

NEUTRAL CITATION NUMBER: [2024] EWFC 5 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 9TH TO 12TH JANUARY 2024

BEFORE HER HONOUR JUDGE OWENS

M

And

F

The parties and representation:

The Applicant, M, represented by: Mr Noble, Counsel

The First Respondent, F, represented by: Ms Le Moine, Counsel

This judgment is being handed down in private on [19th January 2024]. It consists of 25 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 children 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 children 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, and the proceedings concern their child, A, who was born in 2019.

Background

2. M and F were in a relationship that began in 2014. M says that the relationship ended in early September 2020, and it had been thought that this was not disputed by F, but during this hearing he gave evidence to the effect that he considered the relationship to have continued until around April 2021. It is agreed between them that M and F had a volatile relationship. Following the relationship ending, there was no fixed arrangement for A to spend time with F, A having continued to live with M. Both parties have made various applications under the Children Act in relation to A, and a non-molestation order was made until the conclusion of these proceedings following an application made by M in August 2021. Initially, it seems that the Court determined on 12th October 2021 that a Fact-Finding was not required in this case because a Final Hearing had been listed in relation to the non-molestation order. I'm not clear how that fits within the expectations of Practice Direction 12J, especially since (as is noted in the CAFCASS section 7 report D8) it seems to have been understood that there was a need to determine the allegations being made in the non-molestation proceedings to inform the welfare decision in the Children Act proceedings. The final hearing in the non-molestation order proceedings ultimately did not take place for reasons that are not clear to me. There have been numerous hearings in this case since then, with a previous Fact-Finding Hearing in the Children Act proceedings due to take place in September 2022 but which had to be adjourned due to lack of judicial availability. The case was most recently timetabled to a new Fact-Finding Hearing commencing on 18th September 2023 before me, however unfortunately another

case had to go part-heard due to unforeseen circumstances, leading to this case being re-timetabled to this hearing. Despite the allegations of harm being made by each party, which have led to the determination that a Fact-Finding Hearing is required in accordance with Practice Direction 12J and relevant recent case-law, unsupervised contact has been taking place between A and F. M has been permitted to take A out of the jurisdiction to visit family abroad, despite objections on the part of F.

3. The revised Schedule of Findings sought is at A8-A12 and in May 2023 this had been substantially reduced from the scope of allegations made previously to enable the Court to focus on those which may be relevant to determining the welfare outcome of this case in due course. F was deeply critical of the length of time that the proceedings have taken to reach this point. I think it is important to note that, aside from the issues I have identified in the preceding paragraph which have clearly had an unfortunate impact on the timetable, at one point F was making some 41 allegations against M as he himself confirmed in evidence to me. These have been reduced to three key allegations around types of behaviour and focused specific allegations, but the sheer number of allegations being made by F at one point will not have helped ensure swift resolution of these proceedings.
4. I have a Bundle which contains, in addition to other documentary evidence, the statements of the two parties and have heard evidence from each of them during this hearing.

Parties' positions

5. M seeks findings which can be summarised as follows:
 - a) Abusive/harassing communication or behaviour
 - b) Physical abuse including sexual touching
 - c) Controlling or coercive behaviour.

6. F seeks findings which can be summarised as follows:
 - a) Physical abuse
 - b) Stalking/harassment
 - c) Attempted suicide during a driving incident with F in the car.

Relevant legal considerations

7. Whoever makes an allegation has the burden of proving that it is true. They must do so to the civil standard, ie 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 relevant 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***).
8. I have taken into consideration the principles outlined in ***Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448*** with regard to domestic abuse allegations. **Practice Direction 12J Child Arrangements and Contact**

Order: Domestic Violence and Harm is also relevant which provides key definitions of domestic abuse including coercive control.

9. 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.
10. The principles outlined in ***R v Lucas [1981] QB 720*** may be relevant. 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.
11. I have also borne in mind that abusive behaviour has at its heart an imbalance of power in the relationship and that this is exploited by an abuser for their benefit. As is clear in case law such as *Re H-N* noted above, it is insidious in nature and requires sophisticated analysis, including an awareness of the potential for abuse to be maintained even after the parents have separated and even where protective orders have been in force.
12. At the same time, a Court has to draw a distinction between abusive behaviour and poor behaviour which falls short of being domestically abusive. Hence the need for the Court to focus upon those findings which will have a material impact on child arrangements if proved.

