

NEUTRAL CITATION NUMBER: [2024] EWFC 310 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 24TH & 25TH OCTOBER 2024

BEFORE HER HONOUR JUDGE OWENS

M

And

F

The parties and representation:

The Applicant, M, represented by: Ms Roberts, Counsel

The First Respondent, F, represented by: Ms Miller, Counsel

This judgment is being handed down in private on 31st October 2024. It consists of 21 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the child and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This is a Fact-Finding hearing to deal with allegations made in the context of Children Act proceedings. The parties are the two parents, M and F. The case concerns their child, A, who was born in 2018. M and F have a second child, B, who was conceived and born earlier this year, after they had permanently separated. M's application that started the current proceedings, made on 8th May 2024, only related to A.

Background

2. The parents met abroad and began a relationship in around 2007 or 2008. M moved to the UK in early 2018, whilst pregnant with A. F applied under the Hague Convention in relation to A in 2018 and those proceedings eventually culminated in a final consent order in November 2020. That consent order provided for A to spend time with F including on alternate weekends from Friday afternoon to Sunday afternoon. In July 2023 M and F agreed to vary those arrangements so that A would see F at weekends during the day only, not overnight. Overnight stays were reintroduced in February 2024. In early February 2024 B was born, though F does not have parental responsibility for her and F has had negligible contact with her. F applied for a 'declaration of parental responsibility' for her on 31st May 2024. Since parentage of B is not in dispute, it seems this is actually an application for an order for parental responsibility rather than an application for a declaration of parentage.
3. In March 2024 M unilaterally stopped A from spending time with F because of an allegation that A told her F had touched him inappropriately. A last saw F on the weekend of 16th to 17th March 2024.
4. As noted above, M applied to court for orders under the Children Act on 8th May 2024. The first hearing was on 17th May 2024 before a District Judge. The hearing was listed urgently as requested on M's application form, and thus took place before CAFCASS safeguarding was complete. The court suspended the November 2020

child arrangements order and issued directions leading up to a First Hearing Dispute Resolution Appointment (FHDRA) on 9th July 2024 before a District Judge. Disclosure was ordered from the police, social services, and A's school in connection with M's allegations. On 9th July both parties were legally represented, CAFCASS safeguarding was complete, and a Family Court Adviser was present for the hearing. The court heard submissions and determined that it was safe for A to spend time with F professionally supervised by an Independent Social Worker (ISW) (B83). The case was also timetabled to a fact-finding hearing on 16th August 2024 allowing a maximum of 1 day and the case was listed before me for the first time.

5. The sessions of supervised contact envisaged by the court on 9th July did not in fact take place as planned.
6. Prior to the fact-finding hearing on 16th August, a witness template was submitted by M's solicitors which was far from helpful and made it clear that the case could not be concluded within one day. It detailed M giving evidence for 3 hours between 11am and 1pm (a mathematical impossibility), followed by F giving evidence for 2 hours from 2pm to 4pm, with submissions and judgment following at 4pm. As a result of this wholly unrealistic template for a 1-day case, I directed that the case required two days on the time estimates provided and re-listed the matter on 24th and 25th October 2024 before me. As it was, I completed hearing closing submissions late in the afternoon of 25th October and had to reserve judgment, something I had explored as a possibility with counsel when the witness template for this two day case still gave very little (if any) time for judgment. In any event, given the issues in this case, there is merit in providing a detailed written judgment since this will inform the welfare stage of the proceedings and A may need to know what happened when he is older.
7. I have had the evidence contained in the court bundle and heard evidence from each of M and F for this fact-finding hearing.
8. As an important side note, I have been perturbed by the number of times that not only the lay parties, but also child protection specialists, used the term 'disclosure' to refer

to what A alleged. As I pointed out at the outset of this hearing, the term ‘disclosure’ is one that is not encouraged and there is clear and recent case law deprecating its use because it implies that what is alleged is true. The preferred term, prior to any finding of fact, is therefore ‘allegation’. For the purposes of this judgment I have therefore amended the detail of the allegations made by M to use to the correct, preferred term. Mindful also of the long-term impact on A of the publication of this judgment, and the June 2024 President’s guidance about publication of judgments, I have also sought to refer to the gist of the inappropriate touching allegations rather than the full detail.

