

IN THE COUNTY COURT AT YORK

The County Court
Piccadilly
York
8th March 2016

Before

HER HONOUR JUDGE FINNERTY

A Local Authority

-v-

Mother

Father

The Children

JUDGEMENT NUMBER ONE

Transcribed from an audio recording by J L Harpham Limited

Official Court Reporters and Media Transcribers

55 Queen Street

Sheffield S1 2DX

This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court.”

APPROVED JUDGMENT

1. I am concerned with three siblings, Child A, born in 2003, now twelve; Child B born in 2005, now ten; and Child C, born in 2008, now seven. Their mother has attended this final hearing with the assistance of an interpreter. The father of the children is currently on remand in HMP charged with intimidation of the key social worker. He has attended each day of this final hearing. The other parties are the Z Local Authority which will be referred to as ‘the local authority’ and the children through their guardian, Lucy Monk.
2. Dealing with representation. The local authority has been represented throughout by Ms. Campbell of Counsel, the mother by Mr. Shields of Counsel and the guardian by Ms. Bloss. For the first five days of this final hearing the father was represented by Mr. Brown of Counsel who attended without a representative from his instructing solicitor.
3. The case adjourned at the end of day five with Ms. Campbell nearing the end of her cross-examination of the mother.
4. On the morning of day six, Mr. Brown advised the Court that the father had dispensed with his services. The father insisted that he did not want an adjournment, but wished

the case to continue with him appearing as a litigant in person. This would have involved him cross-examining the mother.

5. Having regard to the overriding objective set out in Rule 1 of the Family Procedure Rules 2010 and, in particular, the need to ensure that cases are dealt with expeditiously and fairly, I allowed Ms. Campbell to conclude her cross-examination of the mother but then imposed an adjournment upon the father until the morning of day seven, with a specific direction that a representative from his solicitors should attend court.
6. On the morning of day seven a solicitor did attend together with Mr. Swiffen of Counsel who was instructed to represent the father. Mr Swiffen had represented the father at some of the case management hearings and was therefore familiar with the case. There was no application for an adjournment and the case continued.
7. Turning to the applications. The local authority seek final care orders in respect of these children with care plans for placement in long term foster care and contact with their parents and members of their extended family. The guardian supports the local authority save for some detail around contact. The parents oppose the application. Their primary position is that this court does not have jurisdiction to make public law orders because the statutory threshold has not been established. If the Court does have jurisdiction, the parents seek the rehabilitation of the children to the care of the mother.
8. Dealing with the law. The gateway to the Court having jurisdiction to make final public law orders is satisfaction of the statutory threshold criteria set out in Section 31 of the Children Act 1989. Section 31 (2), a court may only make a care order or a supervision order if it is satisfied that the child concerned is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the

care given to him or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give. Section 31 (9) of the Act defines harm as, ill treatment or the impairment of health and development including for example impairment suffered from seeing or hearing the ill treatment of another.

9. The facts relied upon by the local authority to satisfy the threshold criteria are set out in a document commencing at A17 of the bundle which was amended by Ms. Campbell in her final submissions. The following findings are sought.
10. Paragraph 1, there have been numerous incidents of domestic violence and domestic abuse between the parents over a number of years which place the children at risk of emotional and physical and harm. The father has been the perpetrator of that abuse. The incidents include the following (1) frequent arguments between the parents in the presence of the children; (2) father threatening to kill mother and threatening to throw boiling water over her; (3) father breaking or causing a significant injury to mother's nose; (4) father stamping on mother's stomach causing her to suffer a miscarriage; (5) father assaulting mother on other occasions, one of these assaults caused bruising to mother's face and eyes; (6) father controlling of mother in all aspects of her life including socially, emotionally and financially and controlling of the children; (7) father led mother to believe that Child B would be the subject of a forced marriage.
11. Paragraph 2, father has used the children to monitor mother's movements and telephone. This is likely to cause them emotional harm.
12. Paragraph 3, the domestic violence and abuse detrimentally affected the mother causing her to feel frightened, unsafe and have nightmares. She has presented as highly anxious and agitated. This is likely to have impacted upon her care of the children.

