



Neutral Citation Number: [2025] EWCA Civ 594

Case No: CA-2024-002774

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**MRS JUSTICE THEIS**  
**FD23P00273**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07 May 2025

**Before:**

**LORD JUSTICE MOYLAN**  
**LADY JUSTICE WHIPPLE**  
and  
**SIR LAUNCELOT HENDERSON**

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**Re Z (A Child)**  
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**Anita Guha KC and Justin Slater** (instructed by **Goodman Ray LLP**) for the **Appellant**  
**Michael Gration KC and Katy Chokowry** (instructed by **Dawson Cornwell LLP**) for the **1<sup>st</sup>**  
**Respondent**  
**Jonathan Rustin** (instructed by **CAFCASS Legal**) for the **2nd Respondent**

Hearing date: 27 March 2025  
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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 7 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Moylan:**

1. The father appeals from findings of fact made by Theis J as set out in her order dated 22 November 2024. The findings were made in the course of proceedings between the father and the mother in which the father seeks an order for the return of their son J, now aged 8, to Egypt. The mother wrongfully removed J from Egypt in May 2022. The final hearing of the father’s application, which was listed for 20/21 March 2025, has been adjourned pending determination of this appeal.
2. The mother relied on a raft of allegations of abusive behaviour by the father in support of her opposition to a return order. These were set out in a “Schedule of Allegations” which contained five categories: (1) Coercion and Control; (2) Sexual Abuse; (3) Physical Abuse; (4) Emotional Abuse; and (5) Financial Abuse. The judge rejected the mother’s case in respect of the allegations under (1), (2) and (5). I would note that these included very serious allegations. The judge found that the allegations under (3) and (4) were very largely established. It is from those findings, which are set out in paragraphs (i)(a) to (k) of Schedule B to the order, that the father appeals.
3. Schedule B also records, in paragraph (ii), that the judge rejected the mother’s allegations under (1), (2) and (5). The judge’s rejection of the mother’s allegation, that the father physically abused and shook J (included within (3)), is recorded in paragraph (iii).
4. It is also relevant to note that the judge made serious findings against the mother which are recorded in paragraphs (v) to (x) of Schedule B. These included that, contrary to the mother’s case, the father had been unaware of the mother’s plans to move to the UK with J; and that the mother had relied on a forged Egyptian custody order for various purposes including to prevent the school attended by J in the UK from communicating with the father.
5. Permission to appeal was given by King LJ in respect of two Grounds: (1) The judge failed to provide adequate reasons in support of her findings that the mother was the victim of verbal and physical abuse by the father; and (2) the judge adopted a flawed evaluation of the evidence when determining that the mother was the victim of verbal and physical abuse by the father.
6. The father is represented by Ms Guha KC and Mr Slater; the mother is represented by Mr Gratton KC and Ms Chokowry; the child is represented through his Guardian by Mr Rustin.

*Background*

7. The parents are Egyptian. The mother attended university and graduated in 2008. She was in full-time employment from then until she left Egypt. The father also attended university or some form of higher education and was in full-time employment. The parties married in 2016 and their son, J, was born in 2017. The parents separated in late 2021. The mother and J moved to her parents’ home, which was close to the marital home. J had some, limited, contact with the father.
8. In May 2022, the mother and J travelled to England pursuant to a skilled work visa that she had obtained. Until then, the parents and J had always lived in Egypt. Apart from

a sibling of the mother's, who lives in England, it appears that all other close family members of the mother and the father live in Egypt. After he had arrived in England, there was no contact between J and the father until an order was made in July 2023 for there to be video contact.

