



Neutral Citation Number: [2023] EWFC 189

Case No: WV20P00036

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/11/2023

Before :

THE HONOURABLE MRS JUSTICE JUDD

Between :

TJ

Applicant

- and -

RC

1st Respondent

-and-

RR

2nd Respondent

(by their Children's Guardian, William McGuigan)

The **Applicant** appeared in person
Bronwen Jones (instructed by **Beck Fitzgerald**) for the **1st Respondent**
Mark Blundell (instructed by **NYAS**) for the **2nd Respondent**

Hearing dates: 3rd - 5th October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 2nd November 2023 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE JUDD

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Judd :

1. This is a fact finding hearing in proceedings concerning a little boy, RR, who is now 6 years old.

Background

2. These proceedings have a long history. The parties separated in 2018 in acrimonious circumstances which involved the mother applying for a non-molestation order and the father being admitted to hospital as an inpatient following a suicide attempt. Then proceedings for child arrangements were issued in December 2019. In June 2021 there was a fact finding hearing before His Honour Judge Tolson KC. In between those two dates the father had a number of sessions of supervised contact with RR.
3. The fact finding hearing before Judge Tolson considered a number of allegations made by the mother against the father. In a detailed judgment Judge Tolson rejected most of the mother's allegations although it is important to state that his judgment in this case was careful and nuanced. There was an appeal from his decision which came before me. I dismissed the appeal against Judge Tolson's findings save in one respect as to his refusal to order a psychiatric report as to the father's condition. I also refused to stay the contact order which was made by the judge at the welfare hearing which followed.
4. The case continued in the local family court, but shortly before the final welfare hearing in February 2022 the mother made further allegations against the father, stating that RR had told them his father was going to kill the mother, maternal grandparents and the dog with a gun. The father was arrested and investigated for making threats to kill. The case was transferred to London, the original Guardian discharged and NYAS appointed with Mr. McGuigan as caseworker. It was listed to be heard before a s9 Judge.
5. Numerous third party disclosure orders have been made with respect to evidence held by the police and children's services. The final hearing in October 2022 was adjourned by consent as the psychiatric report had been received but an addendum was required. Further case management directions were made by me in January 2023 and the case was listed for another fact finding hearing. Not only had the mother made allegations that the father had made threats to kill, but there had also been an anonymous allegation that the father had been seen masturbating in the window of his home as children were walking outside. I refused the mother's application at that stage to suspend contact between RR and his father and ordered supervised contact. This supervised contact has not taken place. The fact finding hearing was originally listed earlier before another judge, but for reasons which I will not set out here was adjourned yet again and then came back before me.

The parties' respective cases

6. The mother, who has been represented throughout these proceedings, has filed a schedule containing 8 allegations against the father. In paragraph 1 she alleges that the father has stalked and harassed her by (amongst other things) questioning RR as to where she lives when he collected him from school, by driving through the village

asking him to point out which house he lives in, and by asking him about the mother's car. In paragraph 2 she alleges that the father has harassed her neighbour by reporting him to the police and children's services for allegedly hurting RR. In paragraph 3 she states that the father masturbated in front of children (this is an allegation she has now withdrawn) and in paragraph 4 she states that the father threatened to kill the mother, grandparents and family dog using a gun. In paragraph 5 the mother alleges that the father has provided negligent parenting of RR's physical health (the details of this are set out in her statement but relate to not seeking treatment for hand, foot and mouth and also a respiratory illness), and in paragraph 6 that the father harassed her by slashing her tyres. She also states that she had received information from the father's ex-girlfriend that the father was going to go after both of them. Paragraph 7 deals with several allegations of physical abuse which it is alleged the father has perpetrated on RR, relying on a number of things he has undoubtedly said to the social worker and Guardian from NYAS as well as to the mother herself, including that the father had shouted and hit RR when he spilt bubble gum juice on the new carpet. In paragraph 8 it is alleged that the father was emotional and verbally abusive to RR by asking him leading questions about the mother's neighbour including being hurt by him, and also by shouting at him and telling him things such as 'if he did not eat his dinner he would throw [RR] out of the window'. In paragraph 9 it is alleged the father sexually abused RR by touching his penis.

