

NEUTRAL CITATION NUMBER: [2023] EWFC 322 (B)

Case No.MB21P50045

IN THE FAMILY COURT

Sitting at Middlesbrough

IN THE MATTER OF THE CHILDREN ACT 1989

IN THE MATTER OF A (a boy)

ON APPEAL FROM DISTRICT JUDGE LINDSAY

Before: HHJ.G.MATTHEWS KC

BETWEEN:

Mother

Appellant

And

Father

1ST Respondent

And

A

[through his Children's Guardian HELEN HALE]

2nd Respondent

Dr Charlotte Proudman instructed by Ms M Chhina of Morgan Wiseman Solicitors for the Mother

Nicholas Rooke instructed by Mr F Poncia, Solicitor (freelance) for the Father

Helen Simmons instructed by Hewitts Solicitors for the child

Hearing date: 8 August 2023

1. On the 8th August 2023, I gave an ex tempore ruling in relation to an application for permission to appeal by the Appellant Mother, against findings of fact in a judgment by District Judge Lindsay, handed down on the 10th March 2023. The Respondent Father, opposed permission being granted and the substance of the appeal itself and lengthy submissions were heard by the court and a transcript of the Mother's evidence during the trial commissioned and considered. The protracted timeframe of receiving the latter, taken together with a period of judicial leave unfortunately led to a significant delay in the appeal being determined.
2. However, on the 8th August I decided that the appeal should be allowed on all grounds and the matter re-listed for a fact-finding hearing before myself with a 5 day time estimate on 30th October 2023¹. As I will be the tribunal determining the allegations made by each party against the other in due course, I intend to be circumspect as to my commentary on the evidence and constrain myself to set out herein the basis upon which I decided that the District Judge's decision should be overturned and the case re-listed.
3. This is a complex and sensitive matter in which the Mother has made serious allegations of sexual violence, domestic abuse and coercive control against the Father and he has accused her of parental alienation. Their little boy, A, is 4 years of age. The parents' relationship was short and tempestuous. The legal proceedings have been lengthy and thus far unproductive in terms of determining what is in A's best interests. Importantly, there appears to be no dispute that A should live with his Mother. The Father asks the court to determine the extent and pattern of his future relationship with A through contact.
4. On the 15th February 2023, District Judge Lindsay embarked upon a fact-finding hearing, which had been case managed by a number of other judges. This was unsatisfactory. The Mother's allegations which were subject of the trial are set out at A6 of the bundle. In summary they

¹ Between the drafting and handing down of this judgment, this date has now been pushed further.

involve vaginal and anal rape, assault causing bruising during sexual intercourse, coercive and controlling behaviour, including post-separation abuse and intimidation.

5. On the 10th March 2023, the judge handed down an ex tempore judgment and made the findings set out at A52-54 of the Appeal bundle. There is a full transcript of the judgment at A57. Mother filed a Notice of Appeal on the 29th March 2023 and brief grounds on 31st March thereafter. Amended grounds and a Skeleton Argument in support were filed at a later date in accordance with the directions of the court.
6. The judge did not make the findings sought by the Mother in relation to sexual violence. In respect of the allegation of non-consensual anal rape the judge considered that Mother had not satisfied the evidential burden upon her, whereas in respect of the second allegation of sexual violence she determined that Mother had requested the Father to slap her during sexual activity and take photographs of the bruising and marks thereby occasioned to her.
7. In respect of the third allegation of non-consensual anal sex, the District Judge made the finding sought by the Father, that the allegation was false and had been fabricated against him by the Mother. The judge made no findings in respect of the allegation that there was a pattern of coercive and controlling behaviour perpetrated by the Father toward Mother, although she did make some findings of domestic abuse in respect of actions such as entering the Mother's bedroom to place chocolates on her pillow without permission, whilst being allowed to exercise contact to A within the Mother's home, after separation.
8. The judge also made findings in accordance with the submissions on behalf of the Father, that the Mother had failed to promote contact to the Father, which had been termed "parental alienation" in a schedule eventually produced during the course of the trial, which had not been seen by the Mother prior to commencing her live evidence to the court.