Evidential summary

13. In the Children Act proceedings, M has produced four statements, one dated 26th August 2021 (F1-F5), one dated 7th October 2021 (F15-21), one dated 7th March 2023 (F128-F134), and one dated 19th August 2022 (F272-F284). She has also produced sundry exhibits including messages between the parties. In relation to her application for a non-molestation order, M has produced a statement dated 29th July 2021 (C12-C16), together with supporting evidence (C17-C44).
14. F has also produced four statements, one dated 8th September 2021 (F6-F14), one dated 12th November 2021 (F79-F86), one dated 9th February 2022 (F117-F124), one dated 18th July 2022 (F196-F208). He has also produced numerous exhibits.
15. Police disclosure has been obtained, but Police records only go back to 2020 and, whilst there is reference to footage and exhibits at some points, these have not been retained by the Police. I have, however, been able to see body worn camera footage in relation to one of the incidents in question, as well as ring doorbell footage produced by M. It is not in dispute that F has been convicted in 2022 of breaching the non-molestation order, however it appears that F does dispute the facts leading to this conviction. It is also not in dispute that F has a caution for common assault upon a previous partner in 2020, though F disputes that he did assault his ex-partner despite admitting the offence for the purposes of receiving the caution.
16. CAFCASS completed both initial Safeguarding (D1-D4) and a section 7 report which is dated 13th October 2022 (D5-D18).

Analysis

17. M's first group of allegations relate to a course of abusive or harassing communication or behaviour towards her by F both during and after the relationship. This allegation encompasses various messages which M says are abusive and threatening, calling her

derogatory and offensive names, and being threatening and abusive towards her friends and family. In support of this, she has produced copies of numerous messages as exhibits to her statements, though a minority of these are typed transcripts of the messages rather than the messages themselves. M accepted in evidence to me that there were also messages between the two of them which were at times cordial, though she was clear that she had never said he had only ever sent her abusive messages. F's case about these messages was a little difficult to follow but seems to be that he accepts he sent the messages in question, that they are snapshots of their communications selected by M, that he was not being threatening in any message, and that he often reacted emotionally by text and said things he had no intention of carrying out. I think, though again his evidence and case about this was a bit difficult to follow, that he largely sees nothing wrong in anything that he put in any of the messages concerned because he feels even now that his reactions were justified by the issues that prompted him to send the messages. He also told me that some of the abusive or potentially derogatory language that he used in relation to M in the messages was normal communication and terminology between them when they were in a relationship.

18. Having read the messages in the bundle, I have no hesitation in concluding that M has not simply selected only those messages where F is using inappropriate language. She has included messages that are cordial and, as I have noted, accepted that communications could at times be cordial between them. In his evidence to me at various points, F made a point of saying that I did not have the full context of the messages before me, but he has had ample opportunity to produce any other relevant messages and has not done so. I also have no hesitation in finding that F has sent M numerous messages which are extremely abusive, use derogatory language about her and to her and which would have upset her. It was clear, as Mr Noble for M submitted in closing, that hearing some of that language repeated in this hearing caused M to become upset at times. Hearing some of that language and having read the messages in the bundle as well, I can entirely understand how upsetting M would find that language. I do not find that F was credible

when he claimed that some of that language was simply commonly used between them. When you look at the context of the messages, something that F was particularly keen to emphasise, it is clear to me that there is no evidence of M being similarly abusive towards F at any point, even on the evidence which F has produced. It is also clear that the language which F uses towards M is not simply that which would be normal in their relationship because there is no evidence of M using similar abusive terms towards F. Whilst M accepted in her evidence, when questioned by Ms Le Moine on behalf of F, that they would use some sexual terminology teasingly between each other during their relationship (for example as shown in the texts from 2019 at F209), this is different language to that which F uses towards M in the messages she complains about. I am not going to repeat the actual language used because I am satisfied this risks further abuse of M, but it is foul, focused on using terminology or concepts that are misogynistic, deeply abusive, and overall very disrespectful towards another person, particularly if that other person is the parent of the child you have together.

19. It is also clear to me that, even if F does not perceive the messages as threatening, they were likely to be seen as threatening by the recipient. It was accepted by M that the messages which she showed the police in September 2021 were not felt by the police to be threatening, but I am looking at the messages that I have before me in this hearing not just any that the police may have seen before. Again, I have considered the context of the messages in question. Those to M are, on F's own evidence, sent as a reaction to something that he felt was unacceptable. The range of things which F himself seems to accept triggered these messages are, frankly, concerning. They include arguments about when he was due to see A, M going away with A both within and without the jurisdiction, other adult males whom F thinks may be in the house with M and A, when F wanted to force M to allow him to collect her from the airport as a means of him seeing A, and when F thought she was remaining in contact with men that he thought she should not.

