



Neutral Citation Number: [2019] EWHC 3918 (Fam)

Case No: WV17C00664, WV18C00394

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Birmingham Civil Justice Centre

Date: 29/03/2019

Before :

**MR JUSTICE KEEHAN**

**Re A & B (Children: Fact Find)**

Between :

**A LOCAL AUTHORITY**

**Applicant**

- and -

**MOTHER**

**1<sup>st</sup> Respondent**

-and-

**FATHER**

**2<sup>nd</sup> Respondent**

-and-

**A AND B**

**(Children through their Children's Guardian)**

**3<sup>rd</sup> – 5<sup>th</sup>  
Respondents**

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**Ms L O'Malley** (instructed by **The Local Authority**) for the **Applicant**

**Ms C Udeagbaja** for the **1<sup>st</sup> Respondent**

**Ms A Oji** (instructed by **Blackwhite Solicitors**) for the **2<sup>nd</sup> Respondent**

**Mr R Plunkett** (instructed by **Clark Brookes Turner Cary Solicitors**) for the **3<sup>rd</sup> - 5<sup>th</sup>  
Respondents**

Hearing dates: 21st, 22nd January, 4th February and 27th, 28th and 29th March

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**MR JUSTICE KEEHAN**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must

ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**The Hon Mr Justice Keehan :**

Introduction

1. I am concerned with two children, A, who was born on 23 February 2017, and B, who was born on 29 July 2018. The mother of both children is the first respondent, and the father of both children is the second respondent.
2. The Local Authority issued an application for a care order in respect of A on 22 December 2017, this matter was listed for a fact-finding hearing to determine the facts in relation to the parents' relationship and the events of 6 May 2017 and the degree to which the parents had or had not cooperated and engaged with the Local Authority on an honest and open basis.

The Law

3. The burden of proving the threshold criteria rests solely with the Local Authority, as is the burden of proving the findings of facts sought. The standard of proof is the balance of probabilities *Re B* [2008] 2 UKHL 35.
4. At all times I have regard to the Article 6 and Article 8 rights of the children and of the parents, but bear in mind that where there is a tension between the Article 8, rights of the child on the one hand and the parent on the other, the rights of the child prevail: *Yousef v Netherlands* [2003] 1 FLR 210.
5. When considering the evidence, particularly the evidence of the mother, I give myself a revised Lucas direction, namely I should only take account of any lies found to have been told, if there is no good reason or other established reason for the person to have lied.
6. I also take into account the decision of the Court of Appeal in *Re H C (Children)* [2016] EWCH Civ 136, where McFarlane LJ, as he then was, said at paragraph 100:

“One highly important aspect of the Lucas direction, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction, the ‘lie’ is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane’s judgment in *Lucas*, where the relevant conditions are satisfied, the lie is ‘capable of amounting to a corroboration’. In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R.251, where it was said, ‘In my view there should be no distinction between the approach taken by the criminal court on the issues of lies, to that adopted in the family court. Judges should therefore take care to ensure they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt’”.

7. I entirely accept that the mere fact that a lie had been told does not prove the primary case against the party or witness, should they have been found to have lied to the court. I also bear in mind there is no obligation on the party to prove the truth of an alternative case put forward by way of defence and the failure of the party to establish the alternative case on the balance of probabilities does not, of itself, prove the other party's case, *Re X (Children) (No 3)* [2013][?] EWHC 3651 Fam, and *Re Y (No 3)* [2016] EWHC 503 Fam.

