her as such a risk; and, secondly, to provide the sort of balanced narrative which the guardian referred to.
71. I do not consider that to be a feature on the mother’s side. I have already referred to her attitude towards contact. Her family are understandably, at this stage, somewhat cautious about the father given my findings of domestic abuse against their daughter and also somewhat cautious because of in their eyes the potential risk the father may remove P. But I do not see that as being hostility to the father, rather an understandable and protective reaction to all that they have read and heard in these proceedings. I do not consider that they or the mother will promote a negative picture of P to his father. That has not been the mother’s stance up to date and I see no reason why she should change in that regard.
72. In terms of the capability of the parents meeting P’s needs, there is a high degree of overlap between this factor in the checklist and the risk of future harm. Under this factor, I am happy to record that there are a number of important positives. It is without question that both parents love and adore their son, that is absolutely obvious to me, and they are both wholly committed to him. Therefore, he has the benefit of their love, their commitment, their interest and a number of very positive parenting qualities that they both have. Both are able to engage him in stimulation, in interesting activities, to give him warmth and affection and to provide the sort of care that has been described in the contact notes with some limited exceptions and it gives me great pleasure that I can rehearse those positives which exist for both parents.
73. In terms of the negative factors relating to their ability to meet P’s needs, I consider that I have covered them in considering the risk of harm in this case.
74. Finally, the range of orders: if P went to Spain, there would be recognition sought under the Hague Convention of the orders made here which would include contact orders. I am quite satisfied there is a need for a contact order if a child is going abroad in this way and therefore there would be a degree of protection for the father. In this country, the local

authority supports a supervision order for the father. I have already made the point that I do not consider that that can protect P from the father's difficulties with his self-regulation. It provides a degree of protection in relation to his cannabis use because he can be tested regularly, but I observe as I already have done that a supervision order does not continue indefinitely and usually only continues for a period of a year. I do not see a supervision order as, as I have said, providing the necessary protection here.

75. Pulling the threads together in the context of my analysis of the welfare checklist, I have in my view identified the key pros and cons of each option but I will attempt in a very brief way to draw together the threads.
76. Before I do that, I need to set out the mother's proposals for contact which align with the local authority's proposals as finessed by the guardian in her evidence. The guardian proposes, and this is supported by the local authority and the mother, that the father should have as a minimum four contacts a year with P with one of those at least to be in England; that the contact should last between three to five days with the father seeing P on most if not all of those days (probably all of those days if it is five days, if it was longer perhaps not but principally for all of those days); that that contact should initially be supported in a contact centre because the family need to rebuild trust in the father - they got on perfectly well with him when he was first introduced, but obviously a lot of water has flown under the bridge since then - and because of their concern about P possibly being removed.
77. The guardian suggests that that supervision or support should take place for the first year, namely the first four contacts; and that thereafter or before, if relations can be mended, the family should support that contact. There would obviously be a large number of details to be filled in and the transition plan, which I have not referred to, provides for mediation between the two sides of the family and further discussion of practical issues such as accommodation for the father, who would bear the cost of travel, etc.
78. The father says that those proposals are wholly inadequate to promote and preserve his relationship with his son. The guardian accepts that in any relocation case there will be a significant diminution of the relationship between the child and the left behind parent. That is an inevitable consequence of such a scenario and that is why decisions in relocation cases are referred to as being binary in that there is no halfway house. Equally, whilst the mother says that she would stay here if P stayed with the father, I have already referred to the realism of that in terms of the impact on her mental health. Part of the reason for her breakdown, I am satisfied, was her isolation here. She has no one here, a very recent and limited friendship group, and that is why I did not consider the prospect of her living here with P as being a realistic option also not on the issue of protection in terms of her mental health. So that is the position so far as the proposals for contact.
79. I have already dealt with the father's proposals as per the family group conference, but I have some concerns about the viability and reality of those proposals in terms of what is said about strict supervision and the family attitude towards the mother and her culpability in causing harm to P.

The pros and cons of the mother going to Spain

80. The pros are that P would in my judgment be afforded protection against future relapses in the mother's mental health, which is the key risk emanating from her. She will have the

support, practical, moral and emotional, of her extended family. I am satisfied, as I have said, they are a very close-knit family and that she has extremely good relations with them.

81. The cons of her going obviously relate to what would be inevitably a significant diminution in the father's relationship with P. That is unavoidable if she goes and cannot be protected against. I have already found that she will promote contact. I consider the contact proposals to be realistic as a minimum given that there is travel to Spain involved. It is not known what the financial position for that is and whether the maternal or the paternal family can help the father who does not work and is reliant on benefits. Therefore, I see those proposals as being realistic and the best that can be achieved as a minimum and I stress as a minimum.
82. There is a risk of the mother continuing to use cannabis. I have already indicated that I consider the family can provide some protection against that risk. But I do not see that as being as great a risk as the risk of relapse, although it feeds into a potential relapse.

The pros and cons on the father's side

83. The pros are that he, too, has an extended family support here who can step in and assist him and to some extent mitigate the difficulties with his own physical health. He, too, is committed to his son and on many levels is able to offer him a good level of care.
84. The cons are those I have identified: The continuing risk to P in the ways that I have described of the father's unaddressed propensity for anger and aggressive behaviour in a number of potentially different contexts which, whilst reduced by the separation of the parents, still exists in the way described by the guardian.
85. The second con, of course, is the diminution in the mother's relationship. As I have said, I do not see it as being realistic that she can remain here and I consider that it would be potentially detrimental to her mental health if she did remain here away from her family support. Therefore, the mother too would be impacted in terms of her relationship.
86. Then there is the risk to P from the narrative from the paternal side of the family; their ability to promote the mother in a neutral, balanced and sensitive way; and their ability to promote contact.
87. Balancing the internal pros and cons of each option, and I recognise I have shorthanded them here in my final evaluation, and having regard to the detail of my analysis under the welfare checklist, I am satisfied that the risks and disadvantages in the father's proposals outweigh the advantages and that the advantages in the mother's proposals outweigh the disadvantages. Weighing the two options side by side, I am satisfied that P's overriding welfare needs require that he should be permitted to return to Spain with his mother and that the proposals that she makes supported by the local authority and P's guardian are the proposals which best meet his welfare needs.
88. They are not ideal. As in many of these cases, if not most of them, they are the least detrimental proposals because I am very aware of the inevitable impact upon the father's relationship. But the alternative is equally damaging in terms of the mother's relationship and the risks inherent in the father's proposals, as I have said, outweigh the advantages and still present a risk to P which cannot be mitigated as it can in the case of the mother.

89. I endorse the contact proposals as a minimum. There will need to be a contact order. I also consider the transition plan to be well made and I consider that the agreement which has been drawn up that the maternal family need to sign does cover the risks.
90. I should add also which I have not said before is that I am quite satisfied that there are ample resources where the mother is going to be living in Spain to address any mental health difficulties, to address any support in relation to drug use and indeed to address support in relation to domestic abuse noting that that is a recommendation of the guardian and something the mother may wish to consider.
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