7. The father denies all the allegations. Although there was a direction that he should file a schedule of any allegations that he proposed to make against the mother he did not do so. Nonetheless, it is obvious from all the evidence that his case is that the allegations are a result of deliberate fabrication on the part of the mother and her family (particularly the maternal grandmother), with a view to preventing him from having a relationship with RR. This was made particularly clear in his final written submissions to me. In this document the father states that the mother and her family 'have ignored, evaded and deliberately disregarded all court orders and professional opinions and rulings'. He submits that their sole aim is to alienate him from RR and that they have made numerous false and malicious allegations, wasting police and court time. He states that the family have convinced RR of a false narrative and coerced him into making false allegations, denigrated him to RR so that he does not wish to see him, stalked the mother of his other child through social media and tried to convince her of false and malicious allegations. He stated that she has stopped him seeing RR for over 12 months and repeatedly breached court orders. He also says that she has made decisions without consultation (such as changing RR's school and his surname). He accuses her of making the malicious allegation that he masturbated in sight of school children.
8. The Guardian has maintained a neutral role in the proceedings although Mr. Blundell on his behalf asked questions of each of the parents. He tested the evidence of the mother in particular, as the father was not represented. I am very grateful to him for carrying out this role.

The law

9. The law as to fact finding is not controversial. The burden of proof is upon the individual or body making the allegation and the standard of proof is the balance of probabilities. Findings of fact must be based on evidence and not speculation or suspicion, and the court must take into account all of the evidence in a case and

furthermore consider each piece of evidence in the context of all the other evidence. It must not be assessed in separate compartments.

10. The evidence of the parties is of vital importance, and will weigh heavily in the balance. I bear in mind that people do not always tell the truth about things in court or elsewhere, especially in cases where they are frightened or distressed, or ashamed of conduct which does not form part of the allegations against them or at least falls short of them being guilty. Sometimes people lie out of misplaced loyalty, to bolster a true case or for no reason that anyone can discern. The fact that someone has lied about some matters does not mean for one moment that they have lied about others. A lie should never be considered as direct proof of guilt.
11. Peter Jackson J, as he then was, made a very important point about witness credibility in the case of Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, namely:

“To these matters, I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as “story-creep” may occur without any necessary inference of bad faith”.

12. There are numerous cases in which the approach of the courts to the evidence of children has been considered. It is important for the judge to consider the circumstances in which children have made allegations to others, in ABE interviews and otherwise. In Re P (Sexual Abuse – Finding of Fact Hearing) [2019] EWFC 27, Mr Justice MacDonald determined allegations of sexual and other abuse in a case involving six families and numerous intervenors. At paragraph 584 he said this about the importance of the way in which children are questioned:-

“Once again, [...], it is important to understand why the cardinal principle of the need to retain an open mind when considering allegations of sexual abuse has such a long pedigree. Mr Bagchi and Ms Bains have drawn the court’s attention to a paper by Ceci and others entitled *Children’s Suggestibility Research: Things to know before interviewing a child* (Anuario de Psicología Jurídica 25 (2015) 3-12) in which Ceci and his fellow authors highlight the operation of “confirmation bias” in the context of allegations made by children, being a tendency,

identified in the research, for a person to be biased towards information that confirms their own personal beliefs. In the paper the authors note, in the context of research by Bruck amongst others, as follows with respect to the potential consequences of confirmation bias when interviewing children:

“A person’s established beliefs are often difficult to change and resist contradictory evidence (Ross, Lepper & Hubbard, 1975). This phenomenon, referred to as “confirmation bias”, can have especially detrimental effects when working with child witnesses. If an interviewer enters a room, prepared to question a child, and brings along pre-established beliefs about the case or the accuracy and credibility of the child, the interviewer may unintentionally put disproportional weight on some statements the child makes while ignoring others. If the interviewer’s initial suspicions are incorrect, this could create a false report. Confirmation bias is potentially a problem for all people who may interact with a child witness, even professionals in the field of forensics, human development and social science. In fact, experts tend to be more confident in their evaluations of witnesses than others, despite not necessarily being more skilled at distinguishing accurate from inaccurate statements (DePaulo et al., 2003; Wessel, Drevland, Eilertsen, & Magnussen, 2006).”