#### Background

8. The mother and the father were both born in Ghana. The mother entered the United Kingdom as a student in 2007 and on 22 June 2012 she became a British citizen. In October 2015, the parents went through a customary marriage ceremony in Ghana and later, on 16 April 2016, the parents were married at a registry office. On 23 February 2017, A was born.
9. There was an incident to which I will refer in some more detail later in this judgment on 6 May 2017, in which the police attended the house and as a result of which A was taken to hospital. He was kept overnight for observations and was discharged from the hospital on 7 May.
10. On 8 May 2017, the mother asserted that she had no intention of resuming a relationship with the father. The father underwent an interview with the police in relation to the alleged events on 6 May.
11. On 12 May 2017, after the father had been interviewed, the mother was contacted by Detective Constable P; the mother confirmed to her that the account she had given to the police on 6 May was a true account of what happened, but nevertheless she did not wish to attend court or to give evidence against the father.
12. Thereafter, the mother entered into a working agreement with the Local Authority. One condition of which was that the father was not to attend at the family home. In breach of that working agreement when, on 28 July 2017, the Local Authority requested a safe and well check be undertaken by the police, the father was found by the police, hiding in an upstairs cupboard.
13. During the course of October 2017, and indeed throughout the rest of 2017, the Local Authority, on numerous occasions, attempted to contact the mother and the father, but with no success.
14. On 21 December 2017, the mother and A left the jurisdiction of this court, after the Local Authority had served papers relating to the issue of these care proceedings, on the parents by posting them through the letterbox of the family home.
15. On 22 December 2017, there was a first hearing before HHJ Helen Hughes; a second hearing followed on 11 January 2018. The order made on this latter date contained certain recitals in relation to the whereabouts of the mother. I shall return to this issue in a moment.
16. There was a hearing before me on 23 January 2018, the mother was represented but did not attend and the father did not attend. The matter was adjourned until 2pm that

day, with an order for the father to attend with a warning that a warrant for his arrest would be issued if he did not.

17. Later that day, on 23 January, the father did attend before me and there were further recitals set out in that order relating to the mother. Again, I shall refer to these in a moment.
18. On 31 January, there was a further hearing at which Mother attended and was represented, as did the father. An order was made that the mother should not leave the jurisdiction of this court until further notice and a penal notice was attached to that order.
19. On 23 March, at a further hearing before me, the mother was represented but did not attend. In that order, I made, amongst other orders, a respectful request to the judicial and administrative bodies in the state of Ghana to assist with ascertaining the whereabouts of A, who was a ward of this court. On 15 May, I made a further order for the return of A to this jurisdiction by 4pm on 29 May.
20. On 11 June, there was a further hearing before me, various orders were made including an order that both parents should not leave the jurisdiction of this court until further order. Extensive efforts have been made to discover the whereabouts of A, whether he be in Ghana or elsewhere. Nothing was heard from the parents despite the Local Authority's extensive efforts and I was invited to make a publicity order on 29 June 2018, which I did.
21. B was born on 29 July 2018 in Jacksonville, Florida. As a result of the publicity order, it became apparent that a nursing professional at a hospital in Jacksonville, Florida, saw the publicity about this case on social media and recognised the mother as a patient who had just given birth. She made contact with the American authorities who took steps resulting in the father being arrested and both of the children being placed in care in the United States of America.
22. There were various court proceedings before the courts in Florida. They resulted in A returning to this jurisdiction on 4 August 2018 and, after a further series of legal proceedings in the United States, a judge in Florida made an order for B to return to this jurisdiction on 24 September 2018 and his return was secured on 24 October. Both children were placed in the same foster home. Further hearings provided for this fact-finding hearing and the evidence to be provided to the court.

#### Evidence

23. On 6 May, the mother called the police to the family home. She alleged:
  - i) the father had previously physically assaulted her;
  - ii) on the morning of 6 May, he had been drinking alcohol;
  - iii) there was an argument between them in the mid afternoon;
  - iv) the father threw the baby A from one sofa to another, the child banged his head on the wooden arm rest and started crying;