20. During the incident on 17th August 2021, which is supported by Ring doorbell footage, F accepted that he became upset and used abusive language towards a male present in the

house at the time. It was put to M by Ms Le Moine that the doorbell footage did not show what M or this male were doing at the time, but the footage is both video and audio and nothing abusive can be heard from either M or the male at the time. It was also put to M that the male was listening to the incident, something which M did not deny. I am not clear, though, why it was relevant that the male was listening. On F's own evidence, he does not dispute what he is recorded as saying, including that he would "fuck [the male] up" and that if he was a man he should come down and confront F. But F sought to justify this by saying that this was not a threat, and he did not want to fight, despite admitting that he was angry about a man being around his son without (apparently) M knowing this man's surname according to F. Confusingly, in his evidence to me, F did accept that he had "threatened" to "fuck up" the man concerned – confusing, because he seems otherwise to have completely refused to accept that he was threatening. He also accepted that when he became angry he maybe did become impulsive, but not vicious or physical, though he would say things out of anger. He was completely unable to accept, when questioned by Mr Noble, that his anger during this incident would have had any impact on A, simply saying that A was too young to understand. The footage from this incident and the earlier one from 3rd August clearly shows him becoming angry, using abusive language, and throwing A's backpack into the back of his car whilst holding A. F accepts that he threw the backpack, but denies that he threw it at M or that he pushed past M. Part of F's justification for what is recorded on the footage in the 3rd August incident is that he had put some rubbish in M's bin, which M removed because it was the wrong sort of rubbish for that bin and put in the back of his car at about the same time as he was telling her to stay away from him and he was throwing the backpack into the back of the car. It is clear to me from that footage that F threw the backpack with some force, and at the very least without any thought about whether it would potentially hit M on the other side of the car. It is also clear from the footage that he pushed past M afterwards. All of this is done in the presence of A and, I find, without any thought about the impact on his actions and emotions on A. I tried to clarify with F whether he saw that A might be affected by seeing him angry

during this incident and it took him some time to accept that even a young child might be affected by seeing him behave in this way. He also seemed more concerned about what M had done, the presence of this other male and the impact on F himself rather than putting A's interests first, I find.

21. It was put to M by Ms Le Moine that, if she was as scared of F as she said, she should not have taken the rubbish out of the bin and put it in F's car. It could equally be said that, since F does not appear to challenge M's evidence that she had more than once asked him not to do this, it was not reasonable and potentially provocation by F to put the rubbish in the bin. I do find it credible that M had simply had enough of F doing something that she had asked him not to do. The only one who was behaving unreasonably in this incident was F, I find, and I am satisfied that he was threatening and abusive to both M and the male, including on 3rd August throwing the backpack with some force in the direction of M without apparent thought as to whether this might hit her, and he pushed past her, all whilst holding A who should not have been exposed to this sort of behaviour by F.

22. In the context of abusive and threatening communications, M also relies upon communications sent by F to her sister and to her former self-defence instructor. She does not dispute that she had been in a relationship with the latter at some point prior to her relationship with F. M has produced a message sent by F to the self-defence instructor in August 2020 (F138). F accepts that he sent this message, and broadly accepts the contents of the message though did seem at points to question the version of the message that I have in the bundle, saying that he sent a message in Portuguese and this was in English. However, he has not produced an alternative version of the message and accepted the abusive parts of the message, so I am not clear what he did not accept about the message. He also accepted that in the message he made threats to rape the self-defence instructor's wife and daughter, and that he did regret that but did not think anything else was abusive to the self-defence instructor because "he deserved more than that". In essence, F's evidence seemed to be that he believed the man to be some sort of sexual

threat to M, and he was trying to get him to stop, and that he also spoke to the self-defence instructor's wife to try to get him to stop but this was not done to cause problems for them. He also said that he would not change anything about the content of that message, despite it being pointed out to him by Mr Noble that it included the threats to rape not just the wife but also the daughter who F knew was a child. It is a deeply concerning message in my view. It is extremely abusive and can only be read as threatening. Had it been sent in this jurisdiction to a recipient, I take judicial notice of the fact that it may have breached the criminal law in relation to sending offensive or threatening messages. It does not matter that F may not have intended to carry out any of the threats made – the issue is the impact on the recipient and anyone receiving such a message would be extremely concerned by it, I find. The fact that F feels justified in sending such a message and would not change anything about its contents is doubly concerning.

23. F has also accepted that he sent M's sister texts in September 2020 (F23-F24) and does not dispute the content of those texts. This includes telling her that he is going to tell her parents all about M being a *"very selfish and disturbed human being"* and that *"I am going to take decisions that will break everyone (sic) heart and I am going to have no regrets for anyone and I am going to make problems in [another country] too and will show everyone who is M and how disgusting human being she is"* (F24). F said that he was emotional and angry but not intending to do anything, that this was all done in the heat of the moment. The messages in question are lengthy for things done in the heat of the moment and took place over the space of several hours from the times recorded on them. This is also something that has happened in relation to messages from F to M, as the incredibly lengthy and abusive message to her at F153 onwards, sent in August 2020, demonstrates. I find that these messages were abusive and threatening and not simply abusive and were not simply done in the heat of the moment because of the timings and the length of the messages concerned. As Mr Noble submitted, it takes time to type a text message of any length. Again, it does not matter whether F intended to follow through on his threats, the fact is that threats were still made to make trouble for M with her family.