Parties’ positions

9. M has made three allegations about F’s behaviour. She alleges that, towards the end of March 2024 A made an allegation that F touched him over clothing inappropriately in a sexual way, and that this took place on an unknown date before contact ceased. Her second allegation is that on another date later in March 2024 A alleged that F called that inappropriate sexual touching ‘his special little game’ and told A not to tell M. Her third allegation is that in July 2024 A told the ISW that he did not want to go to contact with F because he did not feel safe and that he did not like it when F touched him inappropriately. F does not accept that he has touched A inappropriately, or that he has told A not to tell anyone about it or called it ‘his special little game’, or done anything that would lead to A feeling unsafe with him.
10. F seeks one finding about M’s behaviour, which is that from either the end of March or the middle of April 2024 to date M has frustrated F spending time with A without reasonable excuse. M does not accept that she has done anything to frustrate F’s time spent with A.

Relevant legal considerations

11. Whoever makes an allegation has the burden of proving that it is true. They must do so to the civil standard, i.e. on balance of probabilities (*Miller v Ministry of Pensions [1947] 2 ALL ER 372*), and also considering *Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35, [2008] 2 FLR 141*. An allegation will therefore be proved if the person making it establishes that it is more likely than not that it happened. The seriousness of the allegation or the seriousness of the consequences make no difference to the standard of proof to be applied in determining the facts. Findings of fact must be based on evidence and not on suspicion or speculation (*Re A (A child) (Fact finding hearing: Speculation) [2011] ECWA Civ 12*). Evidence is also not evaluated and assessed separately: “A Judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof” (Butler Sloss P in *Re T [2004] ECWA (Civ) 556*). The court looks at the ‘broad canvas of the evidence’ and “the range of facts which may properly be taken into account is infinite” (*H and R (child sexual abuse: standard of proof) [1996] 1 FLR 80*). It is, however, not necessary to determine every subsidiary date-specific factual allegation (*K v K [2022] EWCA Civ 468*).

12. **Practice Direction 12J Child Arrangements and Contact Order: Domestic Violence and Harm** is also relevant since both M’s and F’s allegations are that a parent has caused harm or risks causing harm to A.

13. A Court can take into account the demeanour of a witness or the way in which they gave evidence, but needs to be careful in approaching this, noting that in the case of emotive evidence a truthful witness may stumble and struggle whilst giving their evidence, whilst an untruthful witness may give their evidence in a composed manner. The Court may be assisted by internal consistency of evidence and considering how it fits with other parts of the evidence.

14. The principles outlined in ***R v Lucas [1981] QB 720*** are potentially relevant to this case. Where it is alleged that a witness may be lying that there can be many reasons why someone may lie including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure, and that just because a witness may lie about one aspect of their evidence it does not necessarily mean that they may be lying about other aspects.
15. The Court is not rigidly bound to adhere to a schedule of findings (***Re G&B [2009]1 FLR 1145***), especially since issues may emerge in oral evidence which were not hitherto identified. It is also, applying the case law in ***Re H-N and Others (children) (domestic abuse: findings of fact hearings) [2021] EWCA Civ 448***, not necessarily the case that schedules of allegations are the best way to plead a case concerned with allegations of harm or domestic abuse. Hence the need for the Court to focus upon those findings which will have a material impact on child arrangements if proved.
16. The case of ***Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*** is relevant given F's allegation that M has frustrated F spending time with A and that I am dealing with allegations of abuse which are denied by F. It is also relevant in my view, given how the evidence in this case developed before me during this hearing. As was noted in ***Re S***, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. That case emphasised the importance of early fact-finding and noted (drawing on comments by the President of the Family Division in 2018) *"that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAF/CASS definition of alienation is sufficient: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent". To that may be added that the manipulation of the child by the other parent need not be malicious or even*

deliberate. It is the process that matters, not the motive” (para 8). Behaviour of a child is not evidence of the behaviour of an adult, and the fact of a child’s refusal to spend time with a parent does not automatically mean that the child has been exposed to alienating behaviours from the other parent. The fact that allegations of abuse may be found not to be true is also not necessarily sufficient to prove alienating behaviours since there can be a multitude of reasons why a court may not find allegations of abuse to be proved.

