



Neutral Citation Number: [2022] EWCA Civ 1652

Case No: CA-2022-000921

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Clare Ambrose (sitting as a Deputy High Court Judge)
FD21P00881

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 December 2022

Before :

LORD JUSTICE PETER JACKSON
LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE SNOWDEN

Re A (A Child : Findings of Fact)

Michael Gration KC and Mehvish Chaudhry (instructed by **Bindmans LLP**) for
the **Appellant Mother**
Nick Goodwin KC and Edward Bennett (instructed by **Charles Strachan Solicitors**) for
the **Respondent Father**
Joanne Brown (instructed by **Freemans Solicitors**) for the **Respondent Child**
by his **Children's Guardian**

Hearing date : 25 November 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 15 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson:

1. In the absence of some other identifiable error, an appellate court will only interfere with findings of fact made by a trial judge if it is satisfied that the decision cannot reasonably be explained or justified: *Henderson v Foxworth Investments Limited* [2014] UKSC 41 at para. 67. In this appeal from findings of fact arising from allegations of domestic abuse, including transnational marriage abandonment (‘stranding’), the appellant argues that this stringent requirement has been satisfied.

Context

2. The proceedings concern S, who was one year old at the time of the judge’s decision. His parents are first cousins. His mother is a Pakistani national from Pakistan-administered Kashmir; his father is a Pakistani and British national who grew up in England. They contracted an arranged marriage in 2014 and were married in a Nikah ceremony in Pakistan in July 2016, with the father returning to the UK the following month. He visited the mother for three weeks in early 2019. In March 2020, she was granted a spousal visa and moved to England to live with the father and his family. S was born in November 2020.
3. The mother alleges that from the time of her arrival in the UK the father abused her physically, sexually, emotionally and financially. The father’s case is that the mother has fabricated this account.
4. On 28 August 2021, the parents travelled to Pakistan, leaving S in the care of his paternal family. The father had purchased a return ticket for himself and a one-way ticket for the mother. While in Pakistan, they stayed with their respective families. On 17 September 2021, the father returned to England alone. On 18 October 2021, unbeknownst to the mother, he sent an email entitled “relationship breakdown” to the Home Office’s dedicated email address (relationshipbreakdown@homeoffice.gov.uk), attaching the requisite public statement that the relationship was no longer subsisting and describing the mother as his ‘ex partner’ and himself as S’s ‘full-time carer’. The first time the mother saw this communication was at the fact-finding hearing in February 2022.
5. The mother’s case is that the father removed her passport and ID document from her upon arrival in Pakistan and coerced her into reporting them as lost, which she did on 22 September 2021, before stranding her in Pakistan. The father denies having had the documents and says that the mother had indeed lost them.
6. The mother tried to persuade the father to help her to return to the UK. When that failed, she managed to get other support, including from the charity Rights of Women, and she took legal action. On 12 November 2021, she issued proceedings in the High Court and on that date S became a ward of court, various tipstaff orders were issued, and a non-molestation order was made against the father. On 12 December 2021, having obtained new travel documents, the mother returned to the UK. On 14 December 2021, Lieven J ordered that she should have immediate and substantial interim contact with S and listed the matter for a three-day fact-finding hearing. Since then S has divided his time equally between his parents in alternating three-week periods.

The allegations

7. The mother's allegations were grouped under seven heads: stranding, physical abuse and threats, sexual abuse, controlling and coercive behaviour, emotional and psychological abuse, financial abuse, and abuse of S. Forty-one allegations were made, referenced to the mother's detailed statements. Aside from the stranding claim, these included: controlling her movements, regular violence and manhandling, sometimes in the presence of S; burning her arm with a cigarette; grabbing her hair and banging her head against a wall, causing her teeth to bleed; locking her in a shed a number of times, with her once escaping through a window to attend to S; forcing her to have sex; not allowing her to breastfeed; controlling her contact with her family in circumstances where she did not have a telephone; not giving her any allowance and taking money she had received from his family as a gift.
8. The father denied every allegation. He alleged that the mother had falsely alleged domestic abuse as part of a plan to fabricate a false case on stranding, and that her conduct in Pakistan had been an attempt to support an immigration case for an independent visa.