Appeal Grounds

9. I will summarise the grounds advanced on behalf of Mother which are set out in detail in the supporting Skeleton Argument. It is submitted on behalf of the Mother in Ground 1 that the judge generally failed to take into account the Mother's ill-health as well as the trauma of being a victim of domestic abuse when considering the quality of her live evidence to the court. Specifically, in respect of Ground 2 with regard to the allegation [1] of rape and hurting the Mother's breast when A was present in the room, the judge:
- a) was wrong to rely upon the Mother's sexual history with the Father;
 - b) did not give sufficient weight to the Mother's supporting witness to whom Mother complained about Father's conduct some months after the event;
 - c) did not give sufficient reasons for her findings;
 - d) there was no Ground Rules Hearing;
 - e) there was no consideration of whether this was part of a pattern of abuse, rather than considering it as a singular event, in isolation; and
 - f) the judge was wrong to find that Mother had convinced herself that the act was non-consensual.
10. Ground 3 asserts that the judge was wrong to find not proven Mother's allegation that Father had struck her violently on a separate occasion causing bruises to her and had:
- a) wrongly relied upon Mother's sexual history with Father;
 - b) failed to give sufficient weight to the supporting evidence from third parties;
 - c) failed to give sufficient reasons for her findings; and
 - d) was wrong not to consider whether this alleged act was part of a pattern of abuse.
11. In Ground 4 it is alleged that the judge was wrong to find that Mother had fabricated the allegation of anal rape. Rejection of evidence does not it is submitted, translate into fabrication.

It is asserted that Mother did not know that Father would seek a finding of fabrication in respect of this allegation.

12. Ground 5 asserts that the judge was wrong in failing to give adequate reasons for not making findings of coercive and controlling behaviour by Father, which were relevant to welfare and key considerations pursuant to PD12J of the Family Procedure Rules 2010. It is also submitted that the judge was wrong to fail to address Mother's allegation that the Father's allegation of parental alienation, was a form of domestic abuse.
13. It is also submitted that the judge minimised the gravity of Father's behaviour in not making findings of coercive and controlling behaviour, when considering the nature of the actions carried out by him such as checking the mileage on her car, entering her bedroom to place chocolates on her pillow and serving court papers upon her at a contact handover. Ground 7 relates to the judge's failure to stand back and consider whether Father's overall behaviour amounted to a pattern of abusive conduct and that it was wrong not to find that this behaviour amounted to coercive and controlling behaviour.
14. The last ground related to the judge's finding that the Mother had breached the child arrangements order. This is submitted to be wrong on the basis that the judge fails to set out the legal test which applies to such findings and that there was an alleged procedural irregularity in that the Mother was not cross-examined about each and every breach. It is not clear exactly which breaches have been found proven and the evidential basis for this.
15. The father submitted that the judge's findings are not capable of criticism. It is suggested that no proper medical evidence was filed in accordance with the direction of DJ.Read dated 25th January 2023. The father takes issue with a number of the issues now raised by Mother's legal team as they were not raised at the time of the hearing or at the time when judgment was

handed down. No material omissions were raised with the judge and no clarification of her judgment was sought at any point a Notice of Appeal was simply filed.

16. It is pointed out that Mother was granted special measures during the court hearing, numerous breaks were granted, including a whole day for her to read the papers. The judge was well aware of the Mother's health issues and made specific comment in relation to this. It is pointed out that the third-party evidence from the Mother's Clinician at H1, is not actually evidence from an independent witness but a self-serving document penned by the Mother herself. As such this has a different status and less weight than if the evidence had emanated from the witness themselves.
17. It is submitted that the Mother's oral testimony was much more detailed than her written evidence. The allegation of anal rape, whilst referred to in a previous court order is not mentioned in Mother's statements and that the judge was entitled to take this into account. Whilst the Mother later explained that she had to wanted to talk about this or set it out in a statement which her Father was to read, this allegation was not detailed in advance for the Father to consider.

The role of the Appellate Court

18. A summary of the correct approach by an appellate court to an appeal against a fact-finding determination by a judge at first instance is contained in paragraphs 75-76 of **Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings) [2021] EWCA Civ 448**. I am quite clear that my role on appeal is circumscribed and I have been guided by the observations of the Court of Appeal in *Re H-N*. The following is drawn from the principles set out in that judgment.
19. It is not enough for the appellant to establish that this court might have made a different order. Judicial discretion dictates that two different minds may reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit

within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere.

