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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND FAMILY DIVISION (OFFICE OF CARE AND PROTECTION)

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

Name	Year of Birth
MALE CHILD AB	2005
MALE CHILD CD	2008
FEMALE CHILD EF	2012

Between:

A HEALTH AND SOCIAL CARE TRUST

Respondent

and

MOTHER GH

Respondent

and

FATHER IJ

Appellant

Before: Stephens LJ, McCloskey LJ and McAlinden J

McAlinden J (delivering the judgment of the court)

Anonymity

All of the parties in this judgment have been anonymised so as to protect the identity of the children to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to their identification or the identification of their adult relatives.

Introduction

[1] This is an appeal by the father IJ against the fact finding judgment of O'Hara J delivered on 31 July 2019. At the conclusion of the hearing we dismissed the appeal and we now give our reasons. The case involves three children, two boys now aged respectively 14 and 11 and a girl 7 now years old. Until recently, the two boys lived with their father with little or no contact with their mother. The eldest boy, AB, is now in a foster placement with supervised contact with his parents and siblings. The second boy, CD, is now in residential care on foot of a Recovery Order. The eldest boy AB is receiving treatment for a serious illness. The girl EF lives with her mother with little or no contact with her father. Private family law proceedings were commenced in November 2015 by the mother GH against the father IJ when she returned from a North African country to Northern Ireland with her daughter EF. She sought a residence order under which her sons would live with her. They had been brought back to this jurisdiction a short time earlier by their father. Since November 2015, there have been protracted disputes which have blighted the childhoods of all three children. In the opening paragraph of his judgment O'Hara J commented that the three children have been denied the chance to live together as a result of which they have been emotionally damaged. In addition he stated that they had been used as ammunition in a destructive war between their parents.

[2] The Trust became involved in the proceedings when the Judge directed the Trust to prepare a report under Article 56 of the Children (Northern Ireland) Order 1995. Such a report is sought when "it appears to the Court that it may be appropriate for a care or a supervision order to be made in respect to" children. Interim Care Orders were subsequently made by consent in respect of all three children on 21 December 2016. The Trust took the view that it could not take a decision on what public law order, if any, should be sought in respect of the three children until the Court made a ruling on a series of disputed issues. O'Hara J conducted such a fact finding hearing over a period of 28 days during which he heard evidence from the mother GH, the father IJ and a third witness KL who was the father's accountant and a family friend.

[3] The judgment of this Court has been anonymised. The initials used are not the real initials of any of the individuals. Nothing should be reported which would identify any of the children or any member of their extended family. Any report of this judgment should make it known that the names used are not the real names of any of the individuals.

(a) The children, 2 boys and a girl, are referred to as AB, CD and EF, respectively.

(b) The mother as GH.

(c) The father as IJ.

(d) The third person to give evidence before the lower Court who was the father's accountant and a family friend is referred to as KL.

(e) The doctor who examined GH in early 2016 following her complaint to the police of rape is referred to as Dr M.

Appearances in this court and at first instance

[4] In the lower Court, Ms Rosanne McCormack QC appeared for the father along with Ms Marie Claire McDermott. Before the Court of Appeal Ms Marie Claire McDermott appeared on behalf of the appellant father. Ms Noelle McGrenera QC appeared for the mother along with Ms Sarah Walkingshaw. Ms Suzanne Simpson QC appeared on behalf of the Trust along with Ms Jill Lindsay. Mr Charles MacCreanor QC was instructed by the Guardian ad Litem on behalf of the children CD and EF and Mr Andrew Magee was instructed by a Guardian ad Litem on behalf of the child AB. The Court is appreciative of the efforts of Counsel to ensure that this appeal proceeded as scheduled on 3 December 2019 including their industry in submitting detailed and informative skeleton arguments to the Court in what became a very tight timescale given the failure of the appellant to apply for legal aid in an appropriate time scale leading to delay in the preparation of the appellant's case.