13. At paragraph 858 he said this:-

“Within this context, the Court’s assessment of the ABE interviews will be informed by the need for caution regarding children’s recollection that I set out above when considering good practice with respect to the handling of initial allegations of child sexual abuse, which need for caution constitutes one of the fundamental rationales for the ABE Guidance (see *Re B (Allegation of Sexual Abuse: Child’s Evidence)* at [34-35] and the ABE Guidance at [2.162]). Namely, once again:

- “i) Children, and especially young children, are suggestible.
- ii) Memory is prone to error and easily influenced by the environment in which recall is invited.
- iii) Memories can be confabulated from imagined experiences, it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.
- iv) Allegations made by children may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.

- v) The wider circumstances of the child's life may influence, explain or colour what the child is saying.
- vi) Factors affecting when a child says something will include their capacity to understand their world and their role within it, requiring caution when interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.
- vii) Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.
- viii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interviewer.
- ix) Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- x) Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.
- xi) Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given.
- xii) Within this context, the way, and the stage at which a child is interviewed will have a profound effect on the accuracy of the child's testimony".

14. This approach was endorsed In *Re JB (A Child) (Sexual Abuse Allegations)* [2021] EWCA Civ 46, [2021] 1 FCR 574, where Baker LJ drew together the principles from the ABE Guidance and the authorities. These matters remain highly relevant to any evaluation of the reliability of the evidence of young children, particularly those who are living in an environment where one parent is very anxious about or hostile to the other.

The evidence

15. I heard evidence from the mother, the maternal grandmother and the father. The mother gave her evidence from behind a screen. I had determined that the father, who acted in person, should not ask the mother questions directly but that he should prepare them in writing. I asked Mr. Blundell for the Guardian to ask the mother questions first in cross examination as it was clear that he was going to test all the allegations that she had made against the father in his cross examination and that he would very likely cover the ground that the father would have done had he been

legally advised, and also which I considered to be important. This was indeed the case. After Mr. Blundell had finished his questions I asked a number of those that had been prepared on behalf of the father.

16. The maternal grandmother gave evidence after the mother. Her evidence was far shorter, for obvious reasons. The father gave his evidence last. He was questioned first by Ms. Jones on behalf of the mother and then Mr. Blundell. I also asked him a number of questions.
17. Added to this I have read all the documents, contained in a core and a main bundle. In the main bundle there are a large number of documents from the police and children's services, which include accounts of what RR has said to various individuals at different times, and what the parties themselves have said. There is a summary of an ABE interview of RR. At the start of the hearing I raised the absence of a transcript of the interview with the parties but was advised that the parties believed the summary to contain a full transcript. It transpired that this was not so. The mother's solicitors had a copy of the recording in their possession but this had never been transcribed. I have watched this more than once and have also listened to a recording of an interview with the father, and read the transcript of a further interview.

The allegations

18. It has been a very difficult task to get a clear chronology of the allegations in this case and the way they have emerged since the proceedings before Judge Tolson. Whilst there is a schedule filed on behalf of the mother, the details of the allegations are spread around a number of statements. The third party documents are not put together in a coherent order and there is a lot of repetition. This is a case which would very much have benefited from an advocate's chronology and I regret that I did not make such a direction in advance of the hearing. Nonetheless, I have done the best I can to piece it together from all the material I have. What is clear is that the allegations, principally but not exclusively against the father, have continued unabated since June 2021.
19. On 24th October 2021 there was an allegation by the mother to the police that the father had been stalking her. She alleged the father was asking RR questions about where she lives/what car she drives. On 1st November there was allegation by the mother/grandmother to police that RR has said 'daddy said mummy, granny and granda would be dead soon'. On 2nd November the mother received a letter from Z Council stating that Children's Services have received a referral had been made about an incident which resulted in concerns relating to the father's ex-partner and son. I am not clear what this relates to, but it may be an allegation by that ex-partner that he had been harassing her. On 1st December someone made an anonymous allegation that the father had been seen masturbating at his window within the sight of children. On 9th December the father made a referral to Children's Services stating that he was worried about RR who was saying that 'mummy's friend' is hurting him. He said he wanted mother to know he was just concerned about RR and did not want to stir things up before court. On 11th December the father made an allegation to the police of harassment from the mother, saying that she was making false allegations about him masturbating.

20. On 4th January 2022 there was a child in need visit to RR at home. The social worker spoke to him. The account is at H260 of the bundle. At that visit, RR told the social worker that his father had hit him on the head 'a long time ago'. The social worker also reported that when exploring RR's worries he said "my daddy wish D [the dog] was dead, he was mummy was dead and he said Grandpa punched him in the face. I said it's a lie". On 6th February the mother alleged to the police that RR had said that the father had threatened to shoot her, the grandparents and the dog. According to the mother and grandmother's statements, on the evening after his birthday party (which was 5th February), RR told his mother and grandmother that the father had told him he was going to use a gun from the barracks to kill his mother, grandparents and the dog.
21. Just three days later, on 9th February there was another child in need visit. The social worker spoke to RR in his room. The account of what he said is set out at H246 of the bundle. RR told her that daddy did not make him happy, he made him sad. He said 'Daddy said if I don't eat my dinner he would throw me out of the window'. He also said that his father hurt him, and that he had hit him on the head and tummy. He also said this about the alleged shooting incident, namely that Daddy said 'I'm going to shoot mummy, granny and D2 (D2 is another dog). RR said that the father had said this in his house, in the sitting room and that they were both sitting on the couch. The social worker records that RR was happy and excited to share/play with her and that he told her he told his mother and grandmother after he had got back from Daddy's. The father was interviewed by the police on the same day as that visit. He said that RR had been playing with a Nerf gun and had asked to take it home. The father told him that if he did, RR must not shoot anyone, including his mother, grandparents and dog.
22. Also on 9th February the father contacted the local authority to ask for a welfare check on RR. He said that the mother had been coercing RR to make allegations. He also said that RR appeared in tatty clothing and stated that his mother hurt him. The father said that RR had bruises on him. On 16th March RR told someone at school that 'I have a dad and he hits and punches me and threatened my mummy with a gun'. The mother contacted the police a few days later to report that.
23. On 9th September the mother reported the father to the police on the grounds of neglect. She said that he had failed to seek treatment for RR for hand, foot and mouth during contact visit. The mother told the police that RR told her that he kept asking to go to the doctors but that the father said no.
24. On 2nd October the mother alleged to the police that father has sexually assaulted RR. The account as to how that emerged was given by the mother and grandmother in their witness statements. The grandmother's evidence was that RR made the allegation after she had observed him pulling his foreskin back and asked him why he was doing that, saying 'my daddy does this to me and if I don't let him he gets mad'. On 7th October RR was visited at school by the interviewing officer and the social worker. The note at F399 states that RR told them that his daddy had punched him in the head and stomach but he did not know when. He said he had told his granny that 'daddy washes his tummy hard and his private area and he doesn't like it'.
25. On 13th October 2022 RR met with William McGuigan, the NYAS caseworker, at school. RR was found to be engaging and talkative. In the course of discussions RR told Mr. McGuigan that his father had hurt him 'on the wee wee' and pointed at his

flies. He said his father had done it just once. He also told the Guardian that he did not like sleeping over with his father (he liked seeing him in the morning) and ‘it would be better if he didn’t hurt me’.

26. On 31st October in his ABE interview RR said that his father pulled his willy, sometimes when it was light and sometimes when it was dark. He also said that it had happened when he was asleep. As I have said earlier there is no transcript of that video. The recording itself is incomplete as the start of the interview is missing.
27. On 3rd December the mother alleged that father had sent emails threatening to come to the house and take RR. On 17th December she alleged that an unknown person had said that when F has done with her, he would then go after his ex-partner.
28. Mr McGuigan saw RR again in May 2023. What RR said there is set out in that report. Essentially RR said that his father had hurt him when he saw him and that he felt sad when his father was mentioned. Mr McGuigan noted that when talking about this RR appeared to be focussing hard on his drawing.

Assessment of the witnesses

29. In her oral evidence the mother appeared to be very rigid in her thinking, and certain that her views and attitudes were right. I did not detect anywhere that she was reflective about her role in anything that had happened, that RR could have taken on board her anxieties, or any willingness to appreciate that other people might not see things the same way that she did. Many of her allegations were based upon things that RR had said to her and others, and in relying upon them she refused to countenance any suggestion that anything said by him could be anything less than completely accurate. She also demonstrated the same tendency as noted by Judge Tolson to exaggeration and/or distortion of the seriousness of events.
30. A good example of her tendency to exaggerate and distort the importance of events was her decision to report the father for neglect when she considered that he had not sought the right treatment for RR when it turned out he had been suffering from hand, foot and mouth disease. Even when he returned home after contact, RR was not so ill that he needed to see a doctor. It is a common childhood illness and I cannot imagine how she thought that it was a police matter. Yet when being asked questions about it she maintained her position that she had been right to do so. Unsurprisingly the police have taken no action but the mother still asks the court to make a finding about it.
31. Another example of her rigid thinking includes her lack of willingness to countenance that the account from the father about the so called threat of shooting could be correct. Although I can understand that she is very concerned as to what the father actually said to RR, I would expect her to at least be prepared to consider a benign explanation. In the same vein she dismissed any suggestion that in informing various people that his father had hit him on the head and the belly, RR could have been referring to the incident which had been dealt with by Judge Tolson in 2021. The mother’s approach is also apparent in her allegation that the father sexually abused RR. According to the mother and grandmother RR pulled his foreskin back when getting out of the shower saying that ‘my daddy does this to me and if I don’t let him he gets mad, he makes me do it’. He also is said to have said ‘he does it while I am sleeping’. It is one thing for the mother (and grandmother) to be concerned as to what

RR was actually recounting (especially as the father's response was a complete denial), but at least the mother should have asked herself whether there was a more benign explanation than sexual abuse. In her oral evidence the grandmother told the court that she had wondered if RR was describing being cleaned.

32. For the most part the mother came across as a dogmatic character when giving evidence and her emotions were held in check. Nonetheless at various points her worry and distress about RR did become apparent. One of these was when she was challenged by Mr Blundell about supervised contact and her role in RR's distress. She answered with real feeling and emphasis that she did not want RR to refuse to go. She only wished that he would go as she knew that he would be safe when supervised. She also said that she only wished that they (that is the family) could be normal, in the sense of RR having a conventional relationship with his father. Of course there is a danger in relying too much upon demeanour but the mother's presentation at that moment appeared distressed, desperate even.
33. I also found the father to be an unsatisfactory witness. I bear in mind that he has been on the receiving end of a string of allegations, most of which have been highly exaggerated or distorted. He has been investigated by the police for abuse and harassment and has been on the receiving end of a malicious investigation of sexual misbehaviour. He has found it extremely difficult, and recently quite impossible, to see his son. Added to all this he has had to represent himself throughout. In those circumstances it is hardly surprising that he should evince frustration towards the mother and family and with the process too.
34. I also bear in mind Judge Tolson's findings about the father, which I specifically upheld on appeal. Even taking all these things into account, I find his behaviour and attitudes to be concerning. He blames everything that has happened on the mother and her family and is vitriolic in his descriptions of them. He accepts very little responsibility for his own behaviour and is inclined to deflect blame for things he has done onto others. One example of this is the breakdown in his mental health in 2018 and subsequent suicide attempt. He lays the blame for this entirely on the mother and her parents. As he sees it, she constantly put him down (described by him as 'gaslighting') and as good as told him to go and do it. He blames the mother for problems he has had with the mother of his other child.
35. He does not accept the finding by Judge Tolson that he had been unnecessarily angry with RR (who was just over one at the time) on an occasion when the family was at home and packing to go away. He does accept some responsibility for breaching the non-molestation order but this is very limited.
36. Added to the minimisation of this own behaviour, the father has also been less than open and honest in relation to a number of matters. Before the last set of proceedings the father made a complaint to the police that the maternal grandfather had punched him in an argument. Included in the evidence he provided to the police and the family court a record of a 'body map' with injuries recorded on it as if by an independent professional instructed by the police. In fact, as noted by Judge Tolson it had been compiled by his own mother who is a nurse, on an official form. Judge Tolson ultimately did not think this undermined the father's evidence on the main points (and indeed he thought the father had probably been assaulted as he claimed), but it is hardly surprising that the mother believes that this is an example of the father's

dishonesty. Before me the father disavowed his own involvement in this. He told me that it was the police's decision to incorporate the bodymap into their own evidence and that accounted for the way it had been disclosed into the family proceedings.

37. The father also told Judge Tolson (and the judge accepted) that the mother was the person who represented that he had PTSD to the outside world, rather than himself. The medical records that have become available since that trial demonstrate that the father also represented this to be the case in an interview with Dr. T. He is recorded as saying that he had been verbally aggressive to his wife while overwhelmed and feeling 'guilty, anger, stressed, and irritated and 'then his PTSD came up again and became blunt and he did not remember what he said to her'.
38. This deflection of blame goes wider than the maternal family. The father has been found guilty of assault on a junior colleague, but to me he denied responsibility. He said that he was acting in self-defence and only accepted a conviction because of the difference in seniority.
39. The father denies making any disparaging comments about the maternal family to RR. I do not accept this this is correct. I note that amongst the various things that RR said to the social worker on 4th January he told her that his father had told him that his grandfather had punched him in the face. I asked the father about this and he denied saying anything of the sort, but I do not know who else would have told RR this other than him.
40. The maternal grandmother gave evidence last. I take full account of Judge Tolson's findings about her. Nonetheless before me she was a much more impressive witness than either of the parents. She gave a particularly clear and compelling account of the incident where RR is alleged to have said his father threatened to shoot the family. She described him being scared when the grandfather went to leave the family home after a birthday party, saying that his father had said he was going to shoot the three of them (mother, grandmother and grandfather) and the family dog. Her description of what she said to RR, by way of reassurance namely 'your daddy is a silly billy, he doesn't have a gun' has been consistent too, and makes sense in the context of her account of RR's fear.

Discussion

41. It must be apparent from everything that I have set out above, that I find this to be a difficult case. In a situation where I have found each of the parents to be unsatisfactory witnesses and to display concerning attitudes, it is very hard know where the truth lies. This is especially so when the mother lacks judgement in separating out what could be serious and what is not. It is a reminder that in cases like these alleged victims and perpetrators do not often fit into neat categories of good and bad, reliable and unreliable, honest and dishonest. Nor are relationships easily defined. It is not just the behaviour of a parent which matters but how that impacts on the other parent and child(ren). It is also a reminder of the danger of conducting fact finding in a vacuum, rather than against a better knowledge of the family background and dynamics.
42. In coming to my conclusions below, I make it clear that I have done so not only by considering the allegations individually but also by standing back and considering the

evidence as a whole.

43. Some of the allegations made by the mother are based upon very limited evidence and I can deal with them without much difficulty. Paragraph 1 of the schedule, which alleges that the father has stalked and harassed the mother by questioning RR is principally based on what the mother says RR has said to her as well as a text message from her neighbour but also on the father's answers to question in his police interview where he said he had driven through the village and RR had pointed to where he lived. The neighbour has not given a statement in support nor has he been called to give evidence to me. I have considerable reservations about the mother's reliability as a historian, and of the effect of her views and anxieties upon RR. The father was cross examined by Ms Jones about the reasons for his driving through the village after picking up RR from school. I did not consider that there was anything sinister about that. In all the circumstances I do not find this allegation proved.
44. Paragraph 2 states that the father harassed the mother by making allegations about her neighbour to the police. It is true that the father made such allegations but they were couched in limited terms. I see this as an example of the hostility and lack of trust between the parents rather than evidence of abuse or coercive control. It may also be an example of how RR has been caught in the middle of what is going on.
45. In paragraph 3 it is alleged that the father masturbated at the window of his home, and is based on the anonymous report to the police. At the beginning of this hearing the mother dropped this, stating that it was never 'her' allegation. She says that she accepts that it was malicious and could not have happened. Her attitude towards this is somewhat at odds with her willingness to assume the worst of the father in other respects. I have paused to wonder whether this makes her the likely source of the malicious allegation but have concluded that there are other possible candidates, including another former partner of the father's who reported him for harassment and even neighbours in the village (the father said that the police told him the informant was someone who lived in the village). There is no evidence linking this to the mother.
46. Jumping to paragraph 5, this relates to the weekend when RR had mouth ulcers and the mother alleges the father should have called 111 or taken him to the doctor. The father's case is that he took him to the pharmacist and gave him Bonjela. I have already made my views about this allegation clear earlier in this judgment. This comes nowhere near demonstrating negligence and the mother displays a lack of judgment in pursuing it. The same applies as to the mother's allegation that the father did not seek medical attention when RR had a respiratory illness.
47. Paragraph 6 concerns the slashing of the mother's tyres and Facebook messages she was shown by the father's ex-partner. There is no evidence that anyone saw the father anywhere near the mother's car, and the Facebook messages are at least third hand hearsay.
48. This leaves paragraphs 4, 7, 8 and 9. Paragraph 4 is the allegation that the father threatened to shoot the maternal family and dog with a gun. Paragraph 7 states that the father hit RR on the head and stomach, hurt his penis, shouted at him when he spilt a drink on the floor and made nasty comments about the maternal grandmother. Paragraph 8 includes allegations already made in other paragraphs but under the

heading of emotional abuse. It also includes the allegation made by RR that his father had told him that if he did not eat his dinner he would throw him out of the window.

49. I have grouped these paragraphs together as in seeking to prove these the mother relies not only on what she says RR has told the family, but what he is clearly recorded as having told professionals shortly afterwards.
50. Looking at these allegations, for the most part there is a notable consistency between the accounts of the mother and the professional recordings. Sometimes RR has volunteered more to the professionals than to his mother. RR has not said anything which suggests he has been coached to say things or coerced. I think that would have been apparent in relation to such a young child. I have already said that I found the grandmother's evidence about what happened after the birthday party to be compelling (RR telling them his father was going to shoot them). I therefore accept the evidence of both the mother and grandmother as to what RR has said to them, repeated to others.
51. Nonetheless, RR is a young child who has been in the middle of a very long and bitter dispute between the two sides of his family. He must be aware of it. I do not doubt he has been witness to the fear and anxiety on the part of the maternal family, and (as I find) hostility from each of his parents to the other. In those circumstances the court has to tread carefully when considering how much weight to place on what he has said. This is not to suggest that RR might lie, but simply that a young child is likely to absorb the atmosphere around him and the things said in his presence.
52. One allegation that RR has repeated on several occasions is that his father has hit him on the head and stomach. In all likelihood this is a reference to the allegation that the father hit him during contact, when he was playing in a ball pit. This was considered in detail by His Honour Judge Tolson, and rejected. The repetition of this allegation by RR shows that it is something which is likely to have been mentioned in his presence and that he now thinks that his father hurt him. The other allegations that he has made must be seen in that light. RR is a child who believes his father has hurt him and made him sad.
53. In my judgment it is more likely than not that RR misunderstood what his father said to him about a Nerf gun, if not at the time his father said it then when he recalled the incident a few days later when his grandfather went out after his birthday party. I agree with the submission on behalf of the mother that in his police interview the father tried to play down the extent to which he had access to firearms. To me this is an example of bolstering a true case rather than proof of guilt. It is, however an illustration of the lack of openness and honesty which causes such anxiety in the maternal family.
54. I have also come to the conclusion that RR's comment that his father has said that he wishes mother, grandmother, grandfather and the dog were dead, and that his father has shouted at him and hit him must be seen in the light of what is happening in his life. I cannot find on the balance of probabilities that the father said or did this to him. RR not only believes his father hurt him but also that his grandfather hurt his father and in those circumstances his statements must be viewed with considerable caution.

55. Finally, I turn to paragraph 9. It is alleged here that the father sexually abused RR by touching his penis. The descriptions given by RR to third parties (including the police, social worker and Mr. McGuigan) are that his father pulled his 'willy'. The grandmother's evidence is that RR made the allegation after she had observed him pulling his foreskin back and asked him why he was doing that, saying 'my daddy does this to me and if I don't let him he gets mad'. A few days later (7.10.22) RR was visited at school by the interviewing officer and the social worker. The note at F399 states that RR told them that 'daddy washes his tummy hard and his private area and he doesn't like it'. A few days later in the ABE interview RR said that his father pulled his willy, sometimes when it was light and sometimes when it was dark. He also said that it had happened when he was asleep. The ABE interview is unsatisfactory in that the first part of it (truth and lies) is not recorded. Nor do I have a transcript although I have watched it.
56. Whilst it is clear to me from the ABE that RR answered questions in a serious and matter of fact manner, what he has said about this is somewhat muddled. I think there are a number of possibilities as to why he said what he did which fall short of being abused by his father which I think is the least likely of them all. The possibilities include RR being embarrassed at being seen to be touching himself by his grandmother and, in the moment, suggesting that it was because of what his father did, to RR believing that his father had washed him too hard, and that turning into an allegation after further questioning that his father had pulled his penis. None of this sounds as if RR is describing sexual abuse, despite the very firm view his mother took about it. I appreciate that the father has denied even washing RR's genitals which adds to the general suspicion, but this is not sufficient to lead me to conclude that, on the balance of probabilities, he has sexually abused RR in this way, or at all.
57. Therefore I do not find that the father has abused RR physically or sexually or that he has threatened to hurt RR or the maternal family. Nor do I find that the father has acted in a coercive or controlling manner to the mother. In all the circumstances the allegations made by the mother against the father are not made out save that I do find the father has told RR something about the dispute – most particularly that grandfather punched him.
58. On the other hand I do not accept the father's allegations that the mother and her family have acted deliberately and maliciously are correct either. I have said above that there is no evidence RR has been coached or coerced. He has been spoken to by many professionals and there has never been any evidence of his suggesting that he has been told to say anything or indeed of repeating what the mother or grandparents have said to him.
59. Whilst I consider that the mother has a rigid outlook and is inclined to give the very worst interpretation to everything that she sees and hears about the father, it is my view that she genuinely believes that he is a risk to RR, as does the grandmother. Some of the things RR has said are odd and the fact that the mother and grandmother have been alarmed by them is understandable. Further, the father's own character and behaviour has contributed to this state of affairs. He was verbally abusive to the mother at times during their relationship, made some aggressive comments about her to a friend on social media, got unacceptably angry with RR in her presence when just a toddler, pleaded guilty to assaulting someone at work (which he now denies), and seeks to blame the breakdown of his mental health on her. He does seem to have

experienced difficulty in the relationship with the mother of his other child which he is also inclined to blame on this mother. His angry and dismissive response to the fears of the maternal family has only made things worse.

60. Judge Tolson concluded that RR's anxiety in advance of contact was a consequence of his being influenced emotionally and intellectually by attitudes and actions within the maternal family. I concur with this although from my assessment of the evidence since that date the hostility comes from both sides.
61. In all the circumstances, I decline to make the findings sought by either the mother or the father. I do not find that the mother has acted cynically or that she is motivated only to cut the father out of RR's life for malicious reasons. Whilst I recognise that there are times she has acted in a high handed manner (changing RR's school with very little notice to the father and the name by which he is known there) and also that she has over-reacted and demonstrated rigid beliefs, some of her responses are understandable as a protective parent and have been exacerbated by the father's own behaviour. I do not find that the label 'parental alienation' is apposite in this case.
62. I am conscious that I have had a lot of harsh things to say about both of these parents. This is really not the whole picture for either of them. They each come from loving families, and RR is delightful and well cared for in every other respect. The bitterness of the dispute between the parents has become so entrenched that a focus on what has gone wrong and why inevitably leads to a concentration on the negative rather than the positive.
63. If RR is to have a relationship with both of his parents there will need to be some changes by each of the parents and the wider family too. The dynamic between them all has been profoundly corrosive and counter-productive and I simply do not know whether it will be possible for the damage to be undone. For the sake of RR I can only hope that it is.
64. The parties will need some time to reflect on my findings and observations before making proposals as to the next stage of the case.