The hearing

9. The hearing took place on 23-25 February 2022 before Clare Ambrose, sitting as a Deputy High Court Judge ('the judge'). The main written evidence was contained in three substantial statements, two from the mother, the first created while she was still in Pakistan, and one from the father. The judge heard evidence from the parents and from the mother's sister (remotely from Pakistan), with the mother and sister using an interpreter. A Children's Guardian had been appointed for S, but she did not participate in the fact-finding hearing.
10. On the first morning of the hearing Ms Chaudhry applied for an adjournment to allow for an intermediary assessment of the mother and to respond to the father's statement; alternatively, she applied for a number of special measures. After hearing submissions, the judge refused an adjournment and allowed most of the special measures.
11. At the end of the hearing, judgment was reserved. A draft judgment was circulated on 17 March 2022, with judgment being formally handed down on 20 April 2022. The mother sought permission to appeal, and this was granted by King LJ on 26 July 2022.
12. On 26 April 2022, the proceedings were re-allocated to a Circuit Judge sitting in the Central Family Court. The father was ordered to participate in a Domestic Abuse Perpetrator Programme but the programme provider has refused to accept him in view of his denials. A final welfare hearing has been fixed for early 2023.

The judgment

13. The judge described the procedural and factual background. She gave herself a substantial legal self-direction that included reference to Practice Direction 12J of the Family Procedure Rules 2010 and *Re H-N* [2021] EWCA Civ 448 on domestic abuse and fact-finding; *Re A* [2019] EWCA Civ 74 on transnational marriage abandonment; and *Re P* [2019] EWFC 27 and *R v Lucas* [1982] QB 720 on witness credibility.

14. In regard to domestic abuse generally and stranding in particular, the judge gave herself this direction, which rightly affirms that stranding is a very serious form of domestic abuse:

“38. These authorities make clear that domestic abuse takes many forms and may cover behaviour that looked at in isolation might not be abusive, but when taken as part of the broader picture is relevant to the child’s welfare. International stranding or abandonment is regarded as much more serious for a child than abandonment in a domestic context since the separation of the child from its parent or home will be less easily remedied, and the stranded parent is left more vulnerable, with significantly less legal protection (and also more exposed financially and culturally). The abandoning parent can exploit his stronger immigration status to assert control over the child and the other parent, even after the relationship has ended. For all these reasons it is treated as abusive within a relationship, and also as a way to end a relationship between parents.”

15. The judge then summarised the parties’ cases and described her approach to the allegations:

“54. There were 41 separate allegations, grouped under 12 main headings, and 7 different types (including stranding, physical abuse and threats of violence, sexual abuse, controlling and coercive behaviour, psychological and emotional abuse, financial abuse and abuse of S).

55. I have taken account of the law set out above, and as set out in the mother’s position statement. Here the mother alleged patterns of coercive and controlling behaviour together with specific allegations of serious violence and sexual abuse. The matter was listed without a pre-trial review to achieve a prompt listing for fact-finding. Neither side asked for fine-tuning of the issues by way of further case management. Instead, counsel carefully used the time available to address the issues raised, which were all serious. I have carefully looked at the matter alleged as a whole, and as part of patterns of behaviour, as well as the specific allegations made. The specific allegations made are set out in the schedule attached and addressed there, with further reasons provided in this judgment. I will not repeat the allegations within the body of the judgment.”

16. In the remainder of the judgment, the judge assessed the parties’ evidence (paras. 56-66), and then reached conclusions about stranding (67-76), physical abuse and threats of violence (77-86), sexual abuse (87-88), coercive and controlling behaviour (89-103), financial abuse (105), and emotional abuse and abuse of S (104, 106-108). She entered her findings in the table provided by the parties which she annexed to her judgment.
17. The outcome was that the judge found the stranding allegations to be the only allegations to have been proved. She rejected the evidence of the father on that issue and the evidence of the mother on all other issues. In order to understand how she reached that conclusion, I will trace the main features of her analysis.