Agreement as to significant harm

[5] In this appeal, all the parties agree (and were correct to agree) that, for the purposes of Article 50 of the Children (Northern Ireland) Order 1995, all three children are suffering and are likely to suffer significant harm. It is also agreed that the harm/likelihood of harm is attributable to the care given to the children, or likely to be given to each of them if the order were not made, not being what it would be reasonable to expect a parent to give to each of them. The only issue is who has caused this harm. Each parent blames the other. The Judge found that both were responsible for the harm although to differing degrees. The father IJ appeals against certain central findings of the Judge.

The first instance hearing and the legal aid application for this appeal

[6] The first instance hearing of this case took place over a period of 28 days, from 26 February 2018 until 15 November 2018 when oral submissions were made to the Court. Reserved judgment was delivered on 31 July 2019. A Notice of Appeal was lodged on 20 August 2019. The appellant's legal aid application ought to have been made either prior to or at the same time as the Notice of Appeal was lodged. It was not. Rather it was only made on 8 November 2019 and this has to be seen in the context that the appeal was to be heard on 3 December 2019. The Court was first notified of difficulties with the appellant's legal aid when an e mail was directed to the Court on 21 November 2019 requesting that the hearing date be vacated as legal aid for the appeal had been refused and an appeal of this decision had been unsuccessful. The Court reviewed the case on 26 November 2019 and the parties

were informed by the Court that the appeal should be concluded promptly so that it did not adversely affect care planning for the three children. The Court made its own enquiries of Legal Aid and the Court was informed that Mr McDonald of R P Crawford & Co., Solicitors had only applied for legal aid on 8 November 2019. Legal Aid had been refused on 14 November 2019 but a request for a review of this decision had only been received on 2 December 2019. This review was successful and Legal Aid for the appeal was granted on that date.

[7] The request for an adjournment of this case on 21 November 2019 was misleading in that the Court was not informed that Legal Aid had only been applied for on 8 November 2019. No appeal had been lodged when that correspondence was directed to the Court and a review was only requested on the day before the hearing date. The delay in applying for legal aid is inexcusable and the failure to deal with the Court with the utmost candour is inexcusable. This is particularly so in a case where the occurrence of ongoing harm to three children is accepted by all parties and care planning requires the determination of this appeal.

Matters not in issue in this appeal

[8] We note that although this is an appeal by the father IJ against the fact finding decision of O'Hara J, a number of highly relevant findings/conclusions and summaries of the parties' cases have not been challenged in this appeal. Counsel for the appellant specifically confirmed when questioned by Stephens LJ that there is no appeal brought in respect of the conclusions of O'Hara J in paragraph [6] of his judgment, commencing on the second line to the end of that paragraph.

> "[6] …IJ is (or was) a surgeon. He repeatedly asserted that he has vast medical knowledge and is of superior intelligence yet for a long time his main income was secured by running a guest house in Belfast. Despite all the evidence I heard and the documents I received I have no clear picture of when he last worked as a surgeon or why he spent so much time running a guest house when he is qualified to do much more. He is approximately 20 years older than GH and has three children by a previous marriage with whom he has minimal contact."

[9] There is no appeal in respect of the summary of the assertions made by IJ which are set out in paragraph [8] of O'Hara J's judgment.

> "[8] …He added that despite this and their shared Muslim beliefs GH had already offered herself to him sexually more than once, that she drank alcohol and that she smoked. On his version they only married on 29 January 2005 in England at an event which he said he arranged as a surprise for her."

[10] There is no challenge to the Judge's conclusions set out in paragraph [23] of the judgment.

> "[23] IJ on the other hand was as aggressive, confrontational, dishonest, insulting and manipulative a party and witness as I have heard. He displayed a shocking arrogance about his own abilities and achievements and about what he regarded as the many failings and weaknesses of others."

[11] There is no challenge to the Judge's conclusions set out in paragraph [24] of the judgment.

> "[24] IJ's conduct delayed and protracted this hearing. He had multiple changes of legal representation; at one point an English barrister who had provided a witness statement for him sought to be his counsel. IJ also provided a huge volume of documents right up to the closing days of the hearing, a transparent attempt to manipulate the court as gaps in his story were exposed. On some occasions he failed entirely to come to court. When he was asked questions he frequently launched into speeches and then complained when he was directed to answer the original question."

[12] There is no challenge to the Judge's conclusions set out in paragraph [27] of the judgment.