24. Whilst F told me that in sending the messages and behaving in the way he accepts he has done he was motivated by concern for A's welfare, I have to say that it was sadly painfully apparent in F's evidence that his concerns are not really motivated by concern for A's welfare. I am clear from F's evidence that, as he repeatedly accepted at points, he does react to what he perceives as an issue of concern and that this reaction is often angry, abusive and threatening. However, he is often reacting to things that are about him and his perception of either the respect that is due to him, or how he thinks things should be done, rather than genuine concern for A. As I have noted, the range of things that have prompted his outbursts are wide. His evidence to me about this was also strikingly focused on how he had been treated, how his rights needed to be protected, and how he felt justified in responding as he did to things that others had done to him. None of this seemed to think about A or the impact on A at all. This included an apparent inability, or unwillingness, to realise that subjecting M to a barrage of abusive and threatening messages, or abusive and threatening behaviour, might have an indirect impact on A by M becoming upset and A becoming aware of that distress. I find all aspects of the first group of allegations by M proved on balance of probabilities.

25. The next group of allegations by M relate to physical abuse, and physical abuse is the first group of allegations by F against M, so I have considered both together. I've already dealt with item 2(iv) in relation to the backpack being thrown at M and F pushing past M as part of my considerations above. The next incident to consider is M's allegation that F had frequent mood swings during the relationship, a general inability to control his anger, and that he would sometimes punch walls and doors while arguing with M. In terms of inability to control his anger generally, F does seem to accept this in relation to his verbal and written communication at times, though he disputed entirely that he had ever punched walls or doors. He also denied mood swings, though did accept when taken to certain messages by Mr Noble (for example F457 in May 2020 when one minute he was saying that he had had to slap M once to get her to sit like a puppy after an argument and the next he was asking about lamb in the freezer for dinner), that he had rapidly moved

between sending things that were unpleasant to things that were not. F at this point tried to justify calling M an animal in Arabic as a 'cute' reference, that he was trying to forgive and move on, and then immediately tried to deflect away from examination of his actions to his allegations that he is a victim of violence from M. I would note, that in some cultures, referring to someone as an animal in Arabic is not necessarily 'cute' and is more normally taken to be an offensive term, akin to calling someone a 'brute' in English. Again, having reviewed the evidence of the communications produced by both parties in this case, and their oral evidence to me, I am satisfied that F was subject to frequent mood swings. The speed of these mood swings, based on the timings of some of the messages and how quickly he would respond in anger to perceived issues is deeply concerning.

26. The specific allegation about punching walls and doors is one that F disputes. M has produced photographs of doors that she says were damaged during an argument which also involved F's brother (F272 for her statement dated 19th August 2022, photos at F289-F291) on 23rd May 2020. F does not dispute that there was an argument on this date, that it also involved his brother, and that the photos show damage to two doors in the property that he used to live in. His case is that the doors were damaged by his brother, though his statements don't address this, and he has not sought to adduce any evidence from his brother to counter that of M. F told me that it was for M to call his brother, somewhat confusingly. It was put to M by Ms Le Moine that her credibility about this was undermined by the fact that she had not mentioned this in her earlier statements to the court. M told me that she had found the photographs on her phone when trying to find other evidence for her statement that had been directed by the Court in July 2022. I found her evidence about this credible and compelling. Given the volume of incidents and evidence in support of them, it is not surprising that M did not find the photographs until later, and I would note that the allegation that F would generally punch walls and doors was part of her schedule of allegations in July 2021 (C51) and her statement dated 26th July 2021 (C14). I find, on balance of probabilities, that F did punch the doors during the argument on 23rd May 2020,

and that it is more likely than not he also punched walls at times when he became angry.
I find allegation 2(i) proved.

27. The next allegation is one that again refers to another of those made by F. It is agreed by both parties that there was an incident in 2017 when F had attended a driver improvement course following being stopped by the police for using a mobile phone whilst driving. It is not in dispute that M collected F from the course in her car, and that during the drive home along the motorway an argument broke out between them, that because of the argument M sped up and they ended up stopping and swapping over driving responsibility. What is in dispute is who started the argument and over what, whether F punched the rear-view mirror and M on the cheek, and whether M was driving recklessly in a way that meant she was trying to kill herself and either kill or seriously harm F.
28. M's evidence about this is that the argument started about the potential purchase of a car, whereas F's evidence is that it started about M saying that she wanted to have a child. F accepted when questioned by Mr Noble that the course had taken place on 5th July 2017 and at F320 is a message sent by M about a car that she had seen on WhatsApp. That message is dated the same day as the course. I found M's evidence about this to be more credible than F's evidence. F's evidence was that he couldn't remember if they had wanted to purchase a car around then but did accept that at that point, they only had M's car. F also said that it was not logical for him to have caused an issue in a car immediately after attending a driving course, but equally it is not logical for M asking about having a child to have caused the sort of violent altercation that both agree took place unless he reacted 'in the heat of the moment' and became angry as I have already found he tends to do. In this sense, what started the argument is not crucial, but I do accept that consistency and credibility are in issue, and I did not find F's version to be consistent with the text messages nor was he credible about what caused the argument. I also found M more consistent and credible about what happened during the argument. F's allegation is that M was swerving across lanes of traffic as well as speeding, but it seems her driving did not attract police attention despite being on the motorway and no accident was caused.

