

Before DDJ Nahal-Macdonald

Sitting in private 21 May 2024

Between

'HR'

Applicant

-and-

'TM'

Respondent

In the matter of a Final Hearing of a Non-Molestation Order under Part IV Family Law Act
1996

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

I. Preliminary

1. This decision follows a Final Hearing to determine facts (a 'Fact Finding Hearing' or 'FFH') listed before me on Tuesday 21 May 2024 at the Family Court sitting at Uxbridge. The FFH arises from a contested Non-Molestation Order. That Order was made on an interim basis on 4 October 2023, following an application on a without notice basis by the applicant on 2 October 2023.
2. The order was made based on written evidence from the applicant ('A') in a witness statement, in which she alleges physical and verbal abuse by the respondent ('R') on at least three dates during the latter years of their marriage. No findings were made as to the veracity of that evidence, and R denied all the allegations. The Order included the standard prohibitions, including 'not to threaten violence' and 'not to contact A'.
3. The Order was subsequently varied in one respect: to allow contact between R and A directly, only via email or WhatsApp and solely for the purpose of arranging child contact, on 16 October 2023.
4. At a hearing on 17 November 2023, R was ordered to file and serve a statement in opposition and failed to do so. On 5 April 2024 at a further hearing, R said that he

had not understood the imperative to serve a witness statement, and therefore had not done so. He averred that he could not read or write in English. A further Order was made on that date, directing R to file and serve a witness statement in Arabic by 19 April 2024, whereupon A's solicitors would translate it. That again, did not occur, so that I did not have a witness statement from R in the bundle, and A's written evidence was uncontroverted.

5. At the hearing today, A was represented by Mr Long of counsel and R was unrepresented. Pursuant to the prior findings of the court, in that section 31W(6) of the Matrimonial and Family Proceedings Act 1984 applied, and R would be prohibited from cross examination of A, a Qualified Legal Representative ('QLR') was appointed solely for the purpose of cross examination of A to assist the court. The QLR was Miss Chopra of counsel, who was in difficulty due to the lack of a proof of evidence or witness statement from R. As a result, I released her.
6. It became apparent that that R had attempted to send an email forming the basis of his position in lieu of a witness statement, and he showed this to the court on his phone. It was clear that he had not sent this to the other side, as he had been directed, and the email address for the court had typographical errors which meant that it did not reach the court.
7. As I result, I decided that the fairest way to proceed today was to debar R from giving evidence, absent a properly filed and served witness statement, and prohibit him from asking questions of the witnesses, but to instead attempt to draw appropriate questions as to his position from the email which I assisted him in resending to the court.
8. R was assisted by an interpreter, as English is not R's first language. The court heard from A and R and from a third-party witness on behalf of A, a friend who purportedly witnessed the one of the most recent incidents. I had the benefit of submissions from Mr Long and the respondent. I also considered third party evidence including police reports.
9. At the outset of the hearing, R spoke with counsel for A and seemed likely to concede the continuation of the Order on a "no fault basis". I made enquires of R and it was clear he completely denied the allegations, did not understand the gravity of them, and was mainly concerned with seeing their child.
10. There are currently no formal proceedings in the Children Act, and I took the view that if there were to be, *that* court would likely order a FFH anyway. On that basis, I declined to end the matter on a "no fault basis" and proceeded with the FFH.
11. I am therefore asked to decide the several allegations one way or the other, and to make consequent decisions and directions, i.e. whether the Order should remain in

place and on what terms if so. I remind myself at all times that R has denied the allegations and the burden is on A who brings the allegations.

12. I am mindful of the guidance outlined in the case of *Re B (A child) (Adequacy of Reasons)* [2022] EWCA Civ 407, where a helpful summary of the ingredients which might be present in a “good judgment” were outlined, including the reminder that “a judgement is not a summing up in which every possible relevant piece of evidence must be mentioned” [para 59].
13. Accordingly, I have attempted to adhere to a structure such that this judgment will first outline the **background and allegations** [section II]; an **analysis of the relevant law** [III]; my **impression of the witnesses** [IV]; then **findings on the evidence** in regards each allegation [V] and **conclusions** [VI]. For the avoidance of doubt, where I refer to a witness’s ‘evidence’ that may include their written or oral evidence or supporting exhibits, unless specified.