> "[27] Typically witnesses, even the worst witnesses, try to put on some display of respect for the court. IJ's failure or refusal to do so suggests strongly to me that outside the court arena he is even more belligerent and beyond control, especially towards women."

[13] There was no challenge to the Judge's conclusions set out in the first two lines of paragraph [31] of his judgment which refer to assertions and allegations made by IJ as set out in paragraph [30] of the judgment.

> "[30] IJ has portrayed his wife, the mother of his youngest children, as sexually depraved. He testified that she had perverted sexual desires which she tried to draw him into but he declined. He also described her as a "fake virgin" who had surgery before the marriage to suggest that until then she had never had intercourse when in fact she had.

> [31] I reject these allegations about GH. I also reject his allegations that she drank alcohol and smoked…"

[14] Although Ms McDermott confirmed that IJ does not accept the conclusion of the Judge set out in paragraph [50] of the judgment, these specific findings are not the subject of an appeal.

> "[50] In order to cover up his violence towards his wife IJ has invented a series of lies about her:
>
> - That she became involved in fights with customers at the guest house
> - That she is a prostitute and drug dealer
> - That she and KL had an affair
>
> All of this is untrue and is known by IJ to be untrue."

[15] Further, it was confirmed by Ms McDermott that no issue is taken with the approach adopted by the Judge in relation to the standard of proof. In paragraph [17] of his judgment O'Hara J indicates that he was "sure" IJ was lying about the episode referred to in that paragraph. In paragraph [31] the Judge uses the phrase "on balance". Subsequently, in paragraph [36] he uses the phrase "more likely than not". It is conceded by Counsel for the appellant that nowhere in the judgment does the Judge use a test that is too low or is prejudicial to the appellant. Indeed, there are examples where a higher standard of proof is applied and satisfied.

The central basis of the appellant's challenge to the factual findings

[16] Ms McDermott indicated that the appellant's challenge was in relation to the Judge's reasoning rather than the standard of proof test he had applied. In essence, the case being made by the appellant is that throughout the judgment O'Hara J displayed an intense dislike of IJ to the extent that he was in effect biased against him. He regularly commented on his lack of empathy. The basis of the appeal in this case is that O'Hara J formed an adverse view of the appellant's character and he inappropriately let this colour his judgment in his findings of fact. It is alleged that the Judge failed to conduct a neutral forensic analysis of the evidence. In essence, it is contended that the evidence should have been assessed on the balance of probabilities and not on the balance of personalities and that the Court indulged in speculation rather than drawing reasonable inferences.

The Judge's factual findings

[17] The central factual findings of the Judge are as follows:

(i) Since November 2015 there have been protracted disputes between the parties which have blighted the childhoods of all three children. They have been denied the chance to live together as a result of which they have been emotionally damaged. In addition, they have been used as ammunition in a destructive war between their parents.

(ii) IJ raped and attacked GH in January 2007 with the result that she miscarried. IJ displayed a shuddering lack of empathy about this incident.

(iii) GH was raped and brutally attacked by IJ on 10 December 2011 when she was pregnant with EF. The injuries included a left orbital blowout fracture. CD and AB saw their mother's condition immediately after this attack and were distressed by this, particularly AB, the older child. IJ went to work that day after the assaults without caring at all about how he had left his wife. He refused to get his wife medical treatment and threatened he would kill her if she told anyone. IJ proceeded to invent a series of lies about GH in order to cover up his violence. He contrived to have an entirely false entry made in his own medical records to cover up his own violence.

(iv) IJ assaulted AB in or about 2010 by inflicting "a ferocious slap across the face" upon him. This came out of the blue. There was no apparent reason for it. IJ has used violence in private and probably more than once in respect of the children.

(v) All 3 children have been damaged to a severe degree (more than in most cases) by the separation of their parents and by the subsequent conduct of the parties. Both parties are to blame for this situation, although more significant blame should be attached to IJ than GH.

(vi) IJ controlled, denigrated and lied about GH in the most appalling way before their separation and, in particular, since October 2015 when he returned to Belfast with the boys. GH has been the victim of extreme domestic violence.