Analysis

17. M is the applicant and makes the first allegations in the chronology of these proceedings. She therefore bears a burden of proof to prove them on the balance of probability. F does not have a burden of proof to disprove her allegations. I have therefore considered M’s allegations and evidence in support first. M’s oral evidence was, on any interpretation and on her own admission, far beyond the scope of her written evidence at C1-C18 and what is contained in her schedule of allegations at A12-A13. She also alleged that she had further documentary evidence from third parties which would have been very relevant to some of the issues in the case and accepted that she had had that evidence for some considerable time but had not produced it. She was asked about the gaps in her written evidence by Ms Miller on behalf of F and told me that she had provided everything to her solicitors, and it was not her fault that they had not included everything. As Ms Miller submitted in closing, this explanation was lacking credibility when I consider that she was represented by competent and very experienced Family solicitors. It also did not explain her failure to provide some of the key details in her written witness statement or schedule of allegations, details that she freely admitted in her evidence to me were important and meant that there were gaps in her written evidence.

18. Her written statement is in fact remarkably brief in comparison to her oral evidence and considering the seriousness of the allegations. In relation to the first allegation, it

doesn't explain where they were on 23rd March 2024 when A supposedly made the allegation and contains none of the detail she provided in oral evidence about them being in the car, with B, nor even what A said in any detail. It also does not cover (as M said in oral evidence) that there was apparently a gap between when the first part of the alleged conversation, when they made other 'small talk', before she parked, and the second part of the conversation allegedly happened. M told me that she 'freaked out and was crying silently' in the first part of the conversation, but she thought that A was not aware of this despite sitting immediately behind her whilst she was driving the car. Her statement said that she *"tried to remain calm and tried not to make a big deal of it in front of A" (C1)*, which is not consistent with her description to me of 'freaking out and crying'. It is not disputed that the day before A had had a PHSE lesson which, at his age, was designed to teach children about the topic of inappropriate touching and personal space and would have introduced the topic of private areas on the body. M's evidence was that she thought this had prompted what A said, but there is no such link apparent from anything that either A apparently said to her or from what A did say to other professionals.

19. M was questioned by Ms Miller about the lack of specific detail in her written evidence, and the contrast of her more detailed oral evidence to me. M said repeatedly that she was 'exhausted, a single mother of two children without any help from F, overwhelmed and struggling' so she could not recall details. Whilst I appreciate that she was no doubt struggling to juggle her various responsibilities, and was living in temporary accommodation whilst looking after two young children, this did not explain her apparently better recall of very specific details when giving me her evidence during this hearing, compared to her written evidence or what she is reported as saying to professionals. It was also striking during her evidence to me how often she sought to portray F in a negative light despite this not being what she was asked about. She blamed him for her parenting two children alone, though it is not clear to me why she expected anything else given that, on her own account, B

was conceived after separation and in circumstances where F's involvement in A's life was limited as a result of the arrangements agreed under the order made in November 2020. She sought to emphasise that F was "one of the most majorly emotionally unavailable people on the planet", called him a "crap parent" and that she had "held him in contempt for five years". Yet she refused to accept that her message to him exhibited at C30 of the bundle was 'vicious', when it is hard to describe it as anything else. She in fact completely avoided answering the questions about this at first, more interested in telling me that, "despite all [her] efforts, [F] is getting easy parenting" and focused instead on her concerns about how long F allowed A to use a tablet.

20. M was also asked by Ms Miller about the potential impact on A of her strong feelings about F. M told me that she thought she could hide how she felt about F and that, "no matter how [she] disliked what he was doing or how bad a parent he was, [she] promoted him and encouraged contact". M's assertion that she could hide her feelings about F was at odds with her description of how she reacted when A allegedly said what he did in the car and is also at odds with her strong emotional reactions during this hearing when asked perfectly proper questions. At one point I had to stop her from aggressively challenging Ms Miller about appropriate cross examination, explaining to M that Ms Miller had to put F's case to her, and it was important that she try to answer the questions she was asked so I could hear what her answers were. I appreciate that the allegations in this case are bound to provoke strong reactions, however M's reactions seemed out of proportion to the questions being asked and seemed to me to be prompted more by Ms Miller attempting to ask about apparent inconsistencies and discrepancies in M's evidence. M's tendency to try to divert back to her criticisms of F's parenting rather than to answer the question she was actually asked also didn't help me work out what she was saying in answer to those questions.