9. The judge rejected the mother's case that the father knew that she and J were moving to England. She also found that the mother had relied on what purported to be an Egyptian court order, which gave her sole custody, when applying for her work visa and for other purposes. This was a forged document which the mother claimed she had not read, an assertion that the judge found was "simply not credible".
10. When they arrived in England, the mother and J stayed with family members who also provided the mother with her employment. The mother said that she was dismissed from this employment in November 2023 and was then asked to leave their home shortly thereafter. She and J then spent a short period living with a friend of the mother.
11. The mother sent the father's solicitors an email stating that she planned to return to Egypt with J due to her changed circumstances. She indicated that she intended to do this before 20 January 2024 and asked for her and J's passports.
12. The mother did not return to Egypt. Rather, on 25 January 2024, she claimed asylum. Her claim was refused on 2 May 2024, a decision against which she has appealed. Her appeal is due to be determined in July 2025.
13. The mother and J have been living in a hotel which accommodates asylum seekers since January 2024. This is not in the same area in which she and J were previously living, leading to J having to move schools. The mother is not entitled to work or to receive state benefits other than the very modest allowance provided to those who have claimed asylum.
14. It can be seen, therefore, as submitted on behalf of the father, that this was "a clandestine, pre-meditated abduction" by the mother. One consequence has been that J has not seen the father in person since April 2022. The father's application for a visitor's visa to travel to the UK has been refused. As summarised by the Guardian, J has "experienced seismic changes in his circumstances over the last almost three years" and has been living in what she has described as "suboptimal conditions" since January 2024, a description which, in my view, could well be said to understate his situation in England. The judge's analysis was that the Guardian's evidence "painted a bleak picture of the realities for J since January 2024".

### *Proceedings*

15. The father commenced proceedings seeking the return of J to Egypt in May 2023. The chronology indicates that he had spent some time trying to resolve matters amicably with the mother followed by several months trying to find out what remedies were open to him. It was only after he contacted Reunite and he was pointed towards solicitors who were able to assist him that the proceedings were commenced.
16. For a variety of reasons, the proceedings have regrettably progressed extremely slowly. J was joined as a party following the mother making her asylum claim. Both parties

filed a number of statements; expert evidence was obtained on Egyptian law and on UK immigration law; and Cafcass has filed a report.

17. Although the hearing which took place before the judge in November 2024 was intended to be the final hearing, the judge decided that she was not in a position to make a final welfare decision and her judgment is confined to fact finding. The father was refused permission by King LJ to appeal from the judge's decision not to determine the proceedings.
18. The mother, the father and the Guardian filed detailed written submissions (Skeleton Arguments and Closing Submissions) for the hearing before the judge.
19. The submissions made below on behalf of the father significantly reflected the submissions advanced in support of his appeal. They included that the mother was "a wholly unreliable witness" and that her evidence was "undermined by patent lies and fundamental discrepancies in respect of the core of her allegations". Specific submissions were made in respect of the allegations in the Schedule. These included that there were "Fatal contradictions in [the mother's] case on sexual abuse"; there were material contradictions in her evidence about several of the allegations of physical abuse; the mother's accounts "do not marry"; and the mother had "not made out her case on emotional" or financial abuse.
20. The mother made extensive submissions on the approach the judge should take to "Fact-finding, memory, trauma, [and] alleged lies". These, in part, sought to meet the father's case as to the inconsistencies in the mother's evidence and as to how the mother's case had "evolved". The mother relied on the Guardian's comment that "while the mother's account has 'escalated', this is not unusual in those who have experienced trauma through being subject to domestic abuse".
21. It was also submitted that the "forensic context in which the mother's account evolved cannot be ignored". Part of this "context" was the mother's case as to the circumstances in which her first statement had been prepared by her former solicitors. Briefly, she said that this had not been translated to her at the time and it was only when her current solicitors had it officially translated that she realised it did not reflect her instructions and some paragraphs needed to be "amended or clarified". It was submitted on her behalf that this was "a significant issue which impacts on the exercise of evaluating the mother's evidence with reference to alleged prior inconsistency and/or discrepancy between different accounts that the mother has given (whether within her written evidence or in other contexts)".
22. In her closing submissions, the Guardian submitted that: "The mother's evidence was difficult to follow. She was evasive at times and failed to answer straightforward questions, often becoming belligerent in her exchanges". It was also submitted that there were: "Inconsistencies in respect of domestic abuse allegations". The Guardian noted that "the mother accepted that in the 6-month period from November 2021 – May 2022 when she and J lived with the maternal grandparents, nothing adverse happened with the father – thus even [on] the mother's case taken at its highest, she was able to safeguard J from harm". I mention this because it is clearly significant in respect of the substantive issue before the court, namely whether J should return to Egypt.