- v) the father then slapped the mother on her left cheek with his right hand, pushed her to the floor and then kicked her in the back, ribcage and hip; and
  - vi) when this assault was over, she told him to leave the house, he refused and she telephoned the police.
24. The police arrived, an ambulance was summoned and A, with the mother, was taken to hospital. He was detained in hospital overnight and at some point underwent a CT scan. The mother's police statement is dated 6 May; the father was arrested but bailed without interview because the police took the view that the father needed the assistance of a Twi-speaking interpreter.
25. The father was interviewed on 12 May and during the course of his interview he asserted, contrary to the mother's account, that she was the aggressor. Later, on 12 May 2017, the mother was spoken to by DC P, as I have said she declined to press charges against the father but maintained that her account to the police was true.
26. In very marked contrast to her statement, in her response to threshold and in her oral evidence, the mother said all of her allegations against the father were false. She said she made up the allegations against the father because he had been in contact with a woman on Facebook and she was jealous and angry with him for doing so.
27. The mother did not stop at making the bare assertion that her previous allegations were false; she made very serious allegations of misconduct and of lying against a paediatrician who had examined A at hospital; a police officer who had taken her witness statement and against her former solicitor who had previously represented her in these proceedings. I shall deal with each in turn.
28. Dr P, a paediatric registrar, examined A on 6 May and in her report of the same date she recorded in an assessment in A&E that A was noted to have a small bruise over his right eye and he underwent a CT scan, which was reported to be normal. In a section of her report headed "History from Mum" she recorded the following:
- "On the evening of 6 May, Mum was sat of [sic] a sofa holding the baby in her arms. Dad, A, became angry and snatched A out of her arms and threw him from a height of about three feet onto the sofa, banging his head on the wooden arm of the sofa in the process. Dad then proceeded to assault Mum, A cried immediately and there was no history of a loss of consciousness. The police were called to the house by Mum, and Dad was arrested, he is currently in police custody. Mum had noticed the baby had a bruise above the right eye."
29. Under "On examination" she set forth the following:
- "A height was 59.5 centimetres, 50<sup>th</sup> centile, head circumference was 38.7 centimetres, 25<sup>th</sup> centile and weight was 5.1 kilograms, ninth centile. There were no concerns about his dress or cleanliness, he was pink and well perfuse and his observations were all within normal limits. His cardiovascular chest abdominal musculoskeletal ENT in ophthalmology

examinations were all normal; his mouth was normal with both frenulee intact and he was noted to have normal male genitalia and anus. The skin lesions found are described as below, a .5 centimetre x .5 centimetre bruise to right eyebrow”.

30. Dr P’s conclusion was that the history provided was consistent with the injury noted on examination and fell into the category of definite physical abuse. The mother disputed that A had a bruise; she maintained that the doctor had mistaken a vein for a bruise. She maintained the doctor’s report was wrong and that A did not have a bruise. I note in the clinical notes there is a drawing of A’s face with a bruise marked on it, over his right eyebrow.
31. In relation to her police statement dated 6 May 2017, the mother said:
  - i) This statement was pre-written by PC J and was presented to the mother at the hospital on 7 May;
  - ii) before signing, she had told the police officer that her allegations against the father were false and made up by her;
  - iii) the police officer nevertheless said she had to sign the statement because the matter would be investigated by the police, and
  - iv) on the same day when she told a social worker at hospital that her allegations against the father were false, the social worker is alleged to have said it was too late to say this now.
32. On 12 May 2017, DC P telephoned the mother after the father had been interviewed by the police; in her police statement, DC P stated the mother told her that:
  - i) her relationship with the father was over and she did not want him anywhere near A again;
  - ii) she did not want the stress of attending court to give evidence against the father, but
  - iii) notwithstanding this, the account she gave to the police was true.
33. The mother did not accept, initially, this evidence of the police officer. When pressed in cross-examination by Miss O’Malley, counsel for the Local Authority, the mother eventually said the officer’s account could be true but she, the mother, could not now remember.
34. The most egregious conduct of the mother were her assertions that her former solicitor had lied in various recitals and court orders. In the order of 11 January 2018, the following recital appears:

“Upon the mother having indicated to her legal representative that she is currently in London and was aware of today’s hearing and did not intend to come to court today, that the child is currently in Ghana being cared for by the maternal grandmother and the mother does not intend to bring the child

back to the United Kingdom and would not engage in a residential assessment with the child”.