18. The judge's assessment of the mother's oral evidence was as follows:

“56. I take into account that the mother gave evidence through an interpreter, and was distressed at certain stages both when giving and listening to evidence (and then took breaks). While she was naïve in some respects, she was mainly articulate, expressing strong views without hesitation, and somewhat argumentative. She would often be unwilling to give a straightforward answer, instead providing a lengthy answer that justified her broader position.

57. Overall, I considered that her demeanour in court was of limited weight going either way. It was, however, significant that many aspects of her evidence on very serious allegations were unsupported by contemporaneous evidence, or were inconsistent, or the content of her evidence was selective. For instance she had no good explanation as to why the string of messages she exhibited excluded a message that was unfavourable and inconsistent with her case.

58. The mother's primary closing submission in relation to the factual dispute on abuse was “why would the mother lie about the abuse to which she was subject” and it was submitted that the father's evidence failed to establish a plausible and believable motivation for why the mother had made up detailed allegations. However, the burden lies on her to prove her case rather than for the father to find an alternative explanation or motivation for her to have made the allegations up. There was a plausible explanation and logical motive for the mother falsely maintaining that she had been treated abusively. By the time her application was issued she knew that the father was unlikely to support her return to the UK to live with S. A strong account of abuse would justify an application for S to be made a ward of court and for orders to be made that would significantly improve her chances of returning to see her son, achieving independent immigration status and being given primary care over S.

59. While her account was detailed, the details of abuse she provided were not supported by contemporaneous evidence. The level of detail she provided about what she alleged was said and done 2 years ago (including verbatim accounts of what was said) without any contemporaneous record was somewhat implausible. A few details were said to be supported by other evidence (such as a photo of bleeding gums, a picture of a fence and a reference to a lock on a shed) but such evidence was generally equally consistent with a more likely innocent explanation.

60. Beyond the allegations that she sought findings of fact upon she also made serious allegations that the father's mother had assaulted her and S. In her evidence she also made wide ranging

and serious allegations that the father was taking and dealing in drugs.

61. Her case on stranding was supported by the contemporaneous evidence and the key element of her being deliberately left without support to return as a spouse, rather than the factual details given in her statement and oral evidence. She was genuinely hurt and angry about how she had been treated, particularly in the father disengaging from the marriage, and her being left separated from S. However, taking the evidence as a whole, the majority of her numerous, very serious allegations of physical and sexual abuse were exaggerated and lacked credibility. She showed a marked willingness to criticise the father's conduct even when there was little basis for it. She deliberately made serious allegations that I find are false, but this was probably done in response to how angry and desperate she was in Pakistan rather than as a calculated plan. The allegations (even including the matters which were accepted) did not provide a basis for making findings that she was a victim of a pattern of abusive behaviour or the serious physical assaults and sexual abuse alleged."

19. It is apparent from these paragraphs, and others cited below, that the judge only accepted the mother's account of being stranded because her account had clear external support and that she rejected all her other allegations because they were not, as the judge saw it, similarly substantiated.
20. The judge's assessment of the father's evidence was as follows:

"63. The father's written evidence tended to exaggerate the positive sides of the relationship. It appeared unlikely that the mother was treated like a princess in her first weeks of marriage, or that she was as spoilt as he suggested. More generally, the father's oral evidence was fair and realistic. On most aspects his answers were straightforward. In relation to what took place in England I considered that the father's evidence was more reliable than that of the mother. His evidence was realistic on her role in the household and explaining that she had been treated like the other women, including cooking together.

