1

Neutral Citation Number: [2024] EWFC 217 (B)

Case No: NG23P00344

IN THE FAMILY COURT
SITTING IN NOTTINGHAM

Date: 5th August 2024

IN THE MATTER OF ENITAN (BORN 2019)

BETWEEN:

ENITAN'S FATHER

Applicant

-and-

ENITAN'S MOTHER

Respondent

Before:

Mr Recorder Adrian Jack

- - - - - - - - - - - - - - - - - - - - -

**The Applicant Father in person**

**The Respondent Mother** represented by **Bede Porter** of counsel
instructed by **Sills & Betteridge LLP**, solicitors

Judgment date: 5th August 2024

- - - - - - - - - - - - - - - - - - - - -

# Judgment (No 2)

This judgment was handed down by the Judge remotely by circulation to the father and the mother's representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 12 noon on 5th August 2024.

.............................

**Mr Recorder Adrian Jack**

1. Following the handing down of the substantive judgment in this matter on 1st August 2024, Mr Porter on behalf of mother applied for permission to appeal. I indicated that I would refuse permission to appeal. These are my reasons for that decision.

2. Although the draft judgment had been distributed to the parties on 20th July 2024, Mr Porter had not prepared draft grounds of appeal, nor a skeleton. His oral grounds for appeal were somewhat diffuse.

3. Mr Porter argued that it was inappropriate and unfair to rely on criminal law principles in determining the issue of physical abuse of Tobe by his father. I agree with him up to a point. Whether father was guilty or not guilty of common assault on Tobe is irrelevant to the welfare test in respect of Enitan. (The six month time limit for prosecuting him is in any event long since expired: Criminal Justice Act 1988 section 39.) However, whether spanking Enitan with a slider was acceptable parental behaviour or not is an important question in these family proceedings.

4. The distinction can be seen most clearly in the Welsh legislation. After abolishing the defence of reasonable chastisement in both criminal and civil cases, the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 provides in section 1(3): "Nor can corporal punishment of a child taking place in Wales be justified in any civil or criminal proceedings on the ground that it constituted acceptable conduct for the purposes of any other rule of the common law." The consequence is that the Family Court is required to treat any form of physical chastisement as unacceptable behaviour by a parent in Wales from 21st March 2022, when the Act came into force.

5. By contrast, in England the legislature in section 54 of the Children Act 2004 determined that in England reasonable physical chastisement of children was (subject to certain exceptions) acceptable. This remains the position.

6. Accordingly the proposed ground of appeal that I wrongly imported criminal law concepts into the current case has no reasonable prospect of success.

7. I have considered whether this is a case where there is some other compelling reason for granting permission to appeal under FPR 30.3(7)(b). The relevance of the reasonable chastisement rule in family proceedings is a potentially important question, which might perhaps stand to be considered by the Court of Appeal. In the current case, however, the determination of the point would be largely academic. If father's behaviour had occurred in Wales after 21st March 2022, then the three incidents of his striking Tobe in around 2020 or 2021 would fall in the lowest category of physical abuse and is likely to have only a limited impact on a welfare assessment carried out in 2024.

8. I therefore refuse permission to appeal on this ground.

9. Mr Porter also sought to argue that my general findings of fact, and in particular my finding that mother consented to sex on the occasion she alleged she was raped, were wrong. Appeals against findings of fact are notoriously difficult to bring, unless some specific errors can be identified. Mr Porter submitted that it was a "rape myth" to

suppose that a woman would always know she had been raped. There are of course cases where the victim is asleep or under the influence of drink or drugs when she has sex. That is not alleged in this case. Mother's case was that she did not consent and knew she was not consenting. For the reasons I gave in the substantive judgment I did not accept her evidence on this. This ground of appeal has no reasonable prospect of success and there are no other compelling reasons to grant permission to appeal.

10. Accordingly, permission to appeal was refused.