



Neutral Citation Number: [2020] EWHC 947 (Fam)

Case No: BM19C00252

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7/05/2020

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

Between :

A City Council

Applicant

- and -

M

1st Respondent

-and-

F

2nd Respondent

-and-

C

3rd Respondent

(a child acting by her Guardian)

Matiss Krumins for the Applicant

Timothy Bowe (instructed by **Carol Clelland of Cartwright King Solicitors**) for the **1st Respondent**

Patrick Wainwright (instructed by **Charlotte Raybould of Anthony Collins Solicitors**) for the **2nd Respondent**

Sarah Tierney (instructed by **Zoe Brettle of Brendan Fleming Solicitors**) for the **3rd Respondent**

Hearing dates: 2-6 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and

time for hand-down will be deemed to be 10am on 7 May 2020. A copy of the judgment in final form as handed down will be automatically sent to counsel shortly afterwards.

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THE HONOURABLE MRS JUSTICE JUDD DBE

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.

The Hon Mrs Justice Judd :

Introduction

1. In this case I am concerned with a little girl, C, aged two and a half. Her mother is M. Proceedings were commenced in September of this year when C was made a ward of court and F was ordered to return her to this country from X country. She was returned by him on 26th September, when care proceedings were commenced and she was placed in foster care.

Background

2. The mother was born in X in 1999. The father was born in either 1981 or 1984, also in X. He has been living here for some years and became a British citizen in 2008. He met the mother when she was sixteen as her family lived next door to his in X. The parents entered into an Islamic marriage in 2015, and came to live in this country in 2017. C was born here.
3. The local authority became involved with the family in April 2019 when the mother complained to the police that she and C had been assaulted by the father. She alleged that the father had shaken C and thrown her against a wall at Stansted airport, and that he had assaulted her (the mother) that evening and the following day. The father was arrested and interviewed under caution where he denied the allegations although he did say that there had been an argument where he had pushed the mother, and indeed that she had pushed him. After the father was released, the mother would not make a statement and the police decided they did not have enough evidence to prosecute. The local authority began a section 47 investigation during which the mother alleged that the father had been abusive to her during her pregnancy and afterwards, including physical and verbal abuse, financial and coercive control. She said she had withdrawn her complaint to the police because she feared repercussions and that she would be deported.
4. C was made the subject of a child protection plan, and a 'sig marker' was placed on the home address. The mother was referred for domestic violence support and the father to a perpetrator programme.
5. In June 2019, the family decided to go on holiday to Turkey. The social worker warned the mother of the risks involved in this, and that she might be prevented from returning to the UK. The mother told her that she believed it was for a holiday and that she wished to go. The social worker's warning proved to be prescient as the family did not return on the date expected. The local authority reported them missing to the police on 18th June and it was assumed that they had gone back to X. Messages sent by the social worker to the father went unanswered until 26th June when the father sent the social worker a message to say that the mother's mother had become critically ill and that they had returned to X.
6. On 28th July, the father came back to the UK and told the social worker that the mother and C were in X. He is said to have told the social worker that he had come back to renew the mother's visa and that he intended to go back and collect her and C on 6th August. In the meantime and without the father's knowledge, the mother contacted the police and social worker by web chat, and told them that C had been removed from her and that she (the mother) was in hiding as the family had made

threats to her. She said that her phone had been blocked and she was using that of a relative. She spoke to the social worker by video on 5th and 7th August. On 28th August the local authority applied to make C a ward of court. Directions were made on 30th August and on 5th September the father was ordered to return C to the jurisdiction. He did this on 26th September, and C was taken into foster care on 27th. She has remained there ever since with direct contact to her father and contact with her mother by Skype.

The current situation

7. C remains in foster care pending the outcome of these proceedings. The mother remains in X. She is unable to return to this country because her visa has expired, but also because she is the subject of proceedings in which she is accused of adultery. She was originally living with family but was then held in custody after her arrest in October until December 2019. Since that time she has been living at a confidential address. Her trial was due to take place at the beginning of this week but for reasons which are not clear it has been postponed until May. The father is in this country although he had travelled to X for the hearing and returned after it was postponed.