64. He acknowledged that the marriage was going through a rough patch by the time the parents went to Pakistan, and he was not wanting to eat the food she cooked and they had separate rooms. As explained below, he was troubled by some of the mother's behaviour after she arrived in the UK when she chanted words over his food on a few occasions. While his objections were vague and he appears to have given undue importance to this behaviour as a reason for the relationship breakdown, his evidence explaining that he considered that this behaviour was weird appeared genuine, and the existence of these views during

the relationship was consistent with the mother's own evidence and contemporaneous letters and text messages.

65. His account of how the relationship came to an end and what he was doing to resolve the mother's passport issues was more evasive and did not reflect the reality of the situation."

21. The judge then set out her reasoning on the question of stranding, which she described as the most significant and serious group of allegations. She rejected the mother's account of being coerced to travel without S and accepted the father's account that she had travelled on a single ticket as she might have wanted to extend her time with her family. She continued:

"69. However, the father's evidence as to his decision-making in bringing the marriage to an end, supporting the mother's return to the UK and facilitating contact with S following his return home was unsatisfactory. His own actions were more consistent with him having lost interest in the marriage by degrees, ultimately being willing deliberately to leave the mother in Pakistan and eventually making a formal decision to sever his ties once he had left Pakistan and knew she would need his support to return. On his own evidence there were problems in the marriage from at least the time that S was born. I accept that he was genuinely troubled by the mother chanting what she called prayers over his food on several occasions prior to S's birth, and that he no longer wanted her to cook for him, or indeed to eat with her."

22. The judge then considered the parents' social media communications and came to her conclusion on stranding:

"72. He left Pakistan on 17 September 2021. On his own case, he had been told on around 19 September 2021 that the mother's documents had been lost. Even assuming that he was told that they were lost (his account) it would have been obvious that these were essential to enable her to return and she would need his support in more ways than him telling her to report the loss to the police in Pakistan, and providing his ID and cash for this purpose. The messages made better sense when considered alongside the mother's case that the father had kept the passport and ID card, and told her she needed to report them as lost at the police station, and get new papers. There are repeated references in the messages to the mother asking the father directly where her passport is, and why had he taken it from her, and how her own father was still asking where her real passport was. The father knew these documents were important and would take time and money to replace. If he had thought she had lost them then it was strange how he raised no question (at the time or subsequently) as to where and how she had lost them, and what she had done to see if they could be retrieved. I accept, on the

balance of probabilities, that he kept her passport and ID card from her when they arrived in Pakistan.

73. Whether the passport were kept by the father or lost, he acted deliberately in a way to strand her in Pakistan and exploit her vulnerability (mainly on immigration status but also her financial dependence) so as to ensure that she was not able to return to the UK. The father chose not to facilitate her return on a UK spousal visa and refused to provide S's birth certificate for the purpose of her seeking a visa. His explanation was that these were unnecessary and he thought she was plotting a case of being a stranded wife. His case was that he stopped communications on 16 October 2021 because he believed that she was plotting a case of being a stranded spouse. This lacked credibility and made no sense with his case that he was providing the support she needed. In any event, it did not justify him then going on to strand her in Pakistan.

74. On his own account he offered to bring S to Pakistan knowing that he had no intention of bringing him. The father also relied on the fact that the mother had not told him that she had reported her passport missing on 22 September or had been issued with a new passport on 6 October 2021, and that by this stage she was also seeking assistance from a charity called Rights of Women. However, these matters did not justify his behaviour, and were consistent with the mother's case that he had taken away her passport.

75. I am not satisfied that the father believed a renewed passport would contain a visa (and his evidence on this was unclear) since he knew the UK visa required an application to the UK authorities. However, even if he thought that the renewed passport would contain a UK spousal visa his conduct amounted to deliberate stranding because he chose to notify the UK Home Office on 18 October 2021 that the relationship had ended, without telling the mother. His attempt to justify this on grounds that he was testing whether she was relying on the spousal visa made no sense and lacked credibility. By deliberately notifying the home office that the relationship had ended he knew that he was limiting reliance on any spousal visa. His communications and behaviour at the time suggested that he was deliberately choosing to leave her in Pakistan to fend for herself using whatever support her family could offer, with a small amount of cash from his side (around £250 on his own evidence). In his evidence and contemporaneous communications he talked of the mother using him to improve her immigration status. He was acutely aware of the weakness of her immigration status. He knew that by failing to provide assistance for a spousal visa and in notifying the home office that the relationship was over she would be left stranded in Pakistan. He would have known that

his status as her spouse enabled him to exploit her weak immigration status and lack of financial independence, and that his actions (and omissions) would prevent her entering the UK to care for S.