21. M's account of what she says A told her in the car in connection with the first allegation was very contradictory even whilst giving me her oral evidence. Her statement at C1 described A telling her that F used a stroking motion up and down over clothing, and that he showed her a "*moving motion up and down*". However, her oral evidence to me was variously that A told me F had "stroked" or "touched it" and showed her "stroking", and that this conversation took place in two parts, the first part of which was whilst she was driving with A sitting directly behind her. In her oral evidence, she also added a further detail of A asking her if he "did the right thing" telling her before they parked up, and that she then asked him to show her what happened when they parked. Her schedule of allegations at A12 mentioned an additional detail of A describing F using two fingers, which is not in her written statement, and is not a detail that A himself repeated to any professional in the written evidence before me and is certainly not recorded by the school safeguarding lead in her note of what A told her and showed her on 26th March 2024 at E11. Neither M's statement, nor the schedule of allegations, contained the detail in her application at B16 that A also said that he "didn't like it". M was also very inconsistent in the terms she had used to describe A's description of where he said F had touched him. Despite what she said in oral evidence to me earlier in the hearing, and in fact in her statement at C1, M also told me that when she first heard what she says A said she "was still hoping that [this] is wrong and a misunderstanding" and when she asked him to show her she tried to have a conversation with A about "the types of situations this could have happened by accident". She also added that she was clear that A had seen something he should not have seen. None of this detail is in any of her prior written evidence, nor even in her reports to professionals at the time. In fact, her statement indicates that she immediately leapt to the conclusion that A may have suffered sexual abuse when he allegedly first told her: "*upon hearing this I was incredibly shocked and concerned that my son may have been subjected to sexual abuse at the hands of his father*" (C1).

22. Aside from the disparity between M's written evidence about what she alleges that A said to her and what she told me in oral evidence, a wholly new alleged conversation came to light during her oral evidence to me. This related to the second allegation, namely that F effectively encouraged A to keep quiet about what is alleged to have happened and described it as his "*special little game*". In her oral evidence, M told me that she first heard A describe it this way when they were on the way home from her mother's house sometime between the last week of March and the end of April this year. Her evidence about this was confused, and at times simply confusing, though. She herself said that she was "really bad at remembering things", that the details "didn't touch" for her, and that the wording he used didn't matter beyond telling her what happened and that she "didn't see the importance of the details of what he told her", beyond he was being told not to tell her which was a "massive red flag for her". She accepted that none of this was in her statement, explaining that she had so many things going on whilst trying to cover things to the best of her ability and, as a result, she "missed things". This is such a fundamental omission, though, because it is allegedly the first time that A mentioned he was told not to tell her about it and the words "special little game" appear. It is hard to accept that even a busy mother, juggling looking after two young children and in the context of an ongoing police and social services investigation into possible sexual abuse would have completely failed to mention this conversation and its circumstances to anyone. However this is precisely what M told me had happened and she accepted she did not mention this conversation to anyone until giving me her oral evidence.

23. During the period from the 23rd March when M says that A made the first allegation and while there was a police and social services investigation, M accepts that she remained in contact with F by text. Many of the texts from this period are in the bundle, exhibited to F's statement. As his statement says at C20, they "*had fairly normal conversation during this period in light of the [allegation] made*". Somewhat in contradiction to her evidence noted above about her immediate thoughts when she

