

Case No: NG18C00047

**IN THE FAMILY COURT AT NOTTINGHAM**

60 Canal Street  
Nottingham  
NG1 7EJ

BEFORE:

**HIS HONOUR JUDGE LEA**

BETWEEN:

**A LOCAL AUTHORITY**

**APPLICANT**

**- and -**

**THE MOTHER**

**RESPONDENT 1**

**THE FATHER**

**RESPONDENT 2**

**R, S AND T  
(CHILDREN VIA THEIR GUARDIAN)**

**RESPONDENT 3**

**Legal Representation**

Mr Cleary (of counsel) on behalf of the Applicant  
Mr Veitch (of counsel) on behalf of the Mother  
Mr Wells (of counsel) on behalf of Father  
Ms Bloomfield (solicitor) on behalf of the Children's Guardian

**JUDGMENT**

24<sup>th</sup> October 2018

***WARNING: "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."***

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**His Honour Judge Lea:**

1. I delivered a judgment on Monday. I ordered a transcript of it. I do not repeat again the opening paragraphs of that judgment in which I identified the names and ages of the children I am concerned with the name and ages of the parents and the issues raised within the proceedings. I refused the application of the Mother for an adjournment of the fact-finding hearing to allow T to be further interviewed in relation to events in the family home which it

is said that he had or may have witnessed.

2. I refused *Re W* applications for R and S to give evidence. Mr Veitch, on behalf of the Mother sought permission to appeal against the refusal to adjourn for T to be interviewed. I refused permission. I then adjourned briefly to enable instructions to be taken upon my rulings. When the hearing resumed it was indicated that the Mother did not seek to challenge any of the Local Authority evidence through cross-examination, nor to give evidence.
3. The Father had already indicated that whilst he denied the allegations against him in the Local Authority final threshold, he did not intend to attend Court and did not wish to give evidence. I was later informed that the Mother did not seek findings against the Father, as set out in her schedule of allegations at A326 to 331 and referred to in her police interviews on 18 April 2018.
4. It was said that the Mother would not seek findings against the named third party interveners, given my ruling and observations as to them in my earlier judgment and her decision not to give evidence to support the making of findings. Thus, the evidence before me from the Mother comprises:
  - a) firstly, her two signed witness statements with statements of truth dated 10 September 2018, to be found at C74 to 79, headed First Narrative Statement of the First Respondent Mother and C80 to 86, headed Second Statement of the First Respondent Mother, containing her allegations of domestic violence;
  - b) secondly, the Mother's response to the Local Authority's schedule of allegations;
  - c) thirdly, the interviews of the Mother conducted by police on 18 April 2018, which start in reverse order but are as follows. 0399 to 0490, that is the interview at 16:43, 0491 to 0576, the interview at 19:30, and 0586 to 644, the first part of the interview at 13:45;
  - d) fourthly, the handwritten police statement of the Mother dated 8 November 2017 at 05 to 14.
5. In addition, there is the material obtained from the Mother's phone and the Father's phone. The evidence from the Father comprises firstly, at C87 to 92, headed Second Respondent's Narrative Statement. This is signed and dated 19 September 2018. Father repeats that he recognises that he can play no part in the lives of his children, at least for a very long time. Secondly, transcripts of the Father's police interviews from 0366 to 398 on 18 April. 0527 to 585 also on 18 April, his responses to the schedule of allegations.
6. The burden of proving a fact is on the party asserting that fact. Here, therefore, in the absence of findings sought by the Mother the burden rests with the Local Authority in relation to the schedule of findings that it seeks. To prove any fact that fact must be established on the balance of probabilities. The inherent probabilities or improbabilities of an event remains a matter to be considered when weighing the probabilities and deciding whether, on balance, the event occurred.

7. The decision as to whether the facts in dispute have been proved on the balance of probabilities must be based on all the available evidence and shall have regard to the wide context of social, emotional, ethical and moral factors. So, findings of fact must be based on the evidence. When considering, as here, allegations of suspected child abuse, I must consider each piece of evidence in the context of all the other evidence. I remind myself of the approach I should follow as set out in *Re T*, in the words of Dame Elizabeth Butler-Sloss:

"Evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."