(vii) GH has exaggerated to some degree some of her allegations against IJ including and to the extent that her claim that IJ threw the child AB against a wall when he was only a few weeks old was not established nor was her allegation that IJ "cannot go without rape."

(viii) IJ has invented a series of lies and false allegations against GH. He has tried to blacken GH's name by making the most personal and insidious false allegations against her. He has also done that in the knowledge that in the Muslim culture these allegations will be especially damaging.

(ix) IJ is an aggressive, confrontational, dishonest, insulting and manipulative individual. He displays a shocking arrogance about his own abilities and

achievements and about what he regarded as the many failings and weaknesses of others.

(x) IJ made efforts to control matters beyond the courtroom including sending GH's sister a text message which demonstrated that he intended to seek revenge on anyone who was not supportive of him, no matter how accurate their evidence.

(xi) IJ displayed a hostile attitude to social workers (about whom he complained frequently) and to experts. His conduct is strongly suggestive of even more belligerent behaviour (which is beyond control), especially towards women, outside the court arena.

(xii) IJ has used a pattern of controlling and coercive behaviour against GH.

(xiii) IJ has manipulated and abused the children.

(xiv) IJ was instrumental in GH losing contact with the boys by turning the children against their mother.

(xv) GH did not promote EF's contact with her father. She turned EF against her father. EF was influenced against her father by her mother. As a result of this, EF was unable to express her true feelings for her father.

Legal Principles

[18] It is appropriate to set out the approach to be adopted by an appellate Court in a case of this nature which is an appeal from findings of fact by a Judge who has had the benefit of assessing witnesses giving evidence in the witness box. There is no real dispute between the parties as to the approach to be adopted by the Court of Appeal in dealing with an appeal from the High Court in a case of this nature. This approach is set out in *DB v Chief Constable of Police Service of Northern Ireland* [2017] UKSC 7. Other authorities include *Re B* [2013] UKSC 33, *Re R (On the application of AR) v Chief Constable of Greater Manchester* [2018] UKSC 47 and the Northern Ireland Court of Appeal in *Leah Smith v National Farmers Union Mutual Insurance Company Limited and Robinson Services Limited* [2019] NICA 63.

[19] In *Smith* the Northern Ireland Court of Appeal stated:

> "**Review by an appellate court of findings at first instance**
>
> [31] The role of this court in relation to factual determinations made by the judge is limited. The relevant principles have been set out by Lord Kerr at paragraphs [78] – [80] when giving the judgment of the

Supreme Court in *DB v Chief Constable of Police Service of Northern Ireland* [2017] UKSC 7. Amongst other considerations is that the trial judge is in a privileged position to assess the credibility of witnesses' evidence. It is the trial judge who has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. The first instance trial should be seen as the "main event" rather than a "tryout on the road." The standard to be applied in this court in relation to a challenge to factual findings is the clearly erroneous standard with deference to the trier of fact. Lord Wilson stated in In re B (A Child) [2013] 1 WLR 1911, paragraph [53] that:

> "… where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it."

This court does not conduct a re-hearing and it is only in very limited circumstances that the factual findings made by the judge will not be accepted by this court, see *Mihail v Lloyds Banking Group* [2014] NICA 24 at [27]; *McConnell v Police Authority for Northern Ireland* [1997] NI 253; *Carlson v Connor* [2007] NICA 55; *Chief Constable of the Royal Ulster Constabulary and Assistant Chief Constable A H v Sergeant A* [2000] NI 261 at 273."

[20] It is also instructive to set out paragraphs [61] and [64] of the judgment of Lord Carnwath in *AR v Chief Constable of Greater Manchester*:

> "[61] In the light of that review, I agree …that the Court of Appeal applied too narrow a test, by asking simply whether the judge's reasoning disclosed a "significant error of principle". That expression was indeed used by Lord Neuberger, but he linked it to the question of whether the judge had "reached a conclusion he should not have reached" (*In re B,* para 88). That passage preceded and was separate from his consideration of the "standard" of review (para 91). As Lord Clarke said in *Abela* [2013] UKSC 44 the question in relation to the standard of review is whether "the judge erred in