says she first heard what A allegedly said, M told me about these communications that she “firmly believe[s] in not saying that which can’t be taken back and hedging bets until absolutely sure beyond reasonable doubt”. She also said that F was financially responsible for two children and when he was offering to provide for them, she would not be a responsible mother if she said no to that. Having read the messages, F’s description of them as fairly normal is accurate and it is striking that both before and after 23rd March M’s tone in the messages does not change and she continues to discuss banal details of things that she needs him to help her with, occasionally berating him about what she regards as his ‘crap’ parenting (such as use of a tablet). It is not until 28th March 2024 that F was contacted by social services about the allegation (C34-C35) and F accepts that he sent a message on 28th March trying to envisage how he may have accidentally touched A. It is clear from my reading of that message that, as F said in his statement at C20, told social services (D6) and told me in oral evidence, that F initially accepted that A must have said something and was trying to understand how A might have thought that F had touched him inadvertently. However, as F’s evidence also made clear, when the allegation expanded to include him telling A not to tell anyone and that it was “his special little game”, he then knew that this was not a misunderstanding of some innocent and accidental brush whilst sitting with A watching tv, and that he was certain he had not touched A inappropriately as alleged. F’s evidence about this and his apparent change in what he was saying about the allegations was both compelling and credible.

24. It is not in dispute that M’s first step after 23rd March was to inform the school on Monday 25th March. She spoke to a teacher, gave an account of what she said A had told her (E11), and this information was then passed to the school safeguarding lead who spoke to A the following day. The safeguarding lead’s record of what A said to her is at E11 in the bundle, and she made a MASH referral as a result.

25. Following that MASH referral, it appears in accordance with Achieving Best Evidence (ABE) guidance, A was assessed by the police with a social worker present and the school safeguarding lead on 27th March 2024. The record of that assessment is at F12 in the bundle and notes that A told those present he had no worries about F and there was nothing he didn't like about him, that he couldn't recall what he had said to the safeguarding lead the day before, and that he felt safe when he was with F and would tell M if he didn't. Significantly, in my view, it is recorded that the safeguarding lead attempted to "lead A" into repeating what he had told her the day before, but A did not. The police record notes that not only was nothing of concern said by A, but there was also no context provided in relation to what A had said the day before. M was critical of police and social services in her evidence to me, particularly that they only saw A once and he did not know anyone when spoken to on 27th March for the assessment. She alleged that this was why A had not said anything. It was put to her by Ms Miller that A knew the school safeguarding lead, having spoken to her the day before, but M was adamant that A did not know her or feel comfortable with her. Yet A apparently felt comfortable enough to say to her what is recorded at E11, so M's evidence that A would not say anything to people he did not know is not consistent with what A actually did. The assessment on 27th March (which is what M viewed as a formal interview) must have been conducted in accordance with ABE best practice since no evidence has been adduced to show otherwise. It took place at A's school, as is noted at F12, and was therefore a location that A knew. A is noted to have presented as "a confident, articulate and well-presented 5 yo" (F12). Nothing in the record shows any concern that A is withholding information or upset by the assessment, so this is not a picture of a child who feels inhibited and unable to tell people what is concerning him and is in direct contradiction to M's claims that this was why A said nothing to the police or social services at that point.
26. A's failure to mention anything of concern to the police or social services brought the police investigation to a halt because, as they note, there is no information to suggest

any form of sexual assault has taken place (F12) and there are no wider safeguarding concerns either.

27. On 19th April the allocated social worker expressed concern in an email to the school safeguarding lead that she was *“slightly worried that mother continues to probe...on the situation when there might be nothing there”* (E10). That same email confirmed that social services and police were closing the case, noted that M was not happy about that, *“however there is no evidence to suggest that [A] is at risk of harm with father”* (E10).
28. On 23rd April 2024 A approached the safeguarding lead and said, *“my mummy told me that I need to tell you [that F touched him inappropriately]”* (E9). The teacher took A to one side and asked him if he wanted to go and have a quiet chat somewhere, but his response was *“no, I’m fine, I just needed to tell you that”*. She notes that he *“seemed his usual chirpy self and very confident to share the information with me. No awkward body language”* (E9), and she passed that information on to the social worker. M’s explanation for A being ‘chirpy’ and seemingly unbothered by what he has said happened was that she has tried not to make him feel shame for what has happened. However, A being unbothered is in stark contrast to the other evidence about A not feeling ‘safe’ with F and scared of seeing him latterly. It is also concerning that, during her oral evidence to me, M said that she had had repeated conversations with A about the allegations, the details of which conversations were opaque, but she was adamant that she had repeatedly told him to *“be brave and tell the truth”*.
29. The social worker noted on 24th April in response to the information from the teacher about what A said M had told him tell her, that she was *“really worried that mother is telling [A] what to say”* (E9). The police also noted this as a concern when they logged the email from the social worker (F14).
30. M’s second allegation links to the first in that it alleges that A repeated the first allegation and provided additional context. After social services closed the case, F