F is the one who in fact has a record of violence since, despite his protestations, he has a caution for assault to his ex-partner which involved a slap to her cheek. I know F said that he lied in admitting that assault because he just wanted to bring matters to an end, but the fact is that he did accept that assault for the caution to be administered and there is thus an unchallenged statement from his ex-partner E95-E96 which details F becoming abusive towards her by text and then getting into her car in the passenger seat and slapping her on her left cheek with his hand. The police records also note that F made a full admission interview about this (E94), so it is more than just accepting it for the purposes of ending the prosecution, I find. It is also striking that this arose because of F becoming angry about arrangements for seeing his children and that he slapped his ex-partner on her left cheek whilst she was in the car. This was after he had completed a course designed to teach him about safety in the car, so behaving in a way that would make his ex-partner upset when she was about to drive demonstrates a bit of a failure to understand the road safety implications of that.

29. M has also produced messages that she sent to a friend shortly after this incident (F140). She accepted, when questioned by Ms Le Moine, that she told her friend that she was the one who 'lost it' during this incident and did not tell her friend about F punching her. However the messages do show that M told the friend about F punching the rear-view mirror, and I found M credible when she said that she was too ashamed to tell her friend that F had hit her. The messages also show that M clearly told her friend that F was angry, and she told him that she could not continue to drive. As was submitted by Mr Noble in closing, M's credibility about her account was enhanced by the fact that she has not sought to describe the punch to her cheek as not a full-blown punch and has not claimed any injury from it. In contrast, F's credibility was undermined by his claim that during this incident M was trying to kill herself and him. He claimed during his evidence to me that he had been clear from the outset that this was what he was alleging and put this on his C1A, but in fact when I went back to his original application at B62, that is not what he put. I did try to clarify if he had possibly conflated his other allegations about M being suicidal

at times with this and he did accept that was a possibility. I am satisfied that F is the one who has sought to embellish his account of this incident and sought to do so to paint M in as bad a light as possible. He even sought to refer to M having a bad driving record but there is no independent evidence of this. As Mr Noble put to him, in fact he is the only one with a proven bad driving record since he had to complete the police driving course after being caught using a mobile phone whilst driving. On balance of probability I find M's version of this incident proved (item 2(ii) on the schedule) and do not find F's allegation 3 on the schedule proved.

30. Item 2(ii) on the schedule is an allegation of sexual touching. M alleges that F pinched her groin on 10th April 2021. It is not disputed that on this date M had invited F to her house prior to going away with A for a few days so this was an opportunity for A to spend time with F before that. To get A to sleep at one point in the evening they were lying on the bed with A in between them. All were fully clothed. M's allegation is that F touched her inappropriately by pinching her groin and this is what she detailed in her statement of 7th October 2021 (F20). She had told the police about this at the time she reported that F had taken a vehicle from outside of her home (E62), that report being made in the early hours of 20th April 2021 and the taking of the vehicle occurring on 19th April 2021. The police log shows that this was mentioned by M "during the de-brief" (E62). M does not dispute that she subsequently withdrew the complaint of sexual assault with a statement made to the police on 26th April 2021 (E92). Her explanation for this retraction was that she did not have any evidence and it would be his word against hers. It was put to M that her initial complaint to the police at E62 refers to her vagina being grabbed over her clothing, but that her evidence for this court was that he pinched her groin. M responded that she did tell the police it was a pinch to her groin. Her description of this allegation has otherwise been consistently that he pinched her groin, and I note that the log at E62 is not a direct quote of her words nor a formal statement from her, so it is possible that it is the interpretation of the officer concerned. It is also noteworthy that her withdrawal statement also says that she has no evidence of the assault which is consistent with her account to

me of why she chose not to proceed with the charge. That same statement also records that she simply wants F to leave her alone so she can live her life with her son.