Findings sought

8. The local authority is seeking findings in these care proceedings that the father was violent to the mother, and that he has been physically and verbally abusive to her, as well as coercively controlling, since 2017. It also seeks findings that the father was violent to C in April 2019 by shaking her and throwing her against a wall at Stansted airport.
9. Findings are further sought that the father stranded the mother in X by failing to renew her visa, that he separated the mother from C, and that C suffered significant harm as a result of sustaining a burn which was first seen when she was taken into foster care at the end of September. The burn is said to have been sustained at a time when the father had assumed responsibility for her care, and that he failed to protect her.
10. Finally, findings are sought against the mother that she failed to protect C from domestic violence, and by going to X in breach of the Child Protection Plan.
11. The findings sought by the local authority are largely based on the evidence of the mother (although they have evidence of their own from the social worker which they believe corroborates what the mother has said). The mother maintains her accounts of violence by the father to herself going back over two years and to C in April last year. She states that she was tricked into going ‘on holiday’ to Turkey in June, and then into going to X, the father having told her that his own mother was ill. She does not accept she failed to protect her daughter, pointing out the very difficult situation in which she found herself. She says that the burn to C was sustained during a period of time when she was being kept away from her, and that she does not know how it was caused.
12. The father denies any violence to the mother or to C, or that he was controlling. He also denies ‘stranding’ the mother, saying that it was she who decided to abandon the marriage and C when they were in X. He says that the burn was caused in the mother’s care, and that he saw it for the first time when he went back to X in August.

He immediately took X to the doctor. He said he asked the mother for an explanation but she was not interested and said that she did not know.

The law

13. In determining factual matters, the burden of proof lies on the individual or body which is seeking findings, in this case the local authority and the mother. The standard of proof is the balance of probabilities. There is a useful summary of the principles by Baker J in *Re JS [2012] EWHC 1370 (Fam)*.
14. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (*see R v Lucas [1981] QB 720*).
15. In *Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3*, Jackson J, after citing Baker J above, added this, “ To these matters, I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith”.

Evidence

16. I have read all the papers provided to me in the case, and have also heard oral evidence from the social worker, the mother and the father.
17. I heard the mother’s evidence by Skype on the third day of the hearing. Given the difficulties there had been with the use of the video link it was very pleasing indeed that Skype worked so well. I could see and hear the mother clearly, and I believe she could see and hear well too. Many complainants of domestic abuse will give evidence over a video link in the court building rather than in court, and I have to say that I thought the quality of this video link – from half way across the world was as good as if it had been in the next room. The mother was pressed firmly (but entirely properly) about her evidence by Mr Wainwright on behalf of the father, who put it to her that she had invented her claims of violence and abuse against him (save for one episode of pushing with the father said was mutual). It was also put to her that she had decided quite by herself that she wished to abandon her daughter and husband in favour of a new man, and that her claim that she had been threatened, stranded in X and separated from her daughter by the father and the family was false.

18. The mother's evidence in response to this was firm, clear, and consistent with what she had said to professionals last year and also in her written evidence. She maintained that the father had been violent and controlling to her during her pregnancy and afterwards, and that he had been violent to C and herself in April. She said that she had been tricked into going to Turkey and then to X. She denied she had ever said that her mother was ill, or indeed that her mother ever was ill at all - she had met them at the airport at X when they arrived from Turkey.

The father

19. The evidence of the father as told to the local authority and the police was that the marriage was a happy one until April 2019. He specifically told the police in his interview that there had never been any problem in the marriage and that they had been very happy – things were 100% ok as he described it. In his police interview he said that the mother had been 'making jokes' and messing around when they arrived back at Stansted airport, and that C had run in front of a car, making it necessary for him to grab her and tell her off, but he did not describe any argument there. The following day he and the mother did have an argument after she spoke to her family, and wanted to go home to X. They pushed each other and he prevented her from leaving the home. That was all.

20. In his statement for these proceedings the father said that they had left the UK for a pre-planned holiday to Turkey in June, and that they had only gone back to X because the mother said that her own mother had been taken ill (this fits with the message he sent the social worker but not with the mother's evidence). He maintained that the reason he came back to the UK on 28th July was to renew the mother's spousal visa, but that he was told when he was here that he could not do so without the mother's fingerprint. He says that the mother told him that she had started a new relationship and that in August she said she no longer wanted anything to do with him or C.

21. In his statement dated 10th December 2019 the father said that he returned to X in October, and that the reason he did so was 'I was deeply concerned by the lies the mother had been telling about me both to the authorities here in the UK and to the authorities in X. I felt it was important to inform the authorities in X of these lies and of her new relationship because that is how the system works in X'. In November he travelled back to X for a court case where he said he was asked if the mother had committed adultery and that he replied she had admitted that to him. He said that when he instigated proceedings for divorce there he had cited the reason as being her adultery. That led the court to instigate an investigation into this and to arrest her.