20. The appellate court must bear in mind the advantage which the first instant judge had in seeing the parties and any other witnesses. Specific findings of fact, are inherently an incomplete statement of the impression which was made upon the judge by the primary evidence. The judge's expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight and minor qualification of which time and language do not permit exact expression but which may play an important part in the judge's overall evaluation.
21. The exigencies of daily court room life are such that the reasons for judgment will always be capable of having been better expressed, even in a reserved judgment which is based upon notes such as appears was given by the District Judge in this instance. The reasons should be read on the assumption that the judge knew how they should perform their functions and which matters should be taken into account. An appellate court should not strain to find error where there is none, particularly where an appeal is based upon a failure to reference a relevant authority or to refer to a relevant matter.
22. As per *Re F (Children) [2016] EWCA Civ 546* in which Sir James Munby explained that that the judgment is to be read as a whole and having regard to its content and structure. The task facing a judge is not to pass an examination or prepare a detailed legal or factual analysis of all of the evidence and submissions he has heard. Essentially the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable it to be decided whether the judgment is sustainable.
23. However, the reasoning of the judge should be clear so that the parties and the appellate court can comprehend how the judge came to the decision they did after hearing all of the evidence.

The Appeal - Analysis

24. This is a very complex matter and in my view should have been tried by a Circuit Judge, given the complexity of the issues involved, the length of the likely hearing and the fragility of the Mother. In my judgment the District Judge did the best she could in extremely difficult circumstances. The case was poorly prepared with the bundle still being revised during the course of the trial and new documents being produced. It is incomprehensible to me that the Mother had not seen or had an opportunity to read, the bundle prior to giving evidence, necessitating an adjournment for a whole day, mid-trial. None of these failures can be attributed to the judge.
25. The Mother's evidence appears not to have been properly considered and prepared in advance of the trial by her then lawyers, causing extensive evidence in chief to be heard for a full-day. The Mother's evidence and allegations should have been clear upon the papers in advance of the commencement of the trial so that the Respondent Father knew what case he was facing. The procedure is that the evidence is filed and sets out clearly the allegations which the court is asked to consider. Examination in chief should thereafter be restricted to clarification, highlighting or explanation of what has already been set out. Equally, the Father's case on "parental alienation" as he termed it, was not clear in advance of the hearing's commencement and was eventually distilled down into a schedule of alleged missed contact dates.
26. Police evidence was still being produced during the course of the trial and no proper ground rules hearing took place at any point nor was there discussion with regard to what was, or was not, an appropriate area of questioning. Mother's then Counsel appears not to have had a conference with his client in advance of the first day of trial and therefore an earlier hearing scheduled to consider ground rules for the trial was fruitless as he had no instructions. Unfortunately, this is too often the state of affairs which is thrust upon the District bench in the countless similar cases which are regularly proceeding in the Family Court.

27. The District bench seems to bear the majority of the pressures of what Knowles J has referred to as a “relentless train of successive fact-finding determinations”, certainly at this court. At least in this case both parties were legally represented, although this does not assist the court greatly if there are still significant failings in preparation and presentation. Such trials are very complex, sensitive and demanding. The court is required to be fair and impartial to both parents, applying the appropriate participation directions, whilst attempting to discern the truth behind their relationship.
28. The District Judge was also under significant pressures of time as Mother’s evidence proceeded very slowly. It was clear that Mother’s physical health was an issue, as she had been subject to a scanning procedure only the night before the trial commenced. The Father had an impending medical operation and the judge was desperately trying to get through the evidence within the limited timeframe available. This unfortunately, led to long court days which must have been very tiring for all concerned but particularly the Mother.
29. There were a number of allegations and a great deal of evidence to consider. It is vital in a case such as this that a judge stands back objectively and considers all of the evidence in order to determine whether there are any patterns which emerge, as domestic abuse can be subtly imposed. In my judgment the decision of the District Judge cannot be supported and there are a number of reasons for this which I will set out below but one of the significant matters which concerns me is the impression that the allegations were considered separately rather than as a whole, as per **Re O (A Child) (Judgment:Adequacy of Reasons) [2021] EWCA Civ 149.**
30. The decision here is not necessarily wrong but it is the way in which the judge arrived at her conclusions which concerns me and leads me to the conclusion that I cannot and should not uphold the findings which have been made. In general the reasoning is insufficient and there is a clear impression of viewing each allegation in a separate compartment.