76. The father failed to facilitate contact between the mother and S following his return home from hotel quarantine on around about 29 September 2021. It appeared that no indirect contact was set up and he failed to justify this.”

23. In relation to the allegations of physical abuse, the judge began in this way:

“77. In relation to physical abuse the mother made serious allegations covering a wide range of time (as set out in the schedule). These were not supported by contemporaneous evidence. For example, she said that the father banged her head against a wall such that her teeth were badly knocked and the tooth continues to wobble. However there was no evidence for what she claimed as a serious, permanent, injury other than a photo that was more consistent with ordinary gum disease. An allegation of a serious cigarette burn was similarly not evidenced beyond a photo she adduced of her arm that was equally consistent with an ordinary bruise.”

24. It is more convenient to summarise and quote from subsequent paragraphs than to quote them in full. As to allegations of beating and rape during and after the pregnancy, the judge noted that although the mother had provided her own account in some detail she had failed to provide any detailed medical records to support the allegations, even though such records would, the judge thought, exist, since she was repeatedly seen by medical professionals. Her account of his having caused injury to stitches from her Caesarean section was inconsistent with the available contemporaneous medical records which indicated that the wound had become mildly infected, not that the stitches had opened up. Similarly (although the judge’s reasoning on this point is not easy to understand), the contemporaneous record indicated that she had vaginal thrush rather than an infection linked to intercourse. The judge accepted that a victim of domestic abuse may have many reasons for not reporting abuse to the authorities or covering it up and that the absence of a report may be of limited weight. However, the mother was well able to communicate in written English and her account of covering up abuse from medical professionals was not accepted:

“80. ... It was wholly implausible that if she had been beaten as frequently as she alleged (including serious injuries causing bleeds and being pushed down the stairs three times and then being kicked by the father’s mother at the bottom of the stairs) and also abused continuously in terms of being forced to do long hours of housework, and not being allowed adequately to eat or check her blood sugar levels that the medical professionals would not have picked up any injuries or deficiencies, or that she would not have raised her concern for the health of S (as well as for herself).

A message the mother had sent to the father on 1 October 2021 referring to being beaten was sent at a time when she had received charitable support and legal advice and was not sufficient to substantiate her very serious allegations.

25. As to sexual abuse, the judge noted that the mother’s allegations were of the most serious type, encompassing allegations of rape, with the worst incident in the final month of pregnancy. However, she found that the allegations had no medical support and placed reliance on the mother having sent a letter to the father in 2021 asking him to rejoin her in their bedroom, and also having sent a message on 15 October 2021 saying, “I can’t believe u thinking like this. I just wanted to live with you and my son. u r my family and want to make more baby’s ☺”. This led her to be satisfied that the father’s evidence was a fairer account and to reject the sexual allegations.
26. I interpose that the letter to which the judge referred was produced by the father at [SB196]. In it the mother expressed her love for the father and begged him to give her one chance, forgive her, and return to their bedroom. In a similar letter on the couple’s anniversary ([SB256], referred to below by the judge) the mother expressed her commitment to the marriage, saying “You and S is my life. I can’t live without you and our son... I also wanted to change myself. You just tell me what do you want see me... I am again sorry.” The judge seems to have treated these poignant letters as evidence that tended to support the father’s case. In this connection I endorse the observations of Judd J in *Re M* [2021] EWHC 3225 (Fam):

“82. The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them, and will cling to the dream of a happy family and relationship...”