31. F accepted that by the time of this alleged assault, the couple were not in a relationship any longer on M's account, F knew that M thought this, and they were no longer living together. As I have noted F at one point told me that by this date he still thought that they were in a relationship, and it was only after the complaint of sexual assault that he regarded the relationship as over. It was submitted by Mr Noble that it is significant that on the morning of the date in question F had sent M a message asking if she wanted to have sex (F52). F does not dispute that he sent her this message but says that this was a mistake and he meant to send it to someone else. The timing of the text is curious. It is sent just over a minute from a text that M sent asking if he was okay following a perfectly cordial short text exchange between them (F51). About 10 minutes later, M responded to the message asking if she wanted to have sex *"I think you have sent that text to the wrong person, F!"*. Nearly 4 minutes later, F responded to say *"yea I did. Wrong number"*. F's evidence about this was that he was texting someone else at the same time and meant them to receive the text asking about having sex. However, as submitted by Mr Noble in closing, F has not produced any evidence about this. I did find F to be evasive when he was asked about when he thought the relationship with M ended, and lacking credibility about this because this is the first time that he has disputed what M has consistently put in her evidence about the end of their relationship. On balance, I find that F did intend to send that message to M asking if she wanted to have sex, that on his own account he seems to have thought that the relationship was not over because he had not agreed to it being over, and he pinched M's groin as she alleges. I find allegation 2(iii) proved.

32. I will deal next with F's allegations of physical assault against M which are detailed at A11 on the schedule of allegations. M accepts that she has on two occasions been violent towards him, slapping him once and grabbing and shoving him on another occasion. She was very candid about this, and in accepting that what she had done was wrong. F's issue with this admission seems to be that, on his case, the slap was unprovoked and that he

says she slapped him twice. He also alleges that M injured his chest, poked him in the eye and kicked him in the groin, all of which M denies. F's written evidence about this is at F82 in his statement dated 12th November 2021. It was accepted by M when she spoke to CAFCASS for the purposes of the safeguarding enquiry on 5th October 2021 that she had been violent towards him, and that is recorded as slapping him on two occasions "*as he was being abusive towards her*" (D3). F did not speak to CAFCASS when they tried to contact him for the purpose of their safeguarding enquiries, but did mention the allegation of poking him in the eye, slapping and kicking his genital area in his application to court as CAFCASS noted. F's statement at F82 was made after the CAFCASS safeguarding letter was filed and gives very little detail about the allegations, in fact. Neither in this statement nor in his application is there any mention of him being grabbed and pushed out of the bedroom, though he did accept when questioned by Mr Noble about this that this did happen during the incident in October 2019 when he says she poked him in the eye etc. At F104 he has produced some photographs which he says are of the injuries he sustained in this incident. They are not terribly clear, and it is simply not possible to work out if what is shown are marks on his neck or his chest. At worst, they appear to be minor abrasions of some kind and certainly not the sort of bleeding from a vicious attack that F tried to tell me had taken place. F accepted that he did not report any of this to the police so there is no independent evidence in relation to this. His evidence about this alleged assault was also slightly confusing in that he accepted M had asked him to leave and grabbed and pushed him when he refused to leave but said that she should have called the police if she wanted him to leave, and completely refused to accept that there had been any argument at the time. However, in his statement about this at F81 he described them as having an argument at the time about the name to be put on A's birth certificate.

33. On 23rd May 2020 both accept that there was an argument after the postman woke A up. They also both accept that, during this argument, each slapped the other once. F accepted that he was upset, but denied that he was angry, and denied that he was shouting during this incident. This is one of the two incidents that F appears to be referring to in his

allegation of being slapped by M, though his evidence is far from clear about this, I am afraid. He claimed that slapping her was in self-defence. He accepted that he had called M names and sent her abusive text messages afterwards (F457). As I have noted, his main issue with this incident seems to be that he regarded the slap from M as wholly unprovoked. I did not find him at all credible or convincing in his account of this incident. His various accounts are inconsistent and are not consistent with the evidence of the text messages. His evidence to me was wholly lacking in credibility since he started from the position of totally denying that he had ever hit M or that it was ever appropriate to hit someone, but eventually moved to accept that he had slapped M when confronted by Mr Noble with the evidence of the text messages, albeit saying that he did so in self-defence.

34. F has provided absolutely no account in relation to the alleged second slap, and his case seems to rely on what was recorded by CAFCASS. M was asked about this recording by CAFCASS of her admitting two slaps and she gave clear and credible evidence that she had told CAFCASS about two physical altercations, ie one slap and one grab and push. M has never denied that she slapped F during the May incident, nor that she grabbed and pushed him in the earlier October 2019 incident, and accepts that she was wrong to do so. On balance, I do not find that M slapped F in an unprovoked assault in October 2019 or in May 2020, nor that she attacked him causing injury to his chest, poked him in the eye and kicked him. I do find that she slapped him once during the incident in May 2020, and that she grabbed and pushed him in October 2019 but that this was in the context of sustained abuse from F towards her including shouting and, as she put it, she simply snapped. It is clear from her evidence to me that she deeply regrets her actions at this point, in striking contrast to F.