31. This is pertinent in particular to the sexual allegations in respect of which the learned judge has made different decisions in relation to each. In respect of one she regarded this as “not proven” [1], another as occurring in the way that Father described [2] and the latter as being a fabrication by Mother [3]. In respect of allegation 2 the District Judge [DJ] finds that Mother must have imagined that she had been raped, after the event and that Father has not proven that she has deliberately fabricated allegations [1] and [2]. The rationale behind this unusual finding of later imagining is not explained at all. However, I do not accept that the DJ was suggesting that Mother had a serious mental illness by making this finding. Nor was she “gaslighting” the Mother as was set out in the Skeleton Argument filed on her behalf.
32. Whilst the Mother is, of course, entitled to appeal the findings of the judge and to make criticisms of her management of the trial itself, it was clumsy and inappropriate to suggest that the judge was by making this finding, “gaslighting” the Mother. This is a term which has gained a great deal of currency in recent years and which clearly connotes an intention to undermine psychologically. It has now been accepted that it is not being suggested that the judge *intended* to undermine the Mother by making this finding. I accept however, that the Mother may have felt undermined by this finding.
33. In my judgment, there should be some clear factual basis for such a conclusion to be drawn by the judge. In respect of sexual allegation 3 an anal rape, the judge appears to move straight from preferring the evidence of the Father to concluding that the Mother has fabricated the allegation. No other reasoning is provided that I can discern. Perpetrating an act of anal rape is an extremely serious matter as, equally is the alleged fabrication of such a sexual assault. It is imperative that in either situation the reasoning behind a judicial decision is clear. It is unfortunately not clear why the judge has decided that the Mother had actually fabricated this allegation, rather than for example simply finding that she has not shifted the evidential burden.

34. My conclusion is that the reasoning provided here is insufficient and unclear. There is no indication that the judge considered the group of sexual allegations as a whole and/or that a cross-check has been carried out, by referring back to the wider picture of domestic abuse and alleged coercive control. Each sexual allegation gives the appearance of having been dealt with in a vacuum, separately from each other and the wider picture.
35. The Mother had filed evidence from a friend in relation to a relatively recent complaint she made to her about the Father's sexual conduct. This evidence was not challenged by the Father. There is no explanation by the judge as to what weight, if any she attributed to this evidence, or, if she gave it no weight at all, why she did not. This is important and should have been dealt with in the judgment.
36. I am extremely concerned that cross-examination took place of the Mother in relation to the parties' earlier sexual history, which did not relate to the individual allegations. This was not the subject of any pre-hearing ground rules or discussion as I have already set out above. The judge eventually intervened and asked Counsel for Father how this was relevant but this was too late. This questioning had not been sanctioned by the court and was intrusive, embarrassing and humiliating. It is, however, notable that the Mother's then Counsel did not object to this issue being dealt with in the evidence. Whilst the primary duty lies upon the judge to manage the evidence which is admitted on the basis of relevance and fairness, it is incumbent upon those representing the parties to act appropriately at all times and indeed point out to the court if it is falling into error.
37. It appears that the evidence which did arise during this cross-examination had some influence upon the judge as she refers to it in her judgment. She questioned the relevance but then it appears to have achieved some prominence in her mind. I would not have expected her to mention it in the judgement if she considered it to be totally irrelevant or it should have made

clear that it did not influence her decision. The appearance unfortunately, is that this evidence did influence her findings and this creates a picture an imbalance between the weight attributed to Mother's previous sexual behaviour and the overall picture of the Father's sexual behaviour as alleged.

38. In respect of the allegations of coercive and controlling behaviour, there is also in my judgment, insufficient reasoning given in relation to this aspect of the case. A number of errors of judgment by the Father are identified by the judge which she places in the category of domestic abuse and yet it is not clear that the judge reflected upon those errors and considered whether there was a pattern of concerning behaviour on his part or in his attitudes toward Mother which either was or could be indicative of coercive and controlling behaviour.
39. This is an extremely important part of the case which could be highly relevant to the welfare outcome in relation to A. It is not apparent that the judge stood back and asked herself after making those findings which she did make whether they, when taken together or indeed when considered together with the other allegations, were indicative of any patterns in his behaviour. I was not the judge at first instance. I have not yet heard direct evidence from the parties, nor even seen them in person and I hold no current view as to the appropriateness of any of the findings sought. However, the findings which have been made should be supported by detailed reasoning.
40. Contact breaches in themselves, such as the parent who is charged with promoting contact failing to do so on specific occasions, do not amount to a finding of parental alienation. It is not apparent to me that all of the alleged contact breaches were put to the Mother in the course of her live evidence to the court. The schedule of breaches should have been produced in advance of the trial to Mother and her legal representatives, so that she could give instructions. This should not be a "work in progress" during the course of the trial. It may indeed have been

possible for many of these to be agreed or indeed for this issue to be separated off to another time, given the importance of the other issues subject of the trial.