contacted the school seeking information about A as a parent with parental responsibility is entitled to do. This seems to have led to the school safeguarding lead contacting M to tell her that F had been in touch and was entitled to the information. It is noted that M *“became quite upset”*, made comments about F taking her to court, and then asked, *“have you spoken to A as he has stuff to tell you?”* (E8). M’s written evidence did not show that A had made any further allegations to her, and Ms Miller asked her about how M therefore knew that A had more to tell. For the first time, it came out in M’s oral evidence in answer to Ms Miller’s question that A had talked to her many times over the period since 23rd March and she told him he needed to be brave. She was very vague about what A had said to her during these conversations, though, and accepted she had not put this in her earlier evidence or told anyone in the police or social services. Her explanation for not telling the police or social services was that A was not telling her any new information and was *“just sharing his feelings with me”*. It was really difficult to work out her logic in this explanation, because she accepted that she told the safeguarding lead that A did have ‘stuff’ to tell her, which implies it was new information, but at the same time she was saying to me that this was not new information and it was just A’s expression of his feelings.

31. Part of the second allegation made by M is that A then told the safeguarding lead on 26th April that *“mummy said I have to tell you that daddy touched [me] and it was daddies little game and he told me I was not to tell mummy”* (E8). Something similar is then recorded as being said by A to someone else at the school on 2nd May: *“daddy said it was just a game”* (E8). On 22nd May, A asked to speak to the same person as he spoke to on 2nd May and told her in front of the class *“mummy has told me to have a chat with you because daddy touched [me]”*. A was taken to a more private area and then said *“mummy told me to talk to you. She is worried because daddy touched [me] and it was a bad thing to do daddy told me it was his special game, daddy did it twice”* (E6). A was asked whether it was recent or a long time ago, and A said he was a baby both times, and added that *“mummy is worried about my sister and that daddy*

will do it to her". It is recorded by the person that A was speaking to that A's "words sounded scripted and using grown up language". On 12th June 2024, the same person met with A and explored why he didn't want to make a Father's Day card: "I said that was ok, he didn't have to, I asked him how that made him feel, he said it's not safe so I can't see him, because he touched [me]" (sic) I said I understand, how does that make him feel inside because its ok to feel sad or confused, he said he did not know. He just repeated the dad was not safe" (E5). 19th June 2024, A told the same person at school that he "was worried as mummy had told him they were going to court and he was worried that daddy might win and he might have to see daddy again, I said I wanted to go and chat some more with [the safeguarding lead], A repeated "I'm worried about court and he was really scared, because daddy touched[me], daddy did it over clothes it tickled daddy said not to tell mummy" I feel scared because if he wins I'll have to go see him and B might have to see him again". Later that same day, A told both the person he first spoke to on 19th June and the safeguarding lead that "mummy had said it will be really scary for us if daddy wins and him and B have to go to daddy's house" (E5).

32. In between the above recordings, on 16th May 2024 it is noted by another teacher that "we were talking about the word dispute and that it was when people have a disagreement. A said that his mum and dad were having a dispute because his dad touched [him]" (E8). Ms Miller asked M about this, and whether M had discussed the court proceedings with A. M denied that she had discussed court proceedings with A, but went on to tell me that A must have heard about the court case from "members of her family talking about it in front of him", and gave a very convoluted and hard to follow account of him knowing about winning and losing in court cases from a car accident that she had which apparently involved a court case. She was adamant that she had been careful not to discuss things in his presence and that she had not coached him to say things. She also said when questioned by Ms Miller about why A would say that M told him to tell people things, that this was A's interpretation of what