35. F's final allegation relates to recording devices found in A's backpack. M accepts that she placed these devices in A's backpack and that it was wrong to do so. F alleges that one of the devices was a location device, telling me that this was based on what he believed from the police. The police logs about this in section E are quite clear that there were two devices found in the battery compartment of a thermometer in the backpack, but it is not

clear what the purpose of the devices was. They were sent for forensic analysis (E22), but the results of that have not been provided. M accepts that the devices were for recording sound only, not location devices, and she has never denied that she has recorded multiple conversations at points in these proceedings and before them. She accepts that doing this was wrong and there is no evidence that this has continued. F's allegation about these devices is also that he and his family were being harassed and stalked by use of the devices. There is no evidence of stalking or harassment arising from these devices, on his own account F only took the devices to the police when he was asked by one of the previous judges in this case about police disclosure being obtained, and there is no evidence that the devices could be used to follow their location. M's account that she was using the devices to find out what was being said around A is consistent and credible. F does not dispute that at times A has used inappropriate language, and in particular words that he himself uses. Whilst not excusing her actions, it is understandable and credible that, as M told me, in those circumstances she was worried about what was being said about her around A. I do not find that M placed these devices to stalk or harass F or his family and allegation 2 of F's allegations is not proved.

36. The final tranche of allegations is those of M alleging that F subjected her to coercive and controlling domestic abuse. Allegation 3(iii) is that F went onto Facebook on 1st May 2021 and contacted her former self-defence instructor. F does not dispute that he did this but seems to be arguing that her profile was public, and that his actions in contacting the instructor and his wife (as noted earlier in this judgment) were justified. He also seemed to accept during his evidence to me that he had, at times, checked her Facebook account, WhatsApp messages, social media and google mail. As Mr Noble put to him, he cannot really deny this because he has referred to things he has obtained from those checks in his own evidence at points. He accepted in his oral evidence to me that he had also checked her phone whilst they were on holiday, when she was in the shower, and he had not asked her permission to do this. He seemed to be justifying his actions by saying that this was normal in their relationship, and that he only looked at the phone because a

message came in and he thought it might be an urgent message from her family. However, he also accepted that, despite realising that it wasn't an urgent message, he then went on to check the rest of the phone. He denied having the pin number to access the phone but gave no clear explanation as to how he was able to go on to check the rest of the phone if it had locked itself as most phones tend to be set to do. He also sought to justify his checks on Facebook by saying that M's profile was public. M was very clear that only her profile photo was publicly available, everything else was only available to friends. The allegation is in fact that F accessed messages on Facebook messenger not just posts on Facebook, so it would appear that F did have to do some digging to find those messages and may well have had to use M's log in detail to access them, I find.

37. There is also the aspect that, even on his own account, F was suspicious about M remaining in contact with men that she had had previous relationships with and believed that she was being unfaithful to him. M described him as very jealous, and I have to say that his evidence to me, both written and oral, is extraordinarily focused on what he believes was M's infidelity. He came across as a very, very jealous man who was quick to believe that any apparently innocuous contact between M and a man must be somehow sinister. He has repeatedly accused M of sexual immorality and accepts that, effectively, he accused her of living in a brothel.

38. In addition, F accepts that he sent M an intimate video recorded when they were together but sent on 19th June 2021 completely out of the blue. F says that he did so to "test the water", but by his own account at this point he regarded the relationship as over after the sexual assault allegation, so this simply does not make sense. There is no covering message sent before, no friendly enquiry about whether she might be interested in rekindling their relationship, for example. It was put to him that he sent it to show M that he still had it, which F denied, and instead kept trying to focus on his 'right' to keep such images and that he would only delete it if she was in a new relationship so that he did not hurt that other man's feelings. Viewed in the context of the other findings I have made about F to this point, I have no hesitation in finding that F did not send that video to try to

see if they could resume their relationship. I find that he sent it to remind M that he had it, a reasonable person would have deleted it when the relationship ended, in fact, and certainly not to then send it out of the blue to an ex-partner. In the context of his numerous abusive and threatening text messages it is also concerning because it does evidence a level of attempting to threaten M with it too. Allegation 3(iv) is therefore proved on balance of probabilities.

39. The penultimate allegation to be considered is 3(v) and relates to F removing a car from outside M's property. F does not dispute that he had given M a car to use, that the car was parked outside her property with some of her possessions in it, and that he came to collect the car without telling her and took it. He also does not dispute that M therefore reported the car to the police as stolen. There is considerable dispute between the parties about whether the car in question was legally hers or not, but it is not in dispute that F had given the car to her to use including for driving A around as required, that he had transferred the VQ5 into her name and the car was insured in her name. Nor does F dispute that he did not tell her he was going to take the car and simply turned up to take it. F's oral evidence about why he did this was deeply concerning. He said that it was done in response to M having taken A away for a few days, because he wanted to put a stop to her ability to take A away. As Mr Noble then submitted in closing, after this point F's evidence became entirely confusing. He accepted that, having taken the car away, he then allowed M to reclaim it from the police (in so doing, M accepted that she lied to the police as she did in her withdrawal statement about the sexual assault). He then commenced a claim against her in relation to the car in the small claims court, which he then withdrew, but seems still to be arguing that the car was his. Legal ownership is not something that I need to determine for this hearing, and, in fact, I am not sitting in the Civil jurisdiction in any event. However, I am satisfied that, as M alleged, F took the car without her consent on 19th June 2021 and did so solely to stop M being able to go away. The context of his ongoing fears that M was going to abduct A to abroad is relevant to this, too,

I find. Those fears have proved unfounded as the earlier court orders permitting her to travel have not resulted in A being abducted.