23. In respect of the father's evidence, the Guardian submitted that: "As with the mother's oral evidence, the guardian considered that the father's evidence was also evasive with him often appearing to be exasperated at being challenged in cross examination".

*Judgment*

24. The judgment contains the following sections: "Relevant Background"; "The Factual Issues"; "Expert Evidence"; "Legal Framework"; "Submissions"; "Discussion and decision".

25. At the outset, the judge summarised the parties' respective cases:

"According to the mother the father was abusive towards her from early on in the marriage. She describes incidents of physical and sexual abuse which caused her to leave the family home with J for a short period in October 2021 and then, finally, in November 2021. The mother describes behaviour by the father that she said is coercive and controlling, such as limiting the contact she could have with her parents and exerting financial control. The father denies all the behaviour alleged although accepts the parents did have arguments."

The father's summary of the relationship in his first statement was as follows:

"In terms of my relationship with [the mother], there were no difficulties. We did spend some time apart, but the reason for that is because [the mother's] mother has been unwell and suffering with cancer. [The mother] has spent some time with her, and had spent some time with her, in the weeks leading up to removing J from Egypt. I know that her mother is still unwell, but as far as I am aware, she remains in Egypt."

26. The judge went on to summarise aspects of the evidence including in respect of the mother's allegations that she had been sexually abused by the father. She noted that the mother's case had evolved in that the abuse "was described in more detail in her second statement when she had the benefit of an interpreter", "with more information in her later statement and her asylum interviews".
27. In respect of physical abuse, the mother relied on an incident in October 2021. The judge set out what the mother had said about this in her first statement, which included an allegation that the father had "hit and kick J" (sic). The judge noted that in her oral evidence, the mother's account was not the same in that she only "described the father spitting at her on this occasion".
28. The mother also alleged that the father had been critical of her parents and had said that he did not want her or J visiting or seeing them.
29. The judge spent some time considering what had happened on 24 November 2021 which the mother alleged led to her and J finally leaving the family home. The mother's case was that there had been an argument in the car about a forthcoming operation for J during which the father had assaulted her and had then left the car slamming the door

so hard as to damage it. They then saw a priest to help them try and resolve matters. This was followed by a further incident when the parents and J returned home.

30. The judge then summarised the father's response to aspects of the mother's case as referred to above, including as to what had happened on 24 November 2021.

"The father accepts there was an argument on 24 November 2021. In his statement he said that the mother had spoken to him 'in a very irritating manner; I was very upset and agitated. But I didn't hit her or say any bad words. All I did was ask her to stop the car (a habit when I am upset), and I closed the car door firmly but never to the extent of breaking it'. In his statement he denied the mother's account of any assistance by the priest, although in his oral evidence he accepted that had taken place but it had been his idea. He did not accept he was antagonistic towards her parents in his statement stating 'I treated her parents as if they were my own mother and father'. In his oral evidence he was very critical of the way he was treated by the mother's father. He denied the incident in October 2021 or physically or sexually assaulting the mother stating he loved her 'But in some situations, I got upset by her actions and the way she treated me badly sometimes....I was just upset'."