35. The mother said this recital was not true, she was in Paris not London and she did not know about the court hearing. She did not say she did not intend to attend the court hearing, further she did not say that she would refuse to be assessed in a residential unit.
36. In the order of 23 January 2018, the above recital is repeated and the following additional recitals appear:

“Upon the mother having not attended court today, having been made aware of today’s hearing date by her solicitor and upon the mother having provided instructions on 20 January 2018, as set out in the position statement, she is currently in Africa and cannot attend court due to attending a funeral, that the maternal grandmother took A back to Ghana with her, A will remain in Ghana until such time as he is old enough to decide whether to come back or not and the mother will visit A on a regular basis. Upon the father not attending court today on the basis that he has a pre-arranged appointment to attend, his current instructions are that A was taken to Ghana for a holiday”.
37. The mother said both of the first two recitals were wrong and that her then solicitor was lying to the court. At the end of the court day, the mother had not completed her evidence. I gave the usual warning and directed that a statement be obtained overnight from the mother’s former solicitor.
38. The following day I had before me a statement from the mother’s former solicitor, Mr D. In it he confirmed that each of the recitals above were made (a) as a result of conversations he had had with the mother, or counsel then instructed on behalf of the mother had had with her and, (b) the recitals set out above were on the basis of the mother’s specific instructions given to him or to counsel.
39. Before resuming her evidence and reminding the mother she was still under oath, the mother had read Mr D’s statement. After repeatedly avoiding answering the question of whether she accepted what was set out in his statement, the best the mother could do was to say that she had made mistakes when she had said in the previous day in her evidence that Mr D had lied to the court. She could give no explanation for this so-called mistake.
40. Just before the conclusion of the mother’s evidence, her counsel informed the court that the mother had sacked him and accordingly he would have to withdraw. The mother asked if her counsel could stay to represent her for the balance of the day, but when told this was not possible she sought time to instruct an alternate counsel. I adjourned the matter to 2pm, but by then it had not proved possible to find counsel and I adjourned the matter part-heard to 4 February.
41. On 4 February, the case could not proceed. A Twi-interpreter had not attended to assist the father and there was no transcript of the mother’s evidence at the previous hearing. I had no alternative but to further adjourn the matter part-heard to 27 March.



42. On 27 March, counsel now instructed on behalf of the mother told me that as a result of communications between him and the mother and the nature of her instructions to him, he was professionally embarrassed. Following advice he had received from the Bar Council, he was required to withdraw.
43. The mother called her counsel a liar in the course of his submissions to me, the mother wished to continue and that she would represent herself. However, there were solicitors on the record as acting for the mother, I had enquiries made as to whether the solicitors wished to apply to come off the record and, if not, that they should take steps to ensure legal representation for the mother.
44. A solicitor from the firm, Ms Udeagbaja, attended to represent the mother. The mother resumed her evidence; she maintained her previous stance, namely:
45. A was not injured on 6 May 2017;
  - i) the recitals in the order of 11 January and 23 January 2018 were wrong;
  - ii) she had been forced to sign a written agreement by the social worker, which, *inter alia*, as I have said, provided the father should not attend the family home;
  - iii) contrary to the agreement, she said the social worker had told her that the father could visit to collect his clothes;
  - iv) her explanation for the police finding father hiding in an upstairs cupboard at the family home on 28 July 2017 was that he had panicked; and
  - v) she denied the social worker had left notes asking for the mother and/or the father to contact the Local Authority.
46. The mother asserted that the evidence of the social worker was made up; the mother also denied that she had ever received a letter from the Local Authority in relation to and prior to the Local Authority commencing court proceedings. Moreover, the reason why the wrong name was recorded by the hospital for her and for A was a mistake made by hospital staff and not as a result of her having given false names. If there was an injury on A, she could provide no explanation for it.
47. Mr D gave brief evidence before me; he confirmed the recitals relating to the mother in the orders of 11 January and 23 January were based on explicit and expressed instructions of the mother, given and confirmed in telephone calls, emails and/or text messages.
48. Police Constable J, who wrote the mother's police statement on 6 May told me the statement was made at the hospital and he wrote down what the mother told him. He asked her to read the statement, asked if everything was okay and then asked her to sign and date it. At no time did the mother claim to the police officer that her allegations against the father or any parts of her statement were false.
49. In response to the mother's account that:

- i) he had arrived at the hospital with a pre-prepared statement for the mother, who he had never met before;
- ii) she had told him the statement was false, and
- iii) his response was to tell her to sign it;

the police officer said this account was totally wrong and untrue.