she meant by telling him to be brave and tell the truth. However, she also told me that A was quite a literal child, and that it was hard to get children to say what you wanted them to say. It is concerning that A does also seem to have been aware of adult concepts such as risk to his baby sister and adults 'winning' or 'losing' a court case about him and his having to see F as a possible outcome if M 'loses' and F 'wins'. M also told me in her evidence at one point in answer to questions from Ms Miller that she had said to A "if daddy wins you might have to see daddy". When I look at all the evidence, including the concerns of professionals that M was leading A to make further allegations, and the numerous inconsistencies and contradictions in M's evidence, I am not satisfied that A made any allegations without input from M. In fact, I am not satisfied that A said what M has alleged he said on 23rd March 2024. Had M not been so adamant that she could not have misunderstood something A said initially and then in the later part of the conversation after they had parked, it might have been possible to conclude that A may have said something that had a totally innocent origin (as F originally thought, in fact), but her intransigency about this and her subsequent confused and inconsistent evidence means I cannot even be satisfied on balance of probabilities that A said anything to her on 23rd March. I am also satisfied on balance of probabilities that what A is subsequently recorded as saying to professionals at points has been as a result of M leading him to say those things. A's accounts to the various professionals are inconsistent, the most significant of which is between his initial version that this only happened once, and the June version where he says it happened twice, and he does not repeat the alleged details of what the touching involved consistently either even on M's own evidence. More importantly, A was not apparently at all concerned by what is alleged to have happened until some considerable time after 23rd March.

33. This leads me to the third and final allegation by M, namely that A told the ISW that he did not feel safe with F so did not want to go to contact with him. As was noted by Ms Miller in her position statement, which effectively stood as a written opening for this

hearing, this is in direct contrast to what A expressed to professionals in March. It is not disputed that A did not see his father after 17th March 2024, so it cannot be due to anything that F did during this period that A changed his views. It is this that therefore leads F to allege that M has frustrated contact. It was put by Ms Roberts to F that the court suspended contact during the period from 17th May to 9th July, and F accepted that this meant that M could not be said to have frustrated contact during this period. However, this overlooks that if A did not make the allegation that M alleged he did on 23rd March, and specifically if I find that M is either wholly mistaken or lying about that, is there evidence to show on balance of probabilities that she then created the situation that led to A repeating various forms of the allegation to professionals? I have already noted earlier that I am satisfied M did lead A into saying what he did to professionals. F told me he did not believe that M had negatively influenced A, and he acknowledged that there were parts of the ISW's two reports in section D which did show M trying to encourage A to engage in the supervised contact w F, including using "*assuring language*" to him (D26"). M also agreed to the ISW having a one-to-one session with A to try to build up a rapport and to enable A to attend supervised contact with F. However, this overlooks that by the time the ISW was instructed, A had already started telling professionals that M had told him to tell them things including that he did not feel safe with F.

34. The one thing that A raised with the ISW in the first session that might have persuaded him to try attending contact was taking his Switch. M was adamant with the ISW that this would not happen and seems to have linked it to her objections to the time that F allowed A to spend on a device when A was with him in her initial evidence to me. She went on to then say that her objection was about it being a device she would not afford to replace, and that it was not portable. She did not explain which version of the games console A had, but my understanding of most of them since about 2017 is that they can either be used as a docked home console or as a portable device. M also said that A asked for this because he knew it would not

happen, though it was difficult to follow exactly what she was saying about this since she seemed to be alleging at one point that a child of this age was sophisticated enough to ask for something that he knew would not happen as a means to prevent contact happening, though her evidence did then change to say that she was actually concerned about what this meant in terms of boundaries for A in future. Overall, she was not a compelling witness about this, and I find that she was rigidly opposed to any suggestion of the console being used as a means to help A engage with contact, and that this rigidity was not reasonable nor supportive of A having contact with F. It seems more likely than not that this was driven by a combination of her constant criticisms of the time that A spent on devices when with F, though it is not clear to me that A did spend inappropriate amounts of time on his own on a device when with F, and it may have simply been that M has taken something A has said out of context and does not see the potential positives for A of being able to bond with F over shared use of a device. Regardless, it was a simple step that, as the ISW noted at D30 could have made A feel better. It is also concerning that the ISW noted that M *“did not introduce or allow opportunity for A and ISW to be introduced”* (D30). It seems as if the ISW was still able to build a rapport with A despite this, but it is concerning given what the ISW was instructed to do in this case, and I am given no explanation by M as to why this happened.