13. Paragraph 4, the children have also been exposed to father's anger and mood swings which is likely to cause them emotional harm.
14. The burden of proving the facts relied upon rests upon the local authority. The standard of proof is the balance of probabilities. If the local authority prove that the statutory threshold criteria has been established, the Court must go on to consider the placement options for the children. The two potential placement options within the extended family have fallen away and only two options have been presented for the Court to consider, placement in long term foster care or placement with the mother.
15. In looking at those options the Court must have regard to the Article 8 rights of these children and the welfare checklist set out in Section 1(3) Children Act 1989, under the overarching principle that the welfare of these children is paramount.
16. Turning now to the essential factual background. Ms. Campbell has prepared a case summary, a general chronology and a chronology entitled "Father's criminal offending, relevant allegations made to police. Injunction proceedings and current matters". Each of those documents is essential background reading to this judgment and should be annexed to any transcript of it suitably anonymised. I intend to refer in this judgement only to those aspects of the factual background necessary to explain my findings.
17. These parents are first cousins. Their mothers are sisters. They entered into an arranged marriage in 2000 when the father was 20 and the mother 18. At the date of their marriage the mother was resident in Pakistan and the father in the United Kingdom. The mother entered the United Kingdom in 2002 and went to live with the father in the home of the extended paternal family.
18. In 2005 they moved into homeless accommodation in Town 1 in the UK. The parents told me in evidence that they had to move away from the home of the extended

paternal family because it had become overcrowded. At the time of that move Child A would have been 18 months and Child B three months. Towards the end of 2005 the parents moved into a property in Town 1

19. In 2013 the family moved to a new town ('Town 2'). This is a small market town in [X county] with which they had no connection and where they knew nobody. The circumstances surrounding that move have not been explained to this Court. Whatever the circumstances they took up residence in a property in Town 2.
20. It is a matter of public record that the father and male members of his family are men of violence.
21. In 1996, the father was convicted of an offence of violent disorder following an incident in a public place involving the father and other members of his family.
22. In 1998, the father was convicted of possession of a knife in a public place.
23. In 2002, the father was convicted of using threatening, abusive or insulting words or behaviour.
24. In 2005, the father was convicted of possession of an axe in a public place. This conviction arose out of an incident of public disorder in a public place.
25. In 2008 the father was convicted of an offence of battery following an assault upon a 16 year old boy.
26. In 2010 one of the father's brothers, 'Uncle A' was convicted of an assault on his partner by attempted strangulation.
27. In 2015 another brother, Uncle B, was convicted of assaulting his 16 year old nephew by hitting him on the head with an iron bar.
28. It is a matter of record that one of the father's nephews is the subject of a care order because of his exposure to violence within his home. That child has no contact with any member of his family for reasons of his own protection.

29. It is a matter of record that the father has been involved in the supply of Class A drugs with convictions in 1998.
30. In 2015 the father was convicted of an offence of the cultivation of cannabis.
31. The very recent utterances from Child B whilst in foster care, suggest that she is aware of the father's involvement with drugs.
32. C74, an extract from the foster carer's notes in January 2016 ' Child B talking about contact, she enjoyed it and difficult to choose between auntie and uncle. Direct speech, "I love my auntie to bits but she is such a liar". Question, "Why is that?" "Well, she never told me about my dad growing cannabis and selling it in X". Foster carer, "You know about your dad and cannabis in Y". Child B, "But I did not know he was growing it in X, but I know he had drugs with him in X because one day I was with him and the police came and he gave me two packets which I thought was heroin and crack from his top pocket and told me to go and throw them away and not to say anything to the police. The police came and searched him. Police asked me if I knew anything and I said 'no'".
33. It is a matter of record that the father has used violence against another woman with whom he had been involved in an intimate relationship.
34. In 2000 he was convicted of an offence of battery of his ex-partner 'FH', the mother of his oldest child , who was born in 2000. The dates suggest that FH would have been pregnant at the time of that offence.
35. In 2007 FH obtained an injunction preventing the father using or threatening violence towards her to which a power of arrest was attached. The father breached that order. It is a matter of record that he admitted the breaches and in 2007 he was sentenced to a suspended term of imprisonment.
36. In summary, the essential background is this.