Findings in respect of the Grounds of Appeal

41. I grant permission to appeal in respect of all of the grounds of appeal cited and set aside all the findings made by DJ.Lindsay. The grounds cited are allowed only on the basis that I set out herein. It is not necessary or appropriate for me to rehearse all of the matters set out in the Mother's Skeleton Argument as the appeal is being allowed and I will be the tribunal for the re-hearing.
42. Ground 1 is allowed on the basis that, although there is reference to the Mother's ill-health, there is no clear consideration of the potential impact of her ill-health upon her and her presentation as a witness. Whilst the judge makes reference to the general guidelines with regard to the potential impact of trauma upon a victim of domestic abuse there is no obvious assessment of the potential impact upon this Mother's evidence and credibility. The judge may have taken this into account but I am not certain that she did and that should be apparent, in my judgment.
43. The appeal is allowed on Ground 2 as I consider this finding not to be capable of being supported because of: the consideration of sexual history, as set out above; the lack of indication as to what weight, if any and why was attributed to the evidence of Mother's third-party witness; the apparent failure to review whether this allegation could constitute part of a pattern of behaviour and its seeming assessment in isolation; the insufficiency of reasoning for the conclusion that Mother had convinced herself that the incident was non-consensual. More generally, there appears to have been a lack of consideration as to how this finding compared

with the judge's other findings in relation to sexual violence and domestic abuse and coercive and controlling behaviour.

44. I do not accept that the judge necessarily required medical evidence to make such a finding nor that she was indicating some serious medical problem with the Mother as a result of this decision. However, it is necessary to explain the evidential basis upon which she has reached this view in order that this rationale can be scrutinised by the appellate court. All findings should be based upon evidence or reasonable inferences which can be appropriately drawn from the evidence. It is not clear that there is any evidence upon which this finding could be based. The judge does not have to reach a decision in relation to all matters and should not strain to do so.
45. With reference to Ground 3 the appeal is allowed on the basis that the finding is not safe or fair in my judgment for the same reasons which I have already set out above being; inappropriate exploration of sexual history; lack of clarity as to what weight was attributed to the third party evidence and an apparent failure to consider pattern and insufficient reasoning.
46. Ground 4 is also allowed on the basis of insufficient reasons being given for the decision to make a positive finding of fabrication. The judge says that she cannot find that the Mother is mistaken about this event and yet this appears to be the finding which has been made in respect of the second sexual allegation, that the Mother was mistaken. Unfortunately, the appearance is created that the judge has decided that the Mother has not proven her case and, having accepted the Father's account, the court accedes to his concluding submission that the allegation has been fabricated by Mother. It is not clear to me that the allegation of fabrication was put to the Mother in cross-examination.
47. The Mother produced fresh evidence at the directions appointment before DJ.Lindsay on the 30th March 2023. This should have been the subject of a formal application setting out the reasons why the evidence was not available at the time of the fact-finding hearing. The judge

was invited to reconsider her findings initially but this application was later withdrawn as per the order of the judge on that day. Clarification of the judgment was not sought from the DJ.

The fresh evidence was subsequently inserted into the appeal bundle for the appeal hearing on the 1st June 2023 without a formal application being made.

48. When the appeal had to be adjourned part-heard, a formal written application was made by the Mother personally to admit fresh evidence. I did not consider it necessary to consider this application and evidence in determining this appeal, as there were sufficient grounds before the court to determine that the findings should not be upheld. However, it is important to observe that the evidential rules of court apply equally to both sides. The material which Mother has now produced can be introduced into evidence at the re-hearing and this will no doubt be dealt with by the Mother in her new statement. I do not propose to give any guidance as to the family court's approach to making findings that a party has lied rather than that a fact has not been proved by them.
49. Ground 5 which relates to the absence of a finding concerning whether there was a pattern of coercive and controlling behaviour is allowed on the basis of the lack of reasoning and apparent consideration as to the evidence and allegations as an objective whole.
50. I also allow the appeal on ground 6 on the same basis that there was in my judgment a lack of consideration of whether the acts which have been found proven by the DJ could amount to a pattern of coercive and controlling behaviour as opposed to discrete acts of domestic abuse. I express and hold no view about this at the present time. It is imperative that I maintain a neutral standpoint on issues which are to be re-tried. Similarly, with Ground 7 there is insufficient indication that the judge stood back and reviewed the picture as a whole and whether Father's actions did or could amount to coercive and controlling behaviour.