II. Background & Allegations

14. A and R met in 2002 and married in 2012. They have one child together, who is six years old at the time of writing. The child lives with A and R apparently has informal ad hoc contact, noting that R does not apparently have parental responsibility and there are currently not proceedings in respect of a formal order pursuant to the Children Act 1989.
15. A outlined in her witness statement that the early years of the marriage were good, but that a “few years into the relationship” she began to “see a different side of R” who became “jealous and controlling” and “involved himself into [her] life” and that R would try to get her phone and would control who she could speak to.
16. The **first incident** alleged dates to 3 December 2022. A said that an argument began and R “punched [her] in the back and then demanded that I [she] have sex with him” she refused. A said that R then grabbed her right arm and dragged her into the bed, and she struggled. R covered her mouth with his hand and told her not to shout or scream, then grabbed the back of her head and put her on the floor in the middle of the room. He then proceeded to punch her in the side and back of her head and she was in agony. She wanted to call the police but was unable to as R took her phone (a running theme in all the allegations). A managed to escape and run away but came back for their child. She said she was extremely scared and confused. This incident was corroborated by medical evidence, with A attending for treatment and giving a contemporaneous account to the treating physician, within the bundle. [C.92]
17. The **second incident** happened on or around 29 August 2023, in Tunisia. A went there on holiday to see her family, alone, but unknown to her, R followed and attended the family home unannounced on the pretence of seeing their child. He is

alleged to have demanded to see her phone. A said that R verbally abused her, in front of the child, asked her why she did not love him and why she wanted a divorce. He allegedly snatched her phone and a scuffle ensued where he overpowered A and threw her to the floor and punched her to the shoulder and side of her body. He threatened to take their child who was present. When family members intervened, R punched A in the jaw and A fled with her son to the airport. This incident was reported to the police in the UK on return, and the police report in the bundle largely mirrors the account in the witness statement. It is outlined that A decided not to press charges but was pursuing a divorce. She was given advice by the police as to agencies to assist. The police assessed the incident as medium risk.

18. The **third incident** was allegedly witnessed by A's friend, who also gave evidence. On 19 September 2023, it is alleged that R laid in wait for A at their child's school, jumped from bushes and chased her, trying to get into her car. The witness stated that R jumped on the car bonnet, then kicked the car hard when he was told to get off. He then approached the witnesses' car and insulted A to her, but provided items to pass on to the child. It is alleged that A was terrified at this event and that she had to hide in the footwell of the witnesses' car to evade R later on.

19. Concerningly, several incidents are alleged by A to have occurred after the making of the Order on 4 October 2023, and I will outline them here. If true, they form the basis of a complaint against the police in the view of the court, because on each occasion A was allegedly told that 'No further action' ('NFA') would be taken because the court process was said to be ongoing. The 'CRIS reports' within the bundle however suggest that A was unwilling to support a prosecution. If the former is true, it may amount to a failure and misunderstanding of their duties by the police officer in the case ('OIC'). The Non-Molestation Order made in October 2023 was unambiguous in its terms and attached a power of arrest without a further warrant. It should not have led to any confusion by an officer as to whether or not to arrest R and interview him under caution ('IUC') for instance, on the basis of contact with A which was clearly prohibited by the initial order, and indeed still prohibited by the amended order save for the caveat that if R was contacting A:

- (a) Solely via email or WhatsApp, **AND**
- (b) Solely for the purpose of arranging child contact.

Then this would be a reasonable excuse and a defence. It stands to reason, that if R was, for instance, attending at the place of work of A without notice, this would be a breach. If it is correct that the police were content to wait for a final order in this matter, that is a failure of understanding of the terms of the interim order, which carries the same weight and the same sanctions in the criminal court.

20. In regards the alleged **fourth incident**: on 26 October 2023, when the original interim Order was in place, the R is said to have interrogated their child as to who A was talking with on the phone and her movements, which made A feel threatened.

She reported this to the police, who asked for a copy of the Non-Molestation Order by email. They should already have had a copy, and I am greatly concerned that they apparently did not. The police allegedly told A that they would 'NFA' the matter as there were ongoing court proceedings.

21. On 5 November 2023, **the alleged fifth incident**, R is said to have gone to A's place of work when she was there, and demanded to see her son around 5.20 p.m. the amended Order required R to email or send a message via WhatsApp for the purpose of arranging child contact, he had not done so, in clear breach of the Order. He is alleged to have interrogated A as to why she was working and asked when she was coming back home. She felt threatened and embarrassed.
22. On 12 November 2023 the **alleged sixth incident**, R again attended at the workplace of A around 4 p.m. and demanded to see their son. He had apparently sent a message this time at 2.27 p.m. to which A had said he could not see their son as he had a playdate. She provided an exhibit to this effect. On attending, A allowed the child to go with R to the park for 35 minutes. She reported the incident to the police, who again, were said to be unwilling to take further action due to the ongoing case in the family court.
23. On 13 November 2023 R allegedly called A's friend and asked for the friend to kick A out. This made A wary and is the **alleged seventh incident**.
24. On 19 November 2023 R is alleged again to have turned up at A's place of work without permission or warning. A rang the police and asked them for 52 minutes as to what was going on. This is the **alleged eight incident**.
25. For the avoidance of doubt, it is self-evident that the criminal standard of proof is higher than in this court. R would be entitled to a full defence and is innocent until proven guilty in regard any allegation of breach of a Non-Molestation Order in that court. That does not debar me from making findings on the evidence before me, if I am able, as to alleged breaches, which would be both informative of the continuing behaviour of R and strongly supportive of the Order remaining in place if proven.