22. In his oral evidence the father said that he had not told the social worker about the meeting on 26th July (where there was a family meeting and the mother signed a statement saying that she had betrayed him) when he came to England at the end of July because he believed that there was still hope for the marriage. He agreed that he had initiated proceedings for the divorce in X a few days after the wardship application was issued in this country but denied that there was any link; his reason was that the mother had not done anything to initiate divorce proceedings herself as promised.

23. The father maintained throughout his evidence that he held no grudge against the mother; indeed he believed that she should play a part in C's life despite the fact that

she had given the child over to him. He said it was the mother who had wished to go to Turkey and then X, and had not wanted to accompany him to England to renew her visa in early August. He denied being upset or angry about her wish to leave him for another man, and said that he had taken no steps to discontinue the proceedings in X because the mother had not done so either. When asked, he did not know what it was that she might be able to do.

24. Although the father's manner was superficially articulate and polished, much if not most of his evidence about what the mother had said and done, and indeed about his own role in all the events, was wholly implausible.

Discussion

25. In my judgment the mother's evidence, as told initially to the social worker and police in April, and thereafter both before and after she went to Turkey and X, and then in her written and oral evidence to this court is all part of a coherent and consistent whole. The police log at F26 of the bundle notes that the mother told the police that the father had pushed S against the wall and slapped her face at Stansted airport, and that he had punched and slapped her (the mother) in April. The mother told the then social worker very much the same thing. There are some variations in the account – for example as to whether the father threw or pushed C into the wall, or held her there.
26. I listened to the submissions of Mr. Wainwright on behalf of the father about this issue with care but I am not persuaded that the variations in the account are significant. I noted that during the mother's oral evidence the interpreter took a moment to consider the translation or interpretation of what the mother was saying about this episode and then said 'held'. Individuals do not give an identical account every occasion, especially if the incident has happened quickly, and the mother's language is being interpreted.
27. The mother consistently stated that the father had hit her on both 9th and 10th April. At the visit by the social worker on 15th April the mother said that she no longer wanted to leave her husband because he was very sorry, but she did not retract the allegations, indeed she said that he had threatened to send her back to X and to keep C himself. The mother's statement for the court dated 17th October is very much consistent with what she said to the social worker and the police too, including the detail that the father's brother had been present at the assault on 10th April. There was no obvious reason for the mother to make all this up, especially when she had decided to give the marriage another go. In June she told Ms U that she felt safe whilst the local authority was still monitoring things. When the family went to Turkey and then X, the mother contacted the social worker early in August to say that she had not seen her daughter for three weeks, and she was asking for help. She has consistently continued to ask for help since this date, help to come back to England and help to get her daughter back. I do not find that the variation in how long the mother says it was since she had seen C before her first contact with the local authority in August is material, particularly as she timed the point of separation with the day of the family meeting.
28. By contrast with the mother's evidence, the father's version of events makes little sense. If he is right, the mother for no obvious reason made allegations of violence and abuse against him in April, and maintained them even when she had apparently

decided against leaving him. The father would have it that it was the mother who wanted to go to Turkey and then to X and was careless as to the visa renewal, yet when in August she had apparently decided to abandon her marriage and her child in favour of another man she was only interested in her visa application so she could return to the UK. On the father's case, at the same time as the mother was contacting the social worker in August asking for help and expressing anxiety about the whereabouts of her daughter, she was apparently in the process of engaging in a new relationship in which she was proposing to abandon her. The father's only explanation for this was that the mother was simply trying to make life difficult for him. I reject this as a motive or a possibility. I accept that the mother appeared somewhat flat at the beginning and that she did not display as much anxiety about C's whereabouts at the beginning as she did later, but I am not at all persuaded that this was because she was unconcerned. As time went by, the Whatsapp message show increased levels of distress.

29. I also think it highly unlikely that the mother's mother became critically ill much at the same time as the father's mother apparently needed a heart operation. The father makes no further mention of the maternal grandmother's grave illness once the family arrived in X. The suggestion that the mother was unwilling to come back to England in late July to renew her visa sits very badly with the rest of the evidence, and I also think it highly unlikely that the mother would have been so open in X about wishing to leave the father because she would have realised there could be serious repercussions for her if she did so. The father's suggestion in the witness box that he was unaware as to the consequences of an admission of adultery in X was simply not credible .
30. There are further question marks about the father's evidence, for example why he did not see or reply to any of the social worker's messages between 16th and 26th June, why he did not tell the social worker about the meeting on 26th July, why he was so relaxed about the impending expiration of the mother's visa, and very significantly, why he lacked curiosity about the causation of a very worrying injury to his daughter, thought to be a burn mark. I reject his evidence that C was in the care of her mother then; if she had been, particularly given her apparent statement to him that she was abandoning her, he would have been very worried about it and would not have let the matter rest as he apparently did. An act of abandonment by a mother who was the primary carer of her two year old child to pursue a new relationship (which seems to be what the father is suggesting) is an act of rejection. If at the same time as doing this the mother expressed indifference to an extremely painful injury her daughter had suffered in her care, it would place serious question marks as to her fitness to care for C.
31. I reject the father's evidence entirely on this point and find that the mother is telling the truth. As the father describes these events, they came out of nowhere from a previously loving mother, and if they were true he would have been outraged. I find that it was the father who removed C from her mother on 26th July and refused to allow her back. This means that C suffered this injury after being removed from her mother's care.
32. I am driven to the inescapable conclusion that the mother's removal to X in June was part of a deliberate plan by the father, as a consequence of her complaints to the