37. This mother aged 18 entered into an arranged marriage with a man who had convictions for violence and supply of Class A drugs, who after their marriage had been unfaithful with and violent towards another woman with whom he had a child between the date of the marriage and the date the mother arrived in the United Kingdom. Perhaps not the most auspicious start to family life.
38. In his evidence in chief the father asserted that he treated his wife, 'like a princess'. In cross-examination of the mother Mr Swiffen elicited that her marriage was happy and fulfilled most of the time. I am satisfied and find that other evidence from the parents contradicts those assertions. The mother told me that the father was unfaithful sexually and that this made her unhappy. The father denied that he had been unfaithful, which is a bit difficult to accept as after the date of the marriage, he had a child with FH. The father stated that he had had up to 50 girlfriends, and had used chat lines to communicate with women. Both parents told me that the mother did not have a bedroom in the family home. She had to sleep with the children.
39. In the Town 2 property the father had put locks on his bedroom door. Throughout his evidence the father referred to 'my bedroom.' Both parents told me that the mother had no contact with members of her extended maternal family in the United Kingdom.
40. The mother had no friends. When questioned by Mr. Shields, the father could not think of the name of one friend. She could not drive. When asked about this the father's comment, "I tried to teach her to drive, it was worthless".
41. Both parents told me that there was little communication between them. The father's evidence was that there was not a close emotional relationship between them. The mother's evidence was, 'I would speak to him when the children were at school. When the children were at home, I would not speak to him'.

42. Rather than this being a happy and fulfilled marriage in which the mother was treated like a princess, the totality of the evidence from the parents themselves would suggest that this mother was isolated, lonely and controlled. That is further essential background to the threshold finding sought by the local authority which I now turn to.
43. The first in time is that set out in paragraph 1(5), father assaulting the mother on other occasions, one of those assaults causing bruising to mother's face and eyes. The evidence relied upon by the local authority is that of KL who in 2005 was working as a support worker for the homeless and a domestic abuse worker. She met the parents for the first time in 2005, when they moved into the accommodation for the homeless . A Criminal Justice Act statement signed by KL can be found at G171 of the bundle. This should be annexed to any transcript of this judgment suitably anonymised. KL observed injuries upon the mother which the mother said were caused by the father. Those are the injuries particularised in paragraph 1(5) of the threshold document. The mother also told KL of another injury to her back which the mother alleged had also been caused by the father.
44. In her evidence, the mother claimed never to have met KL. The suggestion being that KL had mistaken her for someone else. I specifically reject that suggestion. It is clear from the statement of KL that the mother gave her information which was only referable to this father. G172,' she, that is the mother, stated that he hits his girlfriend, FH.' It is a matter of record that the father hit his girlfriend, FH.
45. In his evidence, the father asserted that KL was involved in a police conspiracy against him. I specifically reject that suggestion. The police did nothing with the information given to them by KL
46. I found KL, to be an honest, professional witness of truth and I accept her evidence in its entirety. Her account was undented by cross examination.

47. When I look at KL's evidence in the context of risk, it is of significance that she was employed as a domestic abuse support worker, from which I infer that she had contact with other women who were the subject of abuse at the hands of their partners. In respect of the mother, KL was so concerned for her safety that she made the referral to the police. In evidence KL said, "It is very, very rare in my career that I have made a referral to the police".
48. In cross-examination of KL, it emerged that following her involvement with the father, she became concerned for her own safety. She described how she had witnessed him threatening her manager. "He said to my manager, 'I know where you live' and correctly said the name of the village where my manager lived". KL stopped working with the family because of her fear of the father.
49. It is a matter of record that in 2005 the father was sentenced to 12 months imprisonment for an offence of violence.
50. In 2006, there is a reference in the mother's medical records, H674 of the bundle, as follows: "Husband left two weeks ago and staying with previous girlfriend. Husband wants mother to return to Pakistan but leave children in the UK. Wanting no outside help. Needing to talk but real fears of husband finding out that she has. Question mark physical abuse but will not admit this"
51. . The local authority case is that it was only after the mother commenced employment as a dinner lady at a local primary school in Town 2, some ten years after she had spoken to KL, that she felt comfortable enough to speak again.
52. The job at the school took her out of her home environment for just over an hour each school day and brought her into contact with members of staff at the school, whom the mother accepted in evidence were kind to her. On the evidence, I am satisfied that she was not accustomed to kindness. It is what the mother disclosed to two members of