8. One of the first matters therefore, that falls to be considered is the consequences that follow from the failure of the Mother and the Father to give evidence at the fact-finding hearing. Mr Wells, on behalf of the Father accepts in his submissions that, as a matter of law and common sense, inferences can be drawn from the Father's failure to give evidence. However, he submits that does not change the burden of proof. That must be right.
9. The burden of proof still rests with the Local Authority, the standard of proof remains the balance of probabilities. Mr Wells does not indicate what those inferences could, or should, be. Mr Cleary, in his submissions refers me to the judgment of Mr Justice Johnson in *GA v London Borough of Southwark and Ors* [2003] EWHC 2011. In that case, a Mother accused of the physical abuse of her children gave a statement in which she denied the allegations but then refused to give evidence. Mr Justice Johnson commented that:

"As a general rule, and clearly every case will depend on its ... particular facts, where a parent declines to answer questions or ... give evidence, the Court ought usually to draw the inference that the allegations are true."
10. Mr Veitch submits that it is for the Court to consider how much weight can be attached to the Mother's allegations or to the Father's denials. It is asserted that it would be open to the Court to come to conclusions about the nature of the relationship between the Mother and the Father on the evidence before the Court. Neither the Mother nor the Father has given evidence before me.
11. It follows that I have heard no direct evidence to contradict, undermine or explain the evidence adduced by the Local Authority in the form of the ABE interviews of R and S and the content of the witness statement with statements of truth served by the Local Authority as part of its case. It would have been open to the Mother and the Father to require those witnesses to give evidence in order to challenge anything that was not accepted.
12. I simply observe that the decision not to give evidence was the decision of the parents, each had legal representation and I have no doubt would have been advised as to the consequences of not giving evidence. Nevertheless, and notwithstanding the lack of

evidence from the parents by way of oral evidence subjected to cross-examination in Court, I still nevertheless have to evaluate the whole of the evidence to include the narrative witness statements of the parents to determine whether the allegations made by the Local Authority have been made out.

13. I finally note that the evidence of R and S stands only as hearsay evidence as neither child, in accordance with my ruling under *Re W* gave evidence. I must therefore consider when weighing up their evidence that it was not subjected to cross-examination. I deal firstly with S's allegations against her father. The evidence here comes from a variety of sources. The primary source of evidence is the ABE interviews of S.
14. This was viewed in Court. I found her account of what happened to her to be both compelling and credible. Secondly, there is also supporting evidence, albeit not independent of S, in the form of the letter which she wrote to her Mother. Thirdly, there is the exchange of text messages between the parents on 22 October 2016, when they discussed together the sexual abuse of S at Father's request. This shows clearly that the Father has a sexual interest in his daughter.
15. Fourthly, there is the fact that having viewed her daughter's ABE interviews, the Mother accepts what S alleges against her Father as being true. Fifthly, there is the video of S found on her Father's phone which corroborates her evidence that she was forced to take a video of herself touching her vagina. Sixthly, there are the search terms which I accept were used by the Father when searching for pornographic content on the internet, set out in full in paragraph 9 of Mr Cleary's submissions and I note in particular the search term:

**"Fucking my teen daughter."**

which appears on no fewer than four occasions. Seventhly, in her police interview the Mother conceded that the Father stated to her that he wanted to have sex with S when she was older, and she said in interview:

**"This is what he got off on."**

16. The Father's sexual interest are plainly evidenced by the internet searches that I am satisfied that he made, and I note one of the last searches was:

**"Mum and dad fuck their teen daughter."**

Eighthly R supports S's account in that on 1 May 2018, in talking to his teaching assistant, about his home life he explained that his parents had been "naughty, no talk about it". She asked what he meant, and he responded:

**"Daddy put willy on S's lacy."**

17. He then tapped his own genital area when saying this. The teaching assistant confirmed that lacy was the term that R used for a vagina. R said he told daddy to stop and he did and of course that is unchallenged evidence in this case. On 8 May, R told the teaching assistant that:

**"Daddy do naughty bad touch to S."**

18. This is unchallenged evidence. On 22 May, R told the teaching assistant:

**"My old house bad touch daddy did that thing to S."**

19. And tapped his own genital area. Again, that evidence is unchallenged and on 14 June, the police interviewed R and he confirmed that he had seen his Father raping S and that is at G798 to G799. It is correctly pointed out that truth and lies work does not appear to have been done with S during her first interview and only passing reference is made to the importance of telling the truth in her second interview.
20. I am satisfied, looking at S's demeanour that she was fully aware of the seriousness of what she was saying and of the consequences for her family from what she was saying and of the need, therefore, to tell the truth. I find nothing sinister in the fact that the rape allegations came later in time. Children frequently disclose abuse over a period, often leaving the gravest allegations as the last ones. The delay in making these allegations does not persuade me to disbelieve what S says.
21. Taking together this in the absence of any evidence in the hearing from the Father creates a strong body of evidence to support the findings sought by the Local Authority as to the abuse of S. In addition, in relation to finding one I adopt the analysis of Miss Bloomfield as to this and note in particular that S's description of her Father's nails as being so sharp that it hurt her and the Father's concession in his interview that his nails were indeed a bit sharp and also the evidence of the threat that S could not go to Guides if she didn't get her bits out is supported by the comment in the message where the Father is asking the Mother to display her vagina.
22. That is to say S's vagina. That finding is plainly supported by the Mother's discovery of the video on 1 June of 2017. Elsewhere, I find S's account in interview to be detailed and precise. This is a girl remembering things that had actually happened to her. Faced, as I say, with what I can see here as overwhelming evidence against the Father, evidence which plainly calls for comment from him, I find that the failure of the Father to give evidence leads me to infer that the allegations made against him of rape and sexual assault of S are indeed true.
23. I am going to deal now with the allegations that I think are findings 10, 11 and 12. In his written submissions Mr Wells invites me to find that such violence, and this is the allegation of the Father being violent to the children, such violence as there was from him, of Father to children, should more properly be characterised as chastisement and he complains that physical violence in a non-sexual way is a very broad, in fact too broad a term, to justify a meaningful finding of physical abuse as it could encompass lawful chastisement.
24. Given the enormity of the findings that I have made of rape of S, and the fact that the Father is not seeking any form of contact with his children, I do not propose to make

the findings sought in relation to physical violence. As to findings 11 and 12, they are sufficiently proved, and I accept S's account. I turn now to the allegations that the Mother failed to protect her daughter. In one real sense this is already conceded.

25. Although she attempted to lie about the video as to when she first saw it and I am satisfied that she first saw it on 1 June and did nothing about it, it is accepted by Mr Veitch that the Mother should have immediately taken action to safeguard S and should have gone to the police. She did not do so. This was an extremely grave failure to protect. The Mother also received the letter from S. S says that this was sent before the making of the indecent video and I have no basis for not accepting that in the absence of evidence in Court from the Mother to contradict the dates given by S.
26. The Mother was plainly aware of the Father's sexual interest in his daughter. She produced an indecent image of herself with S for the Father at his request. She willingly involved herself in the text conversation in October of 2016. Moreover, why would S make up false allegations that she told her Mother, that she has always been very loyal to her Mother and why would she lie about that whilst being otherwise, as her Mother accepts, wholly honest in her complaints against the Father?
27. I therefore make these findings. Firstly, the Mother was aware that S was at sexual risk from her Father because of his sexual interest in her. Far from protecting her daughter she fed the Father's interest, as per the text conversation, by providing to him an indecent image of S and herself. I am satisfied that S told her Mother, firstly, about the circumstances of finding three and told her Mother directly.
28. She told her Mother about being thrown onto the bed and kissed and the Mother again did nothing. Her Mother was told about the two rapes at seven and nine and again did nothing and that the Mother lied when she went to the GP that S had only told her about the rape by her Father on the previous day. I do not accept that account. I now move to findings against the Mother in respect of R and again, the following matters assist me.
29. Firstly, R's interviews. R plainly has learning disabilities. Would he though be capable of making up and fabricating the matters that he describes? I find it highly doubtful that he would. He had initially made these allegations, to which I have already referred, to his teaching assistant. He accepted that he did so, and I view R as a credible witness. It is submitted that the absence of allegations by T undermines the allegations made by R, as he has said that T was present.
30. The same can be said in relation to allegation five concerning S. The fact that T has not mentioned or made disclosure does not mean he was not present, simply that he has not made disclosure. Given his particular difficulties, and one saw how hard it was for the interviewing officer to gain his confidence, it is not surprising to me that he has made no disclosures. This lack of evidence does not so undermine the Local

Authority's case in respect of these threshold findings where he is named as someone present, that I am unable, on the balance of probabilities, to make those findings.