III. **The relevant law**

26. The framework as to FFH has been set out in several cases within the context of family law, not least via domestic abuse allegations within Children Act proceedings.
27. Several recent cases are instructive: including the case of *Re B-B* [2022] EWHC 108, a case where Cobb J heard a fact find on a cross-allegation basis in one of the cases remitted back for rehearing following the leading case of *Re H-N* [2021] EWCA Civ 448.

28. The most important principles in a Fact-Finding Hearing include:

- a. When the court is considering any finding of fact the burden of proof is upon the party making those allegations, which must be proven on the balance of probabilities. There is no equivalent burden on the respondent to an allegation.
- b. Any finding of fact must be based on evidence. The court can draw reasonable inferences from the evidence before it but must not speculate.
- c. The court must consider all the evidence considering each piece of evidence in the case. The court must avoid compartmentalising. In relation to each of the allegations which are proved, that may be relevant to the other allegations, but does not prove those other allegations.
- d. The focus of the court is very different from that of a criminal court.
- e. The evidence of the principal parties is likely to be more valuable than the evidence of supporting witnesses.
- f. In making the assessment of the evidence the court will reach a conclusion on the credibility of the witnesses. That will partly be based on the impression made upon the court by the witnesses' evidence, but also on all the other evidence in the case.

29. In assessing the evidence of the witnesses, I note the following points in particular:

- a. Both parties allege that the other is lying. I remind myself of the guidance given in *R v Lucas* [1981] 3 WLR 120, which enshrined the so-called Lucas test in law. The lesson is that the court should assess why a witness has lied and whether and how that was relevant to the findings that a court may make.
- b. Victims of abuse may react and present in very different ways. Some make complaints at the time, some do not. I must also remind myself that it would be unwise to assume a true complaint would always be consistent or that an inconsistent case is always untrue; much will depend upon the individual and the court must assess all the evidence before it.

- c. Attending court is traumatic. That is so not only for the person who alleges abuse but also for the person accused. That must be considered when assessing a witness.

IV. Impression of the Witnesses

30. The court heard from A and from LYM, who purports to corroborate incident three, above. The court did not hear evidence in chief or cross examination of R owing to his failures of disclosure, but he was given the opportunity to put his case via an email to the court, and lengthy "submissions" which arose to an account, with questions from the court.
31. A came across as earnest, compelling, traumatised and clear. The quality of her evidence at times appeared to be impacted by the events which she has been through, but she remained clear, consistent, and helpful when questioned via the court as to her account. Her answers were full and not evasive whatsoever. She was, in all the circumstances, an excellent quality witness of fact.
32. LYM came across as supportive of A, which is as expected. However, she remained entirely clear, coherent, and compelling and seemed open in her answers. I found no agenda or indication that she was lying.
33. R had the benefit of an interpreter and I must remind myself that the language barrier is at times a hurdle for the witness which is not reflective of the quality of their evidence, per se. I still had to note inferences from the tone, volume, speed of answers and the clarity of the responses to questions via the interpreter. R came across largely as evasive, steadfast, unapologetic and possibly annoyed. He agreed that he had been suspicious of A during the latter years of the relationship, and agreed that on several occasions, he wanted to access her phone. When I asked him if a wife was subservient to a husband, or whether suspected infidelity in a marriage was grounds to assault someone, he said no, but he did not seem convincing or convinced of this.

V. Findings on the evidence

34. In regards allegation one, the incident in December 2022, I found A's evidence live to be consistent with her witness statement in entirety, and the further information

and granular detail she provided was extremely helpful, for instance clarity over dates and times and as to the precise mechanism of assaults upon her. Under questioning from the court as to R's case, A remained clear on the key issues of the mechanism of the alleged assaults and the dates, times, and sequences of events. She explained that she had been to the police on several occasions as evidenced by the CRIS reports, but that owing to not wanting to damage the relationship between father and son, and not wanting to prejudice R's application for leave to remain, she had not pursued a criminal prosecution in the past, despite being assaulted more than once. She made it clear that in future she would press charges.