- 50. The father then gave evidence, he denied throwing A onto a sofa. He denied the mother's account and her allegations against him in respect of 6 May 2017, but did accept there was an incident between them. He did not deny that A had suffered some sort of injury, but he said he did not know how it had occurred.
- 51. He accepted that he had misled the Local Authority and other professionals about A's correct name, that he had misled the professionals about the whereabouts from time to time of the mother and of A and that he had not informed the professionals of where the mother and/or A were.
- 52. He asserted that the incident on 6 May arose as a result of the mother catching him speaking to somebody on Facebook, causing her to be jealous. His account was that on 6 May, he was feeding A, he had put him down to fetch another bottle and the child started crying. The mother criticised him and said the father put A back in the cot.
- 53. He later explained that the reference to a cot meant a makeshift cot on one of the two sofas in the downstairs sitting room.
- 54. He said there was an altercation between him and the mother, she had grabbed his shirt front, the mother had fallen over, she had picked up an iron, which he took off her, then she asked him to leave the home.
- 55. He denied the mother had grabbed him by the throat so that he was choking; he denied that he thought the mother was going to hit him with an iron. Those denials and assertions are at complete contrast to what the father said to the police in his interview on 12 May 2017. He variously said as follows:

“Why is the baby crying, I was not getting any peace. She hurt my feelings because, you know, I had the common, common sense to go and get some more food for the baby. I got annoyed, okay; I got annoyed at that point, so I put the baby back on the sofa. Yes, she started squeezing my throat, I slapped down the hand, for her to leave me, you know, to leave my throat because I was choking and then she, she stumbled and fell and there was an iron behind her. Because she has had an operation before, so I rushed for her to stand up, she refused, she refused my help, she grabbed the iron and was going to hit me with it, so I held her hand with the iron in it, so she said she was going to call the police and I thought she was joking”.

56. Then a little later, it was put by the police officer, “So then you put the baby back on the sofa and that is when she starts grabbing you?” and the father replied “Yes”.
57. Then, some time later, to seek clarification, the police officer said to the father, “You gestured that she has grabbed hold of, like, the scruff of your neck. Tell me if I am wrong because obviously we have talked about this some time ago. Are you talking about the hand that was holding your neck?” The father replied yes and the officer continued “in order to get her to release you, is that right?” The father said “yes”. A little later the father said, “So she picked up the iron to hit me with and that is when she raised her hand, I took the iron from her”.
58. The father was not able to give any adequate explanation for the inconsistencies between what he told the police on 12 May and what he told me in evidence. In relation to the family being in the United States, the father told me in evidence that he travelled from this country to Russia to see the paternal grandfather to obtain some money from his father to settle debts that he owed in Ghana in order that he could travel to Ghana to bring A back to this jurisdiction.
59. Around this time the mother telephoned him to tell him she had been arrested by the police in Norfolk and also that she had plans to take A on holiday to the United States to see her brother; at this stage, the mother was very heavily pregnant with B.
60. Accordingly, the father said that he went to the United States; initially in his evidence he claimed this was to bring A back to this country. Later in his evidence he told me he did not find it easy to give his son, his first born, to the Local Authority and then said that he had had no intention of returning from the United States with A.
61. He accepted that he had taken no steps whatsoever to secure the return of A to this jurisdiction. He accepted that he did not tell the Local Authority or his own solicitors that he was travelling to Russia or travelling to the United States and he accepted he had not informed the Local Authority nor his solicitors of the whereabouts of himself, the mother and/or A, save for in respect of both these matters, he now recognised he had made a mistake but the father refused and failed to give any explanation for those failings.
62. The final witness was DD, the social worker, she confirmed that she had posted a letter notifying the parents of the intended proceedings by the Local Authority through the letterbox of the family home and that she had, on about six occasions, attended the family home to make contact with the mother and/or the father and when there was no response she had posted messages through the family letterbox asking for the parents to make contact with her or the Local Authority. Neither of them ever did.