> principle *or was wrong* in reaching the conclusion which he did" (para 23, emphasis added).
>
> [64] In conclusion, the references cited above show clearly in my view that to limit intervention to a "significant error of principle" is too narrow an approach, at least if it is taken as implying that the appellate court has to point to a specific principle - whether of law, policy or practice - which has been infringed by the judgment of the court below. The decision may be wrong, not because of some specific error of principle in that narrow sense, but because of an identifiable flaw in the judge's reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion. However, it is equally clear that, for the decision to be "wrong" under CPR 52.11(3), it is not enough that the appellate court might have arrived at a different evaluation. As Elias LJ said (*R (C) v Secretary of State for Work and Pensions* [2016] EWCA Civ 47; [2016] PTSR 1344, para 34):
>
> > '… the appeal court does not second guess the first instance judge. It does not carry out the balancing task afresh as though it were rehearing the case but must adopt a traditional function of review, asking whether the decision of the judge below was wrong.'"

[21] The Court will now apply these principles to the grounds of appeal set out in the appellant's skeleton argument as supplemented by counsel's oral submissions to the Court.

Grounds of Appeal

[22] The main thrust of the appellant's appeal is set out above in paragraph [17]. The Court has carefully considered the judgment delivered in this case and finds that the Judge's general conclusions in relation to IJ's credibility, his obstructive and delaying attitude in respect of this case and his callous lack of empathy are based on a strong evidential foundation which has been rigorously tested and analysed with scrupulous fairness by the Judge. Furthermore, this Court finds no evidence whatsoever to support the contention that the Judge's findings in relation to the second and third of these matters in any material way influenced the Judge in his assessment of the reliability of GH's central allegations of rape in 2007 and 2011.

(a) Challenge to the finding of rape on 10 December 2011

[23] In relation to the allegations of rape made by GH, it was submitted on behalf of IJ that the Judge was wrong to accept GH's evidence on these issues even though no supporting or corroborative evidence in the form of medical evidence or evidence from third parties including GH's mother was adduced before the Court. In relation to the 2011 allegation, the case made out on behalf of IJ before this Court is that although GH alleges that she was raped and viciously assaulted by IJ with the result that she received a serious facial fracture, when she attended the out of hours GP and then attended hospital, she made no complaint of rape to the medical advisors. The case put forward by IJ is that unlike the 2007 allegation of rape in Hounslow, GH could not explain the absence of a complaint to medical personnel by using the excuse that IJ was with her at all times when she was giving a history to medical and nursing staff. In 2011 IJ did not accompany GH to either the out of hours doctor or to hospital. In effect, it is IJ's case that the only reasonable inference to be drawn from GH's failure to make a contemporaneous complaint of rape is that the rape did not occur.

[24] GH gave evidence in respect of the 2011 incident. Her statements made to the police in 2016 were introduced in evidence. She was forensically cross-examined at length and in great detail by an experienced Senior Counsel, well versed in conducting rape trials both for the prosecution and the defence. Having heard GH's evidence in relation to the 2011 incident, having heard IJ's evidence in respect of the same incident and having heard KL give evidence and be cross-examined about his first-hand observations of the serious eye socket injury sustained by GH and IJ's reaction to that injury, the Judge formed the view that GH, when giving her evidence, was telling the truth about this incident.

[25] Having regard to the contents of paragraphs [37] to [50] of the judgment of O'Hara J, this Court finds that the Judge was clearly entitled to reach this conclusion. It cannot be said that the Judge was wrong to reach this conclusion. Nor can it be said that he fell into error in his approach to the evidence relating to this incident. GH made no complaint of rape to any doctor or nurse at that time. She made no complaint of assault. She stated that she had fallen down stairs. The Judge concluded that the very serious facial injury suffered by GH was not sustained in this manner which was described in the records. The Court was aware of and took account of the fact that GH did not make a complaint of rape when she returned to her country of origin. The Court could have concluded that it was not satisfied that the incident as described by GH actually occurred. However, the Court was entitled to find that her evidence in respect of this incident was truthful and the Court did so find and that finding cannot be faulted. This finding would strongly suggest that GH was under the coercive control of IJ at that time with the result that she was prepared to cover up for her husband who had inflicted serious injury upon her.