staff at that school which forms the basis for most of the other threshold findings sought by the local authority. Those members of staff were RY who described herself as the mother's line manager and PT the deputy head. Their statements can be found between C66 and C68 of the bundle and C70 and C71. They should be annexed to any transcript of this judgment suitably anonymised.. Those statements were based upon their memory of conversations with the mother. They had not taken any notes at the insistence of the mother, who presented as terrified that the father might find out about what she had disclosed. Mr. Shields and Mr. Swiffen remind the Court to exercise caution in the evaluation of the weight to be attached to evidence based upon memory. I give those submissions proper weight and consideration. However, I found the evidence from RY and PT compelling. It was abundantly clear that those two ladies working at a primary school in a very small town had never heard anything like what was being described by the mother. They were shocked.

53. In evidence RY said that the disclosure that the father had stamped on the mother's stomach causing her to suffer a miscarriage was "one of the most distressing things that I have ever heard. I would definitely not forget that".
54. In relation to the disclosure by the mother about the father threatening to kill her. PT said that the mother had described the father as 'a finder', that is someone who would find women who had left their husbands. PT had never heard of 'a finder' She said she found the description, ' very disturbing, he sounded like a bounty hunter".
55. The mother did not suggest that those two witnesses from the Primary School were being untruthful, nor did she deny that she had spoken to them about wanting to leave her husband. She asserted that they had misunderstood what she was saying because of a language barrier. English is not the mother's first language. In court her evidence was heard through an interpreter. I have not heard her speak English, nor have I had

an opportunity of assessing her understanding of English. In addition, Mr. Shields has identified some entries in the mother's medical notes where medical practitioners have described difficulty in understanding the mother.

56. Ms. Campbell carefully explored with RY and PT whether they had any difficulty understanding what the mother told them. They were clear that the mother had no problem understanding English or making herself understood. I accept that evidence. I am satisfied and find that RY and PT accurately reported the disclosures made to them by the mother and did not misunderstand her.

57. There is other evidence which supports this finding.

58. Firstly, some of the information which the mother gave to RY and PT was strikingly similar to the information which she had given to KL, for example, the removal of her passport by the father.

59. Secondly, some of the information is supported by entries in the mother's medical records, for example, RY records the mother telling her that she attended hospital with a history of having fallen and the doctor quizzed her and did not believe her version of events.

60. At H669 and H690 there is an entry in the mother's medical records from 2010 when she attended accident and emergency, "fallen downstairs, hurt jaw, large bruise in right submental region. Unable to open mouth fully. Lower jaw looks recessed. Denies being hit, though tearful when asked outright". H676 and H690, entries in the medical notes suggest that the mother did indeed suffer a miscarriage in 2004. The mother told those two ladies from the primary school that the father had broken her nose. Entry at H673; "nose feels broken, probably does have a broken nose".

61. Thirdly, the information about the father being a finder resonates with recent utterances by Child B C74, foster carer's note from the 18th October 2015. "Our

auntie left Town A and my dad, who is a finder". Question, "What do you mean, finder? ' Answer, "He is really clever no one can fool him. He just knows how to find people and he went to [a nearby city], that is where she was and do you know that he drove and his car broke down on the roundabout and he had to walk and they opened the door and then shut it in his face. That is not a nice thing to do, is it?"

62. Fourthly information about the father checking up on the mother through the children, resonates with utterances from Child A to the foster carer. CI72, ' Child B has been found rifling through cupboards, drawers and wardrobes that are not in her room. She will, given the chance, read the carer's mail. She can be described as inquisitive. When confronted about things she has accessed which are private to the carers, Child B will deny this. However, Child A has been present for some of these conversations between Child B and carers in which Child A is reported to confirm that Child B used to behave the same way when at home. This included checking her mother's mobile which Child B would then report back to her father, where her mother kept her money and if she went out. All of this was denied by Child B and she directly called Child A " a liar".