### Analysis

63. I accept the evidence of Dr P, Mr D, PC J and DD without any hesitation or reservation whatsoever. Their evidence, either in written form and/or orally is entirely consistent with all of the other written documentation provided to me.
64. I find that the mother lied with outstanding alacrity throughout the whole of her evidence to a degree, which I have hitherto not encountered. I am satisfied so that I

am sure that the mother lied about Mr D and about the recitals to the orders of 11 January and 23 January. I am entirely satisfied and find that what is set out in those recitals was precisely what the mother had told Mr D and/or counsel then representing her and I entirely reject the account of the mother.

65. I am satisfied so that I am sure that the mother lied about the manner in which her police statement of 6 May had come into being; I am entirely satisfied that PC J took that statement from the mother at the hospital as he described, namely he wrote down what the mother had said to him about the events of 6 May.
66. I am satisfied on the balance of probabilities that the mother has lied:
  - i) about the evidence and the events of 6 May 2017;
  - ii) that there was no bruise or injury on A on 6 May 2017; and
  - iii) about the fact that a letter and messages had been left by the Local Authority at the family home.
  - iv) The father also, I regret to find, lied in his evidence and I find, on the balance of probabilities that he lied when he asserted:
  - v) that there were no problems in the marriage between him and the mother;
  - vi) he lied about the events of 6 May 2017;
  - vii) he lied when he asserted that he had placed A on a cot, so-called, on a sofa; and
  - viii) he lied when he denied that the mother had grabbed him around the throat and/or had intended to strike him with the iron.
67. I find that the father deliberately sought to minimise the role of the mother in the events of 6 May to protect her. Both, as I have found, have lied about what occurred in the family home on 6 May 2017. It is tempting to find that the mother's account is true and that the father did throw A onto the sofa, where he struck his head on a wooden arm, but I do not do so because both have chosen not to tell me the truth about what occurred in their home.
68. What I am left with, which is clear, is that a 72-day old, non-ambulant baby sustained a bruise above his right eyebrow. This bruise occurred when he was in the care of the mother and/or the father; neither of them have made any attempt to offer any sort of accidental explanation for that injury and in so young a child I am satisfied and find, on the balance of probabilities, that this was an inflicted injury.
69. There are only two people in the pool of possible perpetrators and they are the mother and the father. It is plain from the matters and circumstances that I have described in this judgment that neither the mother or the father have cooperated or engaged in any meaningful way with the social workers or with this Local Authority. Neither of them have been open and/or honest with professionals with whom they have been involved, most particularly the social workers.

70. The mother abducted A in breach of court orders to take him to the United States of America; the father, I find, failed to disclose to the Local Authority or to his instructing solicitors that he was leaving the United Kingdom for Russia and/or for the United States of America. Both failed to disclose the whereabouts of A. I find that they sought to thwart the Local Authority's intervention and role in their lives and, importantly, in the life of A.
71. It was only as a result of happenchance and the publicity order that I made earlier last year that a nursing professional in Jacksonville was able to identify the mother and thereby notify the American authorities who then notified the court and the Local Authority of the whereabouts of A and of his new born brother B.
72. The father, I find, on the balance of probabilities, was complicit in the abduction of A to the United States or, at the very least, was complicit in the wrongful retention of A in the United States. I have no sense from either the mother's or the father's evidence, especially that of the mother, that they have any insight into the gravity and seriousness of their actions over the last year or so.

#### Conclusion

73. I have, accordingly, no confidence that the mother and the father will, in the future, work with the Local Authority and the social workers in an honest and cooperative manner. I am satisfied in all the circumstances of this case and in light of my findings that both the mother and the father remain a flight risk. I will, at a future hearing, determine the orders that will best secure the future welfare of both A and B.