35. I was not assisted by the fact R was not giving live evidence, but as I said above, this was entirely his own doing.
36. On allegation one, I found that A gave credible evidence and I found that her evidence met the burden of proof. I therefore find it proven that on the date in December 2022, R punched A, dragged her into the bed to have sex against her wishes, then forced her onto the floor with his hand over her mouth, punched her again and took her phone.
37. In regards allegation two, the incident in summer 2023 in Tunisia, again I found A's evidence to be consistent, credible and coherent. She maintained under questions as to the fundamental points of the incident, who was present and the gravamen of the assault upon her by R.
38. R's own email on this subject failed to deal with the mechanism of any assault so I take it as a tacit denial that it occurred, but his position is unedifying, and the parties did not have the opportunity to test it.
39. On allegation two, therefore, I found it proven to the requisite standard that in summer 2023 during a holiday to Tunisia, R attended the family home of A, argued with her, verbally abused her in the presence of the child, and then took her phone against her will. When A tried to get it back, he assaulted A by punching her in the jaw.
40. On allegation three, I had the assistance of evidence from A and the third party. In terms of the key features of: a) R waiting for A at the school b) R jumping from the bushes and pursuing A c) R kicking the car as A tried to leave and d) A being in fear

after the event, A's evidence was consistent with the third party, and both of them were clear and coherent.

41. On the other hand, R's position as to this event was that he had attended on invitation and just wanted to pass presents to A. I found this to be implausible in the context of the prior issues between the two and the school. I found it hard to believe that someone who believed that another would be happy to see them would need to hide in wait for them and found the account of R to be incredible.
42. In regards incident three, therefore, I found the incident proven, in that R waited for A at the school, hid in bushes and jumped out, pursued her and kicked her car, and insulted her to the third party, causing fear to A.
43. In regards the alleged fourth incident of R interrogating the child asking about A, I was not assisted by the lack of direct evidence, as obviously the child is too young to be asked about this. However, A's evidence was unchallenged. I therefore found it proven that R interrogated the child as to his mother's private life, which would have caused concern to A and harm to the child, and is completely unacceptable in the context of this or any similar case and would be of concern to the Court and CAFCASS in a Children Act matter on that basis.
44. In regards incidents five, six and eight, these all concerned alleged breaches of the same type: R attending uninvited at A's place of work, causing her embarrassment and fear, and A gave clear and coherent evidence on each, supported at times by a clear narrative and granular detail from phone records of the times of the visits.
45. R failed to deny these attendances, and I note that he is entitled to raise a defence to them should they result in criminal charges. I found that the allegations were proven on all three occasions by reference to clear and coherent evidence from A.
46. The court had no evidence or account about allegations four to eight from the respondent, but gathered from the CRIS reports that R seems to advance that he has a friend who works with A and that would be the reason for his visits to her workplace. As this is not formally in evidence, I am not assisted by it. I conclude that the evidence of A was therefore uncontroverted in regards incidents four to eight and that her evidence was clear, consistent, and credible. I find the allegations proven: in that on three occasions detailed above, R attended at the workplace of A in prima facie breach of the Order then in effect, and on another occasion he interrogated the child as to his mother's private life, which is abhorrent and

unacceptable, not least to put a six year old in the middle of a matter like this. Finally, I am satisfied as to the allegation that R contacted a third party to put pressure on them to make A homeless, again this would be indirect contact and would be a prima facie breach.

47. Mr Long on behalf of the applicant put sensible and erudite submissions, to the effect that the supporting evidence including from the third party, the police and the NHS, broadly corroborate the applicants' case in full, and that her evidence was clear and consistent. R's behaviour is said to have been entirely inappropriate in the past and I entirely agree.

VI. Conclusions

48. I therefore conclude that the behaviour of R on all three pre-Order allegations as alleged by A was proven, and on each occasion fell well short of the standards of decency expected. On two of those occasions, I found that R directly assaulted A by punching her, and on the third, that he ambushed her and pursued her, and kicked her car.

49. Whilst I was not invited to conclude an overarching allegation as to coercive and controlling behaviour in the written statements, I find that the behaviour of R has all the hallmarks of a bullying, coercive and controlling perpetrator of domestic abuse. It is notable that there is a pattern of mistrust, suspicion and overbearing behaviour by R to A and that he expected her private life via her phone to be submissive and ancillary to his, such that her phone was constantly something he would snatch away to see her messages. It is trite to observe that this behaviour is oppressive and arguably unlawful in itself.

50. I do not know the status of any proceedings under the Children Act between the parties, but I give permission for this decision to be used in those proceedings, should there be any need to obviate a future separate FFH.

51. As a consequence of my findings, I have decided that the Order made on 3 October as varied, must continue and will do so for a further year from today, the order will therefore expire if not **otherwise varied at 4 p.m. on 21 May 2025**. I would urge the applicant to proactively progress matters with the police, and I have strongly warned the respondent as to his future behaviour.

52. A recital will be added to the Order such that both parties agree to refrain from disparaging one another in the presence of the child or from discussing this matter with the child.

53. I have deemed R served as he is present in court and I have checked his understanding of the decision and the extension of the period of the Order, but Mr Long has kindly offered to provide a clean copy of the amended Order which will be issued in turn.

DDJ Nahal-Macdonald

21 May 2024