40. Finally, overall, M alleges at 3(i) that since they separated F has subjected her to controlling, coercive and manipulative behaviour. For the Family court purposes, I think I only need to consider whether she has shown, on balance of probability, that he has subjected her to coercive and controlling behaviour, manipulation being a part of this as far as the legal definition is concerned. Mr Noble submitted in closing that this allegation has been made out 'in spades' during the course of my hearing evidence from F. It is hard to disagree with that, frankly. F at points even tried to control the questions that were being put to him by Mr Noble, repeatedly asking him to move on if he considered that a topic had already been covered exhaustively or trying to deflect answering difficult questions by referring to his allegations against M or trying to refer to other evidence in the bundle. F was quite clear that he had no regrets about the contents of his messages, some of which were absolutely vile and, as I have noted, at least the one to the self-defence instructor could be criminal in nature if sent to someone in this jurisdiction. Throughout F maintained a stance that he was simply responding to actions which had caused him to not be able to control his anger, that he didn't mean what he said or wrote, and overall sought to portray himself as the victim. He showed absolutely no compunction at having subjected M to barrages of abusive and threatening messages, and no awareness or willingness to consider the impact of his actions on M or A. It is clear to me that he behaved in the way he did because he felt justified in doing so because he thought he had been disrespected by M being unfaithful to him, was obsessively jealous about her at times, and now feels strongly that M has sought to use A as a weapon against him when, in fact, the evidence shows that it is F who has consistently failed to put A first in his actions against M. He clearly took the car that she was using as a means of controlling her ability to travel. He also clearly tried to persuade her to leave her employment and work for him, a worrying indicator about his trying to make her more reliant upon him, something that he sought to justify by saying that M was so tired she was dangerous.

However, if his concern was about her being tired doing shift work, there is no evidence of him suggesting anything else apart from working for him, and no evidence of compassion for M either, something that was also notably absent from his account of the incident on 23rd May 2020 when M accepted she slapped herself. There is clear evidence of F adopting a course of conduct that was designed to make M do what he wanted. There is also clear evidence that F puts his own needs and wishes above all else, I find. I find on balance of probability that F has subjected M to coercive and controlling behaviour to make her do what he wanted since they separated on 4th September 2020. I find allegation 3(i) proved on balance of probability.

41. Both parents have given me evidence about lying to the police in statements made to bring proceedings to an end. I have had regard to the provisions of R v Lucas in this regard. Sadly, it is not uncommon for people to withdraw support for a police prosecution, and to make a statement to achieve this. I am not condoning such actions, but it is important to view the actions of each in the overall context. In the case of M, I have found that she has been the victim of prolonged and extremely worrying domestic abuse which includes coercive and controlling behaviour from F. It is equally that she made the withdrawal statement in relation to the theft of the car solely to ensure that she could recover the car from the police. The situation was complicated by an argument about legal title to the vehicle itself, and in circumstances where F took the vehicle to stop M being able to travel with A and as a means of exerting coercive control on her. This is more understandable than F's evidence to me that he lied to accept a caution for common assault in order to bring the prosecution to an end. In fact, I am not satisfied that he was lying when he accepted that caution because, as I have noted, the police records show that he made a full admission in interview.

Conclusions

42. This case will now need to be timetabled to welfare disposal. I have made findings about F which give me concern about his ability to put A's welfare needs first. I am also troubled by his lack of control over his anger and his reactions when he is angry and concerned that he received a 9-month mental health treatment requirement as part of sentence for breaches of the non-molestation order, since that is a very significant sentence which also suggests the Criminal court had concerns about his mental health. It is also worrying that F shows absolutely no sign of acknowledgement that he has done anything wrong and does not accept that he has breached the non-molestation order nor assaulted his ex-partner. I question his level of insight about domestic abuse, and the welfare stage of these proceedings will need to consider what level of risk he poses towards M and A as a result. I would urge him to reflect on his actions and whether he can accept that he has behaved in a way that is not only unacceptable, but which demonstrates that he simply does not respect M and has behaved in a way that has subjected her to domestic abuse. He has also exposed A to his unacceptable behaviour, both directly and indirectly, and this cannot be repeated.



HHJ Owens

[19th January 2024]