31. The judge also recorded aspects of the mother's case which were contradictory such as that, following the operation in December 2021, the mother was critical of the father because, she said, he "never called to ask about J". Later in her judgment, the judge set out that the mother was also critical of the father because he "refused to come to my parents ... to visit J" during the 6 months between November 2021 and May 2022. The mother said that, on three occasions in early 2022, she had suggested to the father's priest that they "visit me at my parents' home" for an "open discussion to discuss our issues". During the same period, the mother "went back to [the family home] to collect belongings and was surprised to find the locks changed". This led to text messages between the parents in early 2022 which were mundane exchanges about the mother wanting to collect things from the home and which the judge found "do not support the fear the mother describes".
32. The judge found that there was "no credible evidence to suggest" that the father knew about the mother's plans to travel to England. As for the forged custody order, she found the mother's attempts to distance herself from this document by saying that she had not read it, "simply makes no sense as all the other evidence points to her knowing its terms".
33. The judge summarised the parties' submissions.
34. On behalf of the mother, it was accepted that she had the burden of proving the allegations on which she relied. It was submitted that the court could not rely on the father's evidence because it was "inconsistent and paints an unrealistic and idolised picture of the parties' relationship". The father had acknowledged that there had been "arguments and he had made mistakes but was unable to provide any details about that when pressed". His "limited admissions about what took place on 24 November 2021

[were] revealing and provide an important indicator of the true nature of the parents' relationship and the inability of the father to control his temper when angry".

35. The father's case was that the mother was "a wholly unreliable witness" and that there were "many inconsistencies" in her evidence. She had been "highly deceitful and opportunistic"; her removal of J from Egypt had been "a pre-meditated abduction"; she had relied on "forged documents" and had "only made an asylum claim seeking refuge upon the basis of her domestic abuse allegations against the Father nearly 2 years after her arrival in this country, as a result of losing her employment in the knowledge that she faced deportation". The judge summarised the submissions as follows:

"Ms Guha KC and Mr Slater rely on the many inconsistencies in the mother's account, the significant delay in her raising any detailed issues about domestic abuse and the circumstances surrounding the period from November 2021 to April 2022 are inconsistent with the mother's account. There is no evidence that she was put at risk of harm from the father during that period, on the contrary, as set out in the evidence, she complained that the father had not taken much interest in J during that period, which she would have welcomed. During that period they were able to communicate about matters concerning J, such as his future schooling in Egypt even if though they give differing accounts about the precise details. They submit even after the mother came here she was still in intermittent communication with the father with no credible evidence that she was in fear. The context of timing when the mother makes her detailed allegations, they submit is important, only after the father has issued proceedings here and since then the mother has sought to delay these proceedings at every stage, including making the application for asylum."

36. The Guardian's submissions included that:

"both parents were evasive in their oral evidence, deflecting their answers to questions of any detail. In relation to the mother there were inconsistencies regarding the allegations of abuse, a general abdication of accountability or responsibility for the steps that had been taken by her, in particular how they impacted on J. The mother acknowledged she was able to safeguard J's interests during the six months she stayed with her parents and attributed blame to the father for causing harm by bringing this application demonstrating a lack of insight into her role as to why these proceedings were necessary."

37. The judge noted that this "is a complex case" and set out matters she took into account when considering the parents' evidence. These included "the way in which the statements have been prepared, particularly by the mother's former solicitors"; the "obvious stress to both parties in giving oral evidence"; and the fact that they gave evidence thorough interpreters. However, the judge agreed with the Guardian's assessment that "both parents were evasive in many aspects of their answers".

38. In respect of the mother's evidence:

"[78] The mother often gave long answers, often repeating what she had said earlier and frequently unrelated to the question she was being asked. A feature of her evidence was the responsibility she placed on others for significant events, such as the agent for the answers in the UK visa application form and the agent or lawyer for the custody order which it is now accepted is not a genuine Egyptian order. She maintained she had not read it which is simply not credible, particularly bearing in mind she took it to the school in ... to prevent information about J being sent to his father. She also sought to maintain that the father knew and/or consented to J coming to the UK with her. All the evidence points the other way, in particular the joint endeavours by the parties in April 2022 to secure a place for J in a school in Egypt starting in September 2022, the way the mother left her employment by resigning after she had left Egypt and the messages from the father to the mother once she was in England."