[26] The Judge did not shy away from concluding that aspects of GH's evidence were unreliable. He did not accept her evidence in respect of rape in 2005. He did not

accept her evidence that marital rape had occurred as frequently as she alleged. He doubted her evidence in relation to the number of miscarriages she had suffered. He specifically did not accept her evidence that IJ had thrown AB against a wall when he was an infant. He also took full account of the fact that GH had been cautioned for shoplifting. This demonstrates a balanced and fair approach being adopted by the Judge. He was not blind to the shortcomings in GH's evidence but having heard all the evidence, he was satisfied as to the veracity of GH in respect of this 2011 incident and this Court can find no error in his approach to the difficult task he had to perform.

[27] Before leaving this aspect of the case, Ms McGrenera QC brought to the attention of the Court the unchallenged findings of Dr M who examined GH following her complaint of vaginal and anal rape to the police in 2016. These findings are included in the Bundle entitled "Father's Discovery 1" at page 102. She read out the following passage. "No injuries were seen on examination. She was, however, extremely anxious during vaginal examination and she found it difficult to tolerate even a small speculum. This caused her obvious emotional distress and this would be consistent with the account she has given." Without attributing any positive probative value to this piece of evidence it is clear that no medical evidence was adduced before the Court which would have in any way undermined GH's evidence about the 2011 incident.

(b) Challenge to the finding of rape in January 2007

[28] In relation to the 2007 allegation of rape in Hounslow, it is GH's case that IJ struck her very forcefully on the lower back with a view to inducing a miscarriage and also raped her. In essence, it is the appellant's case on appeal that the Judge failed to provide adequate justification or explanation for his acceptance of GH's evidence in respect of the incident in 2007. GH's evidence at the first instance hearing was to the effect that IJ was with her in hospital when she attended after her miscarriage and remained with her when she was intimately examined so that she could not give an account of what had taken place. Her evidence was that although her English was quite good, IJ informed medical staff that her English was poor and that he, being medically qualified, would speak on her behalf.

[29] On appeal it was argued that the Judge was wrong to accept GH's evidence because IJ would not have been permitted to remain with his wife during an intimate examination as this would have been contrary to a medical protocol. When pressed on this issue, Counsel accepted that no such medical protocol had been produced to the Court below and that the case put to GH and to the Court of Appeal was based on (a) IJ's instructions as to the existence of such a protocol (it should be remembered that he was a surgeon and not an obstetrician/gynaecologist) and (b) the legal representatives' general knowledge of such matters. In the absence of any actual protocol in place in the relevant hospital at the relevant time, the Court considers that this challenge to the Judge's findings is groundless.

[30] A further ground of challenge was the absence of any reference to bruising on the body of GH when she attended hospital shortly after her miscarriage. Her evidence was that bruising subsequently developed on her back. In the absence of any medical evidence to support the case that in the short time between the alleged blow to the lower back, the commencement of bleeding, the miscarriage and the attendance at hospital, bruising would have clearly manifested itself, the Court does not consider that the Judge's findings are open to legitimate challenge. As with the incident in 2011, the Judge had ample opportunity to assess the credibility of GH and IJ. Both gave oral evidence and were subject to rigorous cross-examination by Senior Counsel. The Judge found GH's account of the events leading up to her miscarriage in 2007 to be reliable and this Court sees no error in the approach adopted by the Judge to the evidence. This Court does not find any failure on his part to have regard to relevant material or any use by the Judge of irrelevant material as a basis for his factual conclusions in respect of the incident in 2007.

(c) Challenge to the finding that IJ assaulted AB in 2010

[31] The challenge to the Judge's finding that IJ struck AB a blow on the face can be dismissed as groundless. The evidence before the Court was that this incident was witnessed by KL. The Judge was critical of KL in a number of respects but in relation to this incident he concluded that this somewhat reluctant witness who failed to challenge IJ in relation to the serious eye socket injury suffered by GH did provide the Court with an accurate account of what actually happened to AB. The Judge had an ample and robust evidential basis upon which to found such a conclusion.