27. When considering the allegations of coercive and controlling behaviour the judge gave weight to text messages between the couple. She found that, when cultural expectations were taken into account, they did not support the mother’s account. In the context of the father sending certain angry messages she concluded:

“96. The mother accepted in evidence that she recited words over his food on a few occasions as a family member had said this would help her relationship. She also admitted this to the father in a letters she wrote to him in 2021. She knew that the father was unhappy about it and she had apologised about doing it, offering not to do it again. In evidence she said it was a prayer but her explanation in the letter did not attempt to suggest it was religious. I took the view that it was not a recognised prayer, nor was it witchcraft, black magic or voodoo. It was somewhat unusual and superstitious but not intended to be harmful.

97. As explained above, the father’s evidence reflected a genuine concern that the mother was doing something weird and crazy with his food, and it bothered him. It was one of the reasons why

he fairly concluded that the marriage was going through a rough patch. While he appeared to place undue emphasis on this he had communicated the seriousness of his objections so the mother knew what was in issue, and she had acknowledged his concerns in a letter containing an apology. His position in calling her weird or crazy or calling it a “dirty mental thing” in this context was not abusive...”

Again, the judge again drew no inferences from the fact that the mother had felt driven to pray for an improvement in her relationship with a husband who had abandoned their bedroom, and to apologise to him.

28. Addressing the mother’s allegations about her treatment in the year and a half she had lived in the father’s family home, the judge rejected her claims that: her passport and identity documents had been removed on arrival in the UK (the judge found that they had been kept in an accessible drawer); her phone had been taken from her on arrival, leaving her without one throughout her time in England (described as “surprising but not abusive”); she had been beaten when the father found she had surreptitiously used a phone that a sister-in-law had passed to her through a hole in the fence between family properties (not addressed); she had been constantly made to work and prevented from going out (exaggerated, and inconsistent with the affectionate letters and photographs of outings for family celebrations). The judge expressed understanding for the mother’s feeling of isolation but found that the father’s account better reflected the impact of Covid-19 on the family.
29. As to financial abuse the mother had failed to show that she had had to hand back all money received from the father’s family. It was correct that she was financially dependent upon the father while in the UK, and that he had not encouraged her to open a bank account or given her an allowance. However, this was insufficient to establish financial abuse. Photographs showed her wearing make-up, having dyed hair, and wearing attractive clothes for social events.

The appeal

30. The mother appeals and seeks a rehearing on three grounds:
 - 1) The judge failed to consider the relevance of her finding of abandonment and stranding to the other allegations.
 - 2) There was a flawed approach to the other evidence and insufficient reasons for those findings.
 - 3) It was wrong to refuse to adjourn for an intermediary assessment and there was a failure to take account of the mother’s vulnerability when assessing her evidence.
31. It is unnecessary to say much about Ground 3. The mother’s application to adjourn for an intermediary assessment was in fact prompted by a suggestion in the position statement filed by father’s counsel and was made some time after the hearing had begun. The judge referred to the court’s duty to consider making participation directions where a person is stated to be a victim of domestic abuse (FPR 2010 rule 3A.2A) and rightly noted that this did not mean that an intermediary assessment was

automatically required. She considered the delay that would be caused by an adjournment and found that other measures could be taken to protect the mother during the hearing.