authorities. She was tricked into going to Turkey and her phone was removed from her. Her visa was allowed to run out. When she was in X she was put under pressure by both sides of the family to say she had betrayed the father, and C was removed from her. Shortly after that she managed get hold of another phone to try and contact the local authority (via the police) here. When the wardship application was launched as a result of the mother's contact with the local authority the father reported the mother to the authorities there, causing her to be arrested, and then he made more complaints in October. Since that date he has done nothing to withdraw his complaint or the proceedings and as a result his protestations that he thinks the mother should have a role in C's life ring extremely hollow.

The allegations of physical abuse

33. I accept the mother's evidence that the father lost his temper with C on 9th April, handled her roughly by grabbing her and holding or pushing her up against the wall. I also accept that he slapped her. Although it was a distressing episode, it was over quickly, and C was not injured. I also accept the mother's evidence that the father assaulted her, both on 9th and 10th April and this is what led her to call the police. The father's suggestion that the mother had sustained a cut to her leg falling over when they were out on another occasion was untrue; she had sustained it because he kicked her.
34. I also accept the mother's evidence that the father was physically abusive to her earlier in the marriage including when she was pregnant, and that he was controlling of her, not allowing her to spend much money or have much freedom. Her situation, as a women much younger than him, speaking little of the language and without her own family, made her vulnerable.
35. I do not make any finding about the mark to C's forehead allegedly caused by the father by accident when trying to stab the mother. The local authority did not seek such a finding and I think it would be unfair to the father were I to do so. In any event the photograph is of poor quality and the allegation was made late. I do not say I disbelieve the mother, although even if I did consider that the incident had been exaggerated, it would not undermine my overall conclusions about the credibility of the other allegations.

The burn

36. I have already said above that the mark to C is a worrying one. The medical evidence is that it is a burn. I have already rejected the father's evidence that C was in her mother's care when it happened, and it follows therefore that she was either being cared for by relatives or the father himself (albeit it is right that there is only a small window of opportunity between his resumption of her care and the doctor's appointment on 17th August). The local authority did not seek a finding in terms that the burn was non-accidental although the medical report says that this is likely in the absence of any explanation as to how it happened.
37. I am sure that the father is not telling the truth about the burn. No doubt this is because of his pretence that C was being cared for by her mother. If the burn was there when he picked C up from relatives on 16th August I am sure he will have noticed and asked for an explanation. If one was not forthcoming he would have demanded one. If she was in his care, then he knows how it happened. My finding is

that C suffered a burn in the care of either her wider relatives or the father. C either sustained the burn as a result of negligence (she is only two and should be being supervised) or it was inflicted. Either way, she suffered significant physical harm as a result of care given to her, not what it would be reasonable for a parent to give. The father knows whose care she was in, and he very likely knows what happened to her, but he has chosen to conceal it and blame others.

Failure to protect

38. The local authority has alleged that the mother failed to protect C from domestic abuse and violence, and by going to Turkey in circumstances where she had been warned she may be prevented from being able to return. Whilst I understand why these allegations have been made, I am not prepared to make these findings. They are not required in the sense that the threshold criteria are amply met in this case, opening the gate to the making of public law orders should they prove to be necessary. This mother has been the victim of domestic abuse in the wider sense of the word, in circumstances where she was vulnerable, in a country relatively unknown to her, and where she did not speak the language. She lived with the father and his brother. In this situation the mother's ability to stand up for herself and her daughter was badly compromised, and I do not think it is right or necessary to label her or suggest that she was to blame. The question for this court is whether or not she can protect her daughter if she is to resume her care, and I think this would be better framed as a risk that C will suffer significant harm in the future, which can be addressed at the welfare stage of the case.