(d) Challenge to the finding that greater harm caused by IJ

[32] On behalf of the appellant it is also argued that there was no evidential foundation upon which the Judge could legitimately base his conclusion that IJ was responsible for the much greater portion of the emotional harm suffered by the three children. It was argued that the Judge adopted a light touch approach when considering GH's contribution to this harm, whereas he adopted a heavy handed approach in his assessment of IJ's contribution and this difference in approach was borne out of his dislike/distain for IJ. Again, this challenge can be dismissed as groundless. Having carefully considered the judgment and having been referred to the evidence given on this aspect of the case, the Court is satisfied that there is no legitimate basis on which to overturn the Judge's finding in respect of the relative responsibility of GH and IJ for the harm suffered by the children.

Discussion

[33] Having heard all the evidence, the Judge concluded that GH had behaved in such a manner as to damage EF's relationship with her father IJ. The Judge also concluded that IJ had behaved in such a manner as to damage AB's and CD's relationships with their mother. This alienating behaviour by both parents benefits no one and does long-term damage to the children. However, it is manifestly obvious

from any consideration of the evidence in this case that IJ has availed of every opportunity to poison his sons against their mother. The conclusions reached by the Judge in paragraphs [28] and [29] are supported by the Trust's discoverable documentation namely a UNOCINI Report (Trust Disc 1 at page 61) and the records relating to a Pre Interview Assessment (Trust Disc 1 at page 62). There is an ample evidential basis to support the Judge's conclusion set out in paragraph [28] of his judgment that when social workers "first became involved with his family in November 2015 the following points were noted:

- IJ claimed that the boys did not want to have contact with their mother but when they saw her "they both ran into her arms and kissed and hugged her".

- The contact between mother and children "was very positive and they all engaged appropriately with each other".

- A worker in Women's Aid (where GH was staying upon her return to Northern Ireland) heard AB tell his mother on 1 December 2015 at contact that if she returned home IJ would not hit her any more.

- On the day when the boys were going from school for pre-interview assessments IJ went to the school and spoke to them. When the PIA with AB started his first words were "my mum hits me, my dad never hits me". The professionals viewed this as a clear sign that he had been coached."

[34] The conclusions of the Judge in paragraph [29] of his judgment are based on similarly firm evidential foundations. There is no legitimate basis on which to challenge his finding that:

> "This manipulation and abuse of the children has only continued since then. On occasions when he left Northern Ireland for brief periods and the mother had contact with the boys that contact was positive. When IJ returned it declined immediately and dramatically to the point where it ended."

[35] This is a horrific case and the awfulness of the harm caused to all three children is readily apparent to this Court even though it is one step removed from the consideration of the primary evidence in this case. The degree of inhumanity displayed by IJ in relation to GH is beyond comprehension. The Court considers that this appeal has served to give rise to further harm being inflicted upon the three children one of whom is suffering from a serious illness. We note that the judge concluded his judgment in the following manner.

> "[59] The three children of this marriage have been damaged to a severe degree, more than in most cases, by the separation of their parents and by the subsequent

> conduct of the parties. I hold IJ significantly more to blame for this than GH. As indicated earlier in this judgment, he brutalized GH in 2007 in London and in the presence of the boys in the family home in December 2011. He also controlled, denigrated and lied about her in the most appalling way before their separation and in particular since October 2015 when he returned to Belfast with the boys.
>
> [60] So far as the children are concerned I believe it is more than likely that the man who gave AB a "ferocious slap" when he was only 4 years old in front of KL has repeated this in private and most probably more than once.
>
> [61] For her part, GH has been the victim of extreme domestic violence even if she has exaggerated to some degree her allegations against IJ. And as he turned their sons against her, she responded unwisely by turning EF against him.
>
> [62] I see little or no prospect of any change on IJ's part. He is much too contemptuous of others to accept fault or failings which might be remedied by any form of intervention or support.
>
> [63] In GH's case there is rather more hope for the future. There is some prospect of her being able to reduce the damage which has been caused to the children already through sympathetic and tolerant parenting. This will not be easy for her or for them, and it may take some considerable time, but in my judgment it should be tried."

We consider that this was an appropriate assessment made by the judge.

Conclusion

[36] We dismiss this appeal. We affirm the order of the Court below. The order of this Court includes the specific factual findings of the first instance court.