32. In my view this case management decision is not open to any criticism and in the event the ground was not pursued by Mr Gratton KC. The wider question – whether the judge gave sufficient attention to the assumption under rule 3A.2A(1)(a) that as a putative abuse victim the quality of the mother’s evidence would be diminished – can be considered alongside the other grounds of appeal.
33. A number of matters were common ground. A finding of stranding was not to be treated as a trump card that would inevitably lead to findings against the father on other matters. The finding on stranding was not on its own a sufficient basis for the welfare decision because the judge’s findings about the situation in the UK and the mother’s lies about it were also of importance for S. The parties also approached matters on the basis that the judge was not expected to examine each of the 41 allegations in detail, but had a wide discretion as to how to approach her task; for example she might examine a representative number of key allegations and then look at the picture as a whole when drawing her conclusions.
34. I would also add that, as can be seen above, the structure of the working part of the judgment began with the judge’s assessment of the witnesses. She then made her findings about stranding before making findings about the other allegations. There was no complaint about that, because the judge had to start somewhere and that was how the case had been pleaded. However, it should be acknowledged that she could equally have taken the allegations in a different order, perhaps chronological. What mattered was that she sufficiently analysed the evidence overall and correlated the main elements with each other before coming to her final conclusions.
35. Returning to Ground 1, Mr Gratton argues that, having found that the father had deliberately stranded the mother and lied about it, the judge then failed to see what the finding meant for the father’s character and credibility. When considering the other allegations, she compartmentalised the finding to such an extent that if you removed all direct references to stranding from the judgment, you would not know that it had occurred at all.
36. As to Ground 2:
 - 1) The judge’s focus was overwhelmingly on a search for corroboration at the expense of any analysis of the mother’s consistent written and oral account. There was no real engagement with why a dependent victim of abuse might not report it.
 - 2) Where corroboration was provided, it was inappropriately rejected as non-specific, and where detail was provided, it was considered excessive.
 - 3) Explanations given by the mother were dismissed out of hand: for example, she had told the court that in relation to the missing text message she had been using her sister’s phone in Pakistan and had had no part in sending the messages to her solicitor.

- 4) The judge did not reach a coherent finding about why the mother would tell such sustained and elaborate lies. At para. 58 she said that there was a logical motive for the mother falsely maintaining that she had been treated abusively, knowing that a strong account of abuse would significantly improve her chances of returning to see her son, achieving independent immigration status and being given primary care of S, yet at para. 61 she concluded that she had lied from anger and desperation, and not as a part of calculated plan.
 - 5) Overall the analysis of these fundamentally important matters was superficial and in accepting of the father's evidence as "fair and realistic" no account was taken of the inherent probabilities arising from his serious abuse and lies surrounding the stranding. Nor did she take account of the power imbalance between the parents and the mother's vulnerability when assessing her evidence.
37. If the appeal is allowed, Mr Gration accepts that a full rehearing would be necessary.
 38. Responding, Mr Goodwin KC submits that the judge had to address multiple diverse factors and her judgment was well-reasoned and sustainable. She had given herself impeccable legal self-directions, including on the need to consider the whole picture, and patterns of behaviour as well as specific allegations. She had both immersed herself in the detail and stood back and assessed the whole picture. She did not need to slavishly address every single point of detail. The court should be extremely slow to overturn findings of fact by a judge who saw the witnesses. In relation to Ground 1, it would be highly artificial to conclude that the judge did not take into account her important finding on abandonment when considering the wider allegations. At para. 61, she explicitly acknowledged the impact that one allegation might have on another when she referred to the other allegations not being proved "even including the matters which were accepted", i.e., notwithstanding the stranding. However, Mr Goodwin fairly accepted that this was the only point in the judgment where the judge made any link between the stranding allegation and the other allegations.
 39. Mr Goodwin identified fifteen aspects of the judgment as showing the judge's careful treatment of the evidence. These related to matters such as the evasive quality of the mother's evidence, the missing text message, the motive for lying, the lack of supporting evidence and the implausible level of detail. He took us to a number of the underlying documents.
 40. On behalf of the Children's Guardian, Ms Joanne Brown made submissions in support of Ground 3. I have already touched on the issue of an intermediary assessment, but the Guardian contends that the judge did not factor in the mother's vulnerability when assessing her evidence. She also points to a number of questions put to the mother that were too complex for a witness in her situation.

Determination

41. As a matter of general principle, where a court has to assess the evidence given by competing witnesses on a number of issues, it is entirely possible for it to prefer the evidence of one witness on some issues and another witness on other issues. In some cases the conclusion may even be that the first witness is telling the truth about some things but lying about others, with the reverse being so for the second witness.