31. Secondly, there were photographs of R and his Mother in bed together and also with X present. The Mother appears to be naked. Some of the contact between Mother and X appears to be sexual with the touching of tongues. Thirdly, I have made findings that the Mother was prepared to assist in the sexual abuse of S. The Mother has also demonstrated a willingness to have sexual relations with relatives, in that she formed a sexual relationship with X, her nephew, and indeed in June of this year she was considering conceiving a child with him.
32. She had a regular sexual relationship with her cousin. The overwhelming weight of the text messages suggests that this was an entirely consensual sexual activity and indeed she had sexual intercourse with her own Father, such as I will find in due course. I take into account the Mother's failure to protect S. Knowing that the Father was intending to have sex with her daughter seemingly caused her no obvious concern.
33. In other words, she appears to have been content for it to happen and when it did, and it was reported to her, she did nothing about it and all this indicates to me a lack of sexual boundaries particularly in terms of familial sexual activity in which I find that the Mother would indeed be willing to sexually abuse R in the circumstances that he alleges. As Mr Cleary puts it, the Mother was complicit in the sexual abuse of her daughter.
34. She allowed a convicted child rapist and her cousin close to the children, indeed indicating to school that he was good with children and was willing to have sex with family members including her own Father and it is not a quantum leap to say that she would therefore willingly sexually abuse R. In fact, those facts combined with R's disclosures make for a convincing case that she did sexually abuse him as he alleged and therefore, I make the findings sought, I think they are number 17 to 23.
35. I agree with the Guardian's submissions at paragraphs 65 and 66, in the Guardian's written submissions. I am going to go back to finding 16, the allegation that X raped S. S herself makes no allegation as to this in either of her ABE interviews. R, in his interview made a disclosure that he saw Daddy in S's Lucy but does not describe X raping S.
36. X denied the allegation when put to him and I agree with the submission on behalf of the Guardian that there is here an insufficiency of evidence for the Court to make this finding, on the balance of probabilities, and I do not do so. Finding 24, the allegation of sexual intercourse between the Mother and her Father, I find to be clearly made out given the text messages passing between the parents, in particular the suggestion from the Father that the Mother should have sex with her Father and her response which is not along the lines that that is an appalling suggestion but is along the lines that she does not really want to have much to do with him because he never pays his way or has much to do with the children.
37. I have to say, I find that exchange of messages proves very clearly the Mother had

sexual intercourse with her Father, not just on one occasion but on more than one occasion. Finding 24, as amended therefore, is, I find, made out on the evidence that we have heard.

38. I just want to add one rider to what I said in my judgment yesterday. In asking for a transcript of my ruling and seeking permission to appeal Mr Veitch draws a distinction between a child giving evidence about sexual abuse that the child has himself been subjected to, as for example, as S did here and the evidence as a child as witness to the abuse of another.
39. The guidelines of course do not, as I read them, make such a distinction but apply generally to children giving evidence in family proceedings, whether as a victim or as a witness. Moreover, I am not persuaded that there is such a difference. If there is a difference it is somewhat artificial. A child for example, who witnesses its Mother being physically or verbally abused by a partner is not merely a witness but can also be rightly said to be a victim of such abuse through witnessing it.
40. Similarly, a child who witnesses sexual activity which the child should not see or be exposed to, whether it be consensual or forced, can be said to be a victim and not merely a witness. Indeed, under Section 12 of the Sexual Offences Act it is an offence to cause a child to watch a sexual act, if done for the purposes of obtaining sexual gratification and so a child who saw such things would be not simply a witness but a victim in those circumstances.

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This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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