39. As to the father's evidence:

"[79] The father's evidence maintained his denials but when pressed by Mr Gration to give examples of the mistakes he had made which he referred to in his statement he struggled to provide any detail. The picture he sought to paint of limited difficulties in the marriage did not match his evidence about what took place on 24 November 2021 which was not an isolated occasion in terms of the parties arguing or the father leaving the car in the way that he did, making it more likely that there had been other serious arguments between the parties where the father had been unable to contain his temper and, in my judgment, is likely to have physically assaulted the mother in the way she has described."

40. The judge then set out her ultimate conclusions:

"[80] I accept the mother's evidence that she and J had left to go to her parents' home in October due to an argument between the parents and returned two days later following the argument described by the mother. There is no issue that she and J left on 25 November 2021 and didn't return to the family home. The father doesn't suggest she left for any reason save to look after her mother, but her cancer diagnosis was not until later. There is a level of acceptance by the father that the parents argued but, in my judgment, his evidence underplays the extent of those arguments and his tendency to lose his temper in the way that happened on 24 November 2021 happened more frequently than he was prepared to acknowledge. I consider it more likely than not that the mother left due to the father's verbal and physically abusive behaviour towards her set out in the schedule at 3 and 4



(save that the incident at (a) is limited to the mother thinking the father was going to hit her) but I am not satisfied to the required standard that the allegations of sexual abuse are established to the required standard due to the lack of consistency in the mother's accounts, the delay in the allegations being made, being raised for the first time in August 2023 in response to the father's application which she vehemently opposed. I fully recognise, due to the difficult sensitive issues in such allegations, there can be delays in them being made. However, even making all due allowance for those matters, including the mother's wish for the family not to be broken up and the cultural pressures around that, she remained open to the parties reconciling during the six months she was with her parents, was critical of the father in not remaining in touch more either with herself or J. Her position in relation to that continued when she came to the UK and whilst I accept she may have felt more protected due to the distance her attitude and behaviour was inconsistent with all the serious sexual allegations she had made.

[81] Looking at the evidence as a whole I consider it more likely than not that J witnessed either directly or indirectly (if he was not in the same room) the arguments between the parties and the physical abuse by the father to the mother. On any view that was deeply damaging to his emotional welfare. I do not accept the mother's evidence about the father shaking J, the allegation lacks any real detail or context and is inconsistent with her wanting to promote the father seeing J after they separated.

[82] I do not find the allegations of coercion and control or financial abuse established to the required standard. There is no credible evidence that the mother was unable to seek the assistance of her parents when she needed it, she went there in October and in November. The allegation regarding the purpose and circumstances of the sale of the gold and the purchase of the property lacks any supporting evidence. The mother remained working during the relevant period."

41. As can be seen, the judge dealt with all the allegations in relatively summary terms. This included her rejection of the mother's allegations as set out in the Schedule in respect of "Coercion and Control", "Sexual Abuse" and "Financial Abuse". Several of these were extremely serious allegations and they all sought to paint a picture of the mother being the victim of continuous abusive behaviour by the father. Further, and importantly in the context of this appeal, it can be seen that the judge did not fully accept the allegations as set out under the headings of Physical, category 3, and Emotional Abuse, category 4. The mother's evidence did not support her allegation that the father "hit" her when she was pregnant (allegation 3(a)). And, the judge also did not accept that the father "used to hold J by his shoulders and shake him" (allegation 3(e)).
42. Following receipt of the judgment, Ms Guha sent a request for clarification which invited the judge to address findings (eight in all) which had been sought by the father.

In her response, the judge pointed out that she had made findings in respect of five of these matters (relating to the mother's wrongful removal of J from Egypt and the use of the forged custody order). In respect of the other three, she added a paragraph to her judgment which dealt in particular with the potential effect on J of his abrupt removal from Egypt and the severance of contact with the father. The judge indicated that the extent to which this had caused emotional or developmental harm to J would be a matter "to be addressed at the welfare hearing".