Sometimes the correct finding will be a surprising one, but, provided there is an appropriately robust explanation, it is entirely open to the court to make it.

42. In this case, the mother gave a detailed account of a consistent course of seriously abusive behaviour in two countries while the father denied everything. On the face of it, there were three main possibilities for the court to consider: that the mother was broadly telling the truth, that the father was broadly telling the truth, or that each was telling the truth about some things and lying about others, there being no room for honest mistake. The judge's conclusion was the mother was lying about events in England and the father was lying about events in Pakistan, their credibility in effect running on geographical lines. On these facts that was in my view a truly surprising conclusion. Perpetration of domestic abuse is an expression of an aspect of a person's character within a relationship and the fact that a person is capable of being seriously abusive in one way inevitably increases the likelihood of them having been abusive in other ways. There is no indication that the judge acknowledged this. Instead, and despite her correct self-direction, she treated the various limbs of the mother's allegations as if they existed in unconnected compartments, so much so that I accept Mr Gration's submission about the stranding allegation and the finding about it being invisible elsewhere in the judgment.
43. This outcome arose because the judge clearly considered that the mother's evidence could only be accepted if it was corroborated. It was of course necessary for her to take a view of the parents. However, the judge's assessment of the mother's evidence is in my view vulnerable in a number of significant respects. First, although she was clearly aware of the FPR 3A.2A assumption that the quality of the evidence of a victim of abuse would be diminished, she did not make that assumption or explain why she was not making it in her assessment at paras. 56-57 (above). Second, when addressing the issue of the mother's motive for lying at paras. 58 and 61, the judge reached inconsistent conclusions about the father's (necessary) claim that it was all a plan for immigration purposes. Third, she did not interrogate the likelihood of a person who was "naïve in some respects" being capable of manufacturing such elaborate and sustained lies, whether as part of a calculated plan or out of anger and desperation. Fourth, while it was sensible to have had regard to the presence or absence of evidence from elsewhere, the judge placed unjustifiable weight on the absence of corroboration at the expense of a broader assessment that took proper account of the predicament of victims of an abusive relationship and of the inherent probabilities. In this context, I refer to the treatment of the mother's letters. Fifth, the reasons given at paras. 59 and 77 for dismissing such potentially corroborative evidence as there was were in my view superficial. Sixth, it is hard to understand the reservations expressed at para. 59 about the implausible level of detail of the mother's account of events that were all said to have taken place within the past two years and would have been memorable if true. Seventh, the judge did not take account of her own assessment that the mother had told the truth about the stranding while the father had lied about it, and factor that into her assessment of both parties' credibility on the other issues. Finally, she did not consider the possibility that the mother was giving an exaggerated rather than an untrue account of an abusive relationship.
44. In contrast, the judge's assessment of the father at paras. 63 to 65 was remarkably indulgent in the light of her findings as a whole. If her conclusion about stranding was sound it showed him to be a man who was capable of gross cruelty to his wife and grave

abuse of his son by depriving him of his mother indefinitely. The evidence of the text messages also appeared to show him crowing at the mother's apparent impotence in Pakistan, which the judge found had been brought about by his theft of her documents and sabotaging of her visa position, and it was no thanks to him that she managed to return to the UK at all.

45. These assessments of the parents permeate the judgment. They are not in my view sustainable and they do not supply the reasoning necessary to justify what was in other respects a surprising conclusion. The package of findings of fact cannot reasonably be explained or justified. I would therefore allow the appeal.
46. The consequence is that the matter must be fully reheard. It is important to state that this places both parties in a position to present their cases on all issues. The concern of this court is not that the judge should have made more findings against the father but rather that her reasoning did not justify making the mixed findings that she did. At the retrial all options will be open. Subject to listing factors that may speak the other way, I propose that the case is remitted and returned to the Family Division, at which point the previous Guardian can be reappointed.

Lady Justice Elisabeth Laing:

47. I agree.

Lord Justice Snowden:

48. I also agree.
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