51. Ground 8 relates to the finding made about the promotion or failure to promote contact by the Mother. Sadly, it is not clear to me that the Mother was cross-examined in relation to each and every date. It seems that there was an assumption that if A did not attend contact that this constituted a breach by Mother and that therefore the detail was not important. The standard of proof is not referred to and there appears to have been no evidence led on behalf of the Mother as to the reasons behind her stance at various points of the proceedings. There appears to be a discrepancy between the breaches of contact recorded in the court order and those referred to in the judgment. Findings made after a fact-finding hearing should be the subject of a clear schedule.
52. I note that Mrs. Justice Knowles indicates in Re A that it is desirable that judges carrying out a fact-finding hearing, with the definitions of domestic abuse set out in PD12J firmly in mind, produce their own schedule of findings, either incorporated within the body of the judgment or appended to its conclusion. This is she points out good practice and could perhaps prevent a mistranslation into the court order in due course.
53. The court will need to be clear from Mother's evidence, what her approach has been to the promotion of contact from the point of separation. The issue of domestic abuse and whether there has been a pattern of coercive control by Father will obviously be part of the context for the court's consideration of this issue. The Father's schedule should be filed and disclosed and then Mother needs to be given an opportunity to respond to this in her forthcoming statement.
54. The issue as to whether the allegation of failure to promote contact by Mother should be tried together with Mother's allegations can be considered at the Ground Rules Hearing which has now been listed in advance of the re-trial. There will be a re-hearing in relation to all of the allegations, save for those matters which the Father now accepts having had an opportunity to reflect upon his conduct and the court process. At the appeal hearing I requested information as

to which, if any, of the judge's findings the Father accepted and for these to be set out clearly for the benefit of the court and the Mother.

55. Father has made a number of admissions in his most recent statement, in respect of his behaviour which amount to domestic abuse and he has self-referred on to a Domestic Abuse Perpetrators Programme at his own substantial cost. The admissions encompass the following actions:

- i) Leaving chocolates on Mother's bedroom pillow when accessing her room without permission during a contact period;
- ii) Using bodycam on 3 separate occasions at contact handovers;
- iii) Being prone to overexaggerate and portray Mother in a bad light;
- iv) Reporting Mother to Children's Services;
- v) Alleging that Mother had caused A to be placed in a calpol induced coma, wilfully interpreting this in a negative manner;
- vi) Recording the mileage on Mother's car;
- vii) Calling the police to report that Mother had allegedly physically assaulted A;
- viii) Serving enforcement papers on Mother in relation to the first set of proceedings at a contact handover;
- ix) Referring to a potential transfer of residence of A on 28th April 2022;
- x) Sending Mother a Whatsapp message stating that he would not attempt further handovers in the light of numerous failed handovers in the lead-up to his message.

56. These admitted matters will not be tried again but Father's accepted behaviour, will be taken into consideration when the court is determining the other allegations which the Mother makes against him. These of course encompass sexual violence and coercive and controlling behaviour as set out above. I do not consider that it is appropriate or logical for me to maintain the

positive findings which DJ.Lindsay has made, whilst setting aside all of her other findings. The Appellant has been highly critical of the judge, submitting that her decision was so flawed that it was not capable of being corrected by seeking further clarification.

57. In such circumstances in my judgment it is not appropriate to retain some of the findings, whilst overturning the findings made in the lower court in respect of serious sexual assault allegations. I do not consider it appropriate to make a positive finding at this stage that the domestic abuse thus far found proven or admitted, amounts to coercive and controlling behaviour. It is more appropriate to consider the evidence and the pattern as a whole without being tied to the findings of the judge in the court below.
58. This case is quite distinct from that considered by Mrs.Justice Knowles in Re A [2022] EWHC 3089. In that case the appeal against the judge's findings that allegations of rape and non-fatal strangulation were not made out by the Mother, was unsuccessful. The appeal was however allowed in relation to the judge's failure to evaluate whether there had been a pattern of abusive behaviour and was remitted back to the DFJ to determine, by reference to PD12J whether it was necessary for there to be a further fact-finding hearing.
59. In this case very serious allegations are yet to be determined by the court and as the future trial judge I consider it preferable to stand back and survey all of the evidence as a holistic picture, including Father's new admissions.

11th September 2023