35. I am also mindful of the context of F’s allegation which is made not just in the context of what happened from 23rd March onwards, but previous court proceedings. Ms Roberts did properly point out that the previous court order was by consent in 2020. However, I have M’s own evidence that she found the previous court proceedings very difficult and can take judicial notice of the fact that they took from 2018 to 2020 to resolve as indicative that they were protracted and did not always proceed by consent. I also have M’s own evidence of how she holds F in utter contempt, and seems to have done so even before the 23rd March, repeatedly criticising his parenting in text messages and telling me about her long standing concerns about his

parenting in her evidence to me (when she was often being asked something entirely different).

36. It is also inherently implausible to me that this mother, who really struggled to contain her emotions on the witness stand, would have been able to protect A from her negative views about F. This would have been particularly problematic during the numerous and frequent conversations that she told me she had with A about the allegations. Even encouraging him to be brave and tell the truth, as she says that she did, and “through the whole process giving him a chance to recant, or if he was not sure he could tell [M] and [M] would make sure everyone knows” as she startlingly revealed during her oral evidence to me, is concerning in that it is encouraging him to say things. It also gave A the message that he has something to be brave about. Encouraging A to know that he did not have to continue with his allegations or could tell people if he wasn’t sure was also not something that M mentioned when Ms Miller had earlier asked her repeatedly about the numerous conversations she said she had had with A. M told me that she “couldn’t remember every single word” she had said to A, only that she had “done everything [she] could to promote contact, to push him to be open and honest”. M used the word ‘push’ without any prompting by Ms Miller in her question. I was left with the distinct impression that this was a slip by M whilst trying to explain why she had not mentioned a key detail earlier, and that M has in fact ‘pushed’ A not just to be open and honest, but to make further allegations, particularly to professionals. Coupled with the evidence I have noted above which includes professionals being concerned that M continued to ‘probe’ matters with A, I am satisfied that M actively encouraged A to make allegations against F to professionals, and that she has discouraged him from seeing time with F as safe as a result of doing that and as a result of exposing him to her strong emotions and negative views of F. I am also satisfied that she has failed to protect him from knowledge about these proceedings.

Findings

37. Given my analysis above, I find on balance of probability the following:
38. F did not touch A in any way that was inappropriate and sexual in nature.
39. F did not tell A not to tell anyone about inappropriate, sexual, touching and that this was a “special little game”.
40. A has said that he does not feel safe spending time with F, but this is not as a result of anything that F has done, rather this arises from M’s actions in seeking to encourage A to make allegations against F and in failing to protect A from her strong emotions and negative views of F.
41. M has also failed to protect A from exposure to adult concerns and issues, including telling him about the court proceedings and her fears about risk to both A and B from F if F ‘wins’ this case.
42. I am also satisfied that, in seeking to encourage A to make allegations against F, exposing him to her strong emotions and negative views about F, and failing to protect A from exposure to adult concerns and issues, she has inappropriately disrupted A’s relationship with his father. To this extent F’s allegation that M has frustrated contact is therefore proved on balance of probabilities.
43. I am also satisfied that what M has done has caused A emotional harm and risks his sense of identity given the disruption in his relationship with his father. If M is not able to properly support A and B having a relationship with F, she is risking them suffering significant harm in future.

Conclusions

44. There are no safeguarding reasons that would prevent A, or in fact B, from having a relationship with F. The issue that the court will need to consider in the welfare stage of this case is whether M is able to move on from the unfounded allegations she made, accept the findings that I have made about her behaviour, and really support A in having a meaningful relationship with F. As Ms Miller put to her, that means M is going to have to give A emotional permission for that to happen, which includes

making sure that her own strong feelings and views about F do not affect A or B, even inadvertently.

A handwritten signature in black ink, appearing to read 'HHJ Owens'. The signature is written in a cursive, flowing style with some overlapping letters.

HHJ Owens

31st October 2024