### *Submissions*

43. The father's case on this appeal is, in summary: (i) that the judge's evaluation of the evidence was flawed in particular because she failed to look at the overall picture and considered the evidence in silos; and (2) that the judgment "fails to accord with the minimum requirements" set out in *Re B (A Child) (Placement Order; Adequacy of Reasons)* [2022] 4 WLR 42 ("*Re B*") in particular by failing to provide adequate reasons for making her findings in respect of physical and emotional abuse.
44. Ms Guha submitted that the judge's adverse findings against the father cannot stand "when one analyses the overall landscape of the evidence and the other findings made about the mother's credibility". The judge had "compartmentalised" the evidence. She had failed to factor into her analysis of the allegations of physical and emotional abuse how her rejection of the more serious allegations made by the father and her other findings against the mother impacted on the mother's credibility and her case in respect of these allegations. The key issues were "interlinked" and there was "an abundance of evidence in support of the father's case that the mother had retrospectively manufactured her allegations of domestic abuse to exonerate her conduct within the abduction and contrive a case to defeat the father's application for a return order" which the judge had failed to include within her analysis.
45. The judge did not take into account the scale of the mother's deceit involved in her removal of J from Egypt (this included that the mother had been discussing with the father which school J should attend in Egypt when, at the same time, she was secretly applying for a visa to enter England) and in her use of the forged Egyptian order, in respect of which she had then given incoherent accounts to seek to attribute responsibility for this to others (variously her travel agent, her Egyptian lawyer and her brother-in-law with an "absurd lie" that she had not read it). In addition, there were other elements which were contrary to the mother's case. She did not say that there had been any incidents of concern with the father's conduct in the period between November 2021 and May 2022. She only lived 5/10 minutes away from the father but had lived "in safety". She had actively pursued a reconciliation with the father during this period and there had been, at least, some contact between J and the father.
46. There were examples of the mother, when speaking to professionals in England, "distorting the narrative and attributing blame to the father for acts he had not committed" including when she told one professional that she had had to leave her work in England "due to the abuse she continued to experience from" the father. This was clearly a false claim as was the mother's assertion to others that the father had threatened to remove J from her care when he had "never challenged that J will remain in the care of his mother".

47. The inadequacy of the judge's analysis and her reasons were, Ms Guha submitted, "amply demonstrated by the fact that the judge simply adopted the schedule of eleven findings sought by the Mother within the category of verbal and physical abuse without any reference to the key evidence from the parties or the Father's case pertaining to 9 of the 11 allegations". The "totality of the judge's reasoning in respect of these 11 allegations is contained within a short passage of the judgment at paragraphs 79 & 80".
48. In addition, Ms Guha highlighted some of the inconsistencies in the mother's evidence about these allegations. Some of these, she submitted, amounted to "completely different accounts". There were significant inconsistencies and they should have featured in the judge's analysis. I do not propose to set out all the inconsistencies relied on by Ms Guha and refer to just two examples.
49. One allegation in the Schedule was that, during an incident in early October 2021, the father "spat on [the mother's] face". In her first statement, the mother said that the father "shouted at both of us and started to hit and kick J" (an assertion that was not corrected in her second statement); in her asylum interview, there was no reference to J being assaulted with the mother saying instead that the father had spat at her; in her oral evidence she said that the father "slapped me to my face ... Sorry, he spat at me".
50. In respect of the incident on 24 November 2021, the Schedule stated that, when they were in the car, the father "hit [the mother's] arm with his fist". In her first statement, she said that the father "slapped me". This was not corrected in her second statement. In her asylum interview, the mother said that the father was "hitting shoulder" (sic). In her oral evidence, the mother said that he had hit her shoulder with a closed fist.
51. Ms Guha also pointed out that the judgment contained no finding as set out in Schedule B(i)(e). This was not