63. Fifthly, the evidence of RY and PT about the mother's demeanour is compelling. Each of them speak of her shaking, wringing her hands, sobbing, absolutely terrified that her husband would discover what she had said about him.

64. In my judgment this evidence of affect is consistent with a terrified woman imparting very serious allegations indeed. I specifically reject the submission made by Mr. Shields that this extreme affect was equally consistent with a woman from the mother's background who wanted to leave her husband. It went far beyond that.

65. It is submitted by Mr. Shields and Mr. Swiffen that the demeanour of the children, following their reception into care, is inconsistent with children who have been

exposed to the extreme levels of domestic violence described by the mother and that this undermines the credibility of the accounts given by the mother to RY and PT. I reject that submission for the following reasons.

66. Firstly, it was the guardian's professional judgment which I accept that this mother had done her best to protect the children from the worst excesses of the father's behaviour, exemplified by her evidence that she tried not to speak to the father when the children were around.
67. Secondly, the mother has told the children that nothing has happened, that it is all a lie.
68. Thirdly, the mother has told the children not to talk to professionals.
69. It is submitted by Mr Swiffen that the mother's credibility is undermined by the fact that no one outside the family ever observed the Father hitting his wife. I specifically reject that submission. It is not the nature of domestic violence that the perpetrator assaults when witnesses are present.
70. On my findings, the threshold as pleaded is established on the balance of probabilities based on the evidence of those two ladies from the Primary School and KL save for paragraph 1 (1) the threat to throw boiling water over the mother which comes from the evidence of QB and paragraph 1.7 the father led the mother to believe that Child B would be the subject of a forced marriage which comes from the evidence of Detective Inspector D.
71. After very careful consideration I have determined that it would be unhelpful, to consider those additional allegations. QB is an outreach worker. She was unable to attend Court because of ill health. Mr. Shields dismissed her evidence as untested hearsay.

72. Detective Inspector D, is a serving member of the police. If I were to make a finding based upon the evidence from D, I fear that would feed into what has become the family truth that there is a police conspiracy. I am anxious that these children should not be exposed to the possibility that the findings made by this court will be dismissed by the parents as based on untested hearsay or part of a police conspiracy. These children need to be told that a judge has made very serious findings based upon evidence from witnesses who have no connection to the police, and who came to Court to be questioned about information which had been given to them by their mother.
73. I turn now to the placement options. There are two, foster care or placement with the mother.
74. I deal first with the advantages and disadvantages of a placement in long term foster care.
75. The expressed wishes and feelings of the children are a very important consideration. All three state clearly and consistently that they wish to return to the care of their mother.
76. The evidence from contact demonstrates that the mother is eminently capable of meeting the practical needs of her children. The evidence from the key social worker was that the mother's contact with the children was the best she had ever seen.
77. I am satisfied and find that separation from their mother whom they love, contrary to their wishes and feelings, is likely to carry with it a risk to them of emotional harm.
78. Foster care per se is fraught with risks of harm. Foster Placements often break down leading to instability and the risk of emotional harm. Foster Care is also very intrusive for children, for example, they have to have regular contact with a social worker and

they cannot enjoy normal childhood experiences such as holidays or sleepovers without the agreement of their social worker.

79. The advantage of foster care is that the children would be protected from the harm directly attributable to the behaviour of their father and the inability of their mother to protect them. The evidence from the guardian which I accept is that these children have settled in foster care.

80. I turn now to the advantages and disadvantages of a placement with the mother. She is a good mother, well able to meet the needs of the children. She loves them. She told me that they are her world. I fully accept that. Placement with the mother would accord with the wishes and feelings of the children. However, a return to the care of the mother would expose them to the risks directly attributable to the father's conduct.

81. I have thought long and hard as to whether there is any way of protecting these children from the risks presented by the father in a way that would enable them to live with their mother. Mr. Shields submits that a Family Court should not necessarily remove children from a home where there is domestic violence. I agree with that submission. The Court has to look at the level of risk and whether the risk can be managed. The mother has spoken of her experiences at the hands of the father to RY, PT and KL. She is the subject of a risk of life notice, as the police feel that there is a risk that the father could seriously harm or even kill her. On my findings he has indeed threatened to kill her. In my judgement, the risk presented by the father is very high. Is the mother herself able to protect the children from the risks presented by the father? She is not. On my findings she is terrified of him. The evidence surrounding their chance meeting in 2015 supports this. In my judgment there is a risk that this terror would itself affect the ability of the mother to meet the needs of the children. She is the prisoner of her own fear. On the evidence she is simply incapable of taking

a stand against the father, even at the expense of her beloved children. I give two examples. First In 2015, with the assistance of the police, she left the father and fled with the children to a different county after months of secret planning and deliberation. Within days the father had found her and she returned home in the full knowledge that if she returned her children would be removed from her care. Second, later in 2015, the father decided that he wanted to return to the Town 2 address where the mother was living. This would have placed him in breach of the terms of the domestic violence protection order. The mother vacated the home to enable him to return. She now has no independent accommodation for the children.

82. I have thought about whether the father could be trusted to remove himself to allow the mother to live in peace with the children, I have concluded that he cannot. He clearly does not regard the marriage as over. Mr Swiffen invited the mother to attend mediation so that the parents could be assisted to resolve their difficulties and the children would not have to come from a broken home.

83. Between DI and D4 of the bundle we have the recent correspondence from the father to the children which sends a clear message that they remain a family unit. D3 a message to Child B, "We are a strong family. Nothing can break us. Me and your mum will be there no matter what happens'

84. I have thought carefully about whether the risk from the father could be managed with the mother having support from protective agencies and injunctive orders. I have concluded that certainly at the moment that is unrealistic. It is a matter of record that this father has no respect for Court Orders. That is reflected in the number of breaches of Court Orders recorded in his antecedent history. He also breached the non-molestation order designed to protect FH

85. The mother denies that the father presents any risk. How can professionals help her in the face of that denial? She has gone to extraordinary lengths to protect him, even using the children. The letter from Child A at G586 of the bundle should be annexed to any transcript of this judgment suitably anonymised. Not only does she deny that the father presents a risk, she has demonstrated that she is prepared to lie to professionals and to this Court to protect him, for example, her lie that there was no direct contact between them while she was in police protection, was sustained until the very beginning of this hearing. She was forced to accept that she had been lying only after the phone records were disclosed. They demonstrated that there had been over one hundred telephone calls between them.
86. On a human level, this court has sympathy for the mother who is clearly distraught at the prospect of being separated from her children. However, the welfare of these children has to be my paramount consideration. When I look at the two options available for their future care, I have concluded that the unmanageable risk of harm to these children, if placed with their mother, outweighs all the advantages of placement with her and outweighs all the disadvantages of continued placement in foster care. It is a very sad situation.
87. Looking at the issue of contact there is the narrow issue between the guardian and the local authority as to the frequency of the mother's direct contact. The care plan provides for a reduction in direct contact to once a month, the guardian's recommendation is that it should be once a fortnight.
88. The competing arguments are as follows. The local authority is concerned that the more frequent the mother's direct contact with the children, the more likely it is that she would destabilise the foster placement by making adverse comments to the children about the care that they are being given. The guardian's view is that the

children need more frequent contact to enable them to settle in foster care because they love and worry about their mother.

89. I can only look at the issue of contact as at today's date. Contact will be kept under review in accordance with the local authority's statutory duty. At this time I prefer the view of the guardian. It seems to me that the concerns of the local authority can be addressed by way of a clear written agreement and if the mother fails to adhere to that agreement it may be that contact arrangements will have to be further adjusted. Mr. Shields submitted that contact could take place in the community. In the light of my assessment of risk I have formed the clear view that at the moment that is simply impossible.

90. The care plan also provides for the mother to share her contact with a family member. In my judgment her contact should be for her and for her children and should not be shared. I would invite the local authority to adjust that part of its care plan accordingly.

91. In relation to the father's contact, the children want to see him. He wants to see them. The recommendation of the local authority is that there should be indirect contact between him and them whilst he is incarcerated and that thereafter his contact should be fixed at six times a year. I agree. I know from Ms. Campbell that my invitations in relation to amendments of the care plans will be accepted by the local authority. I make final care orders in relation to the three children. I direct that amended care plans are filed and served with the Court before the Easter vacation and make orders for public funding in respect of the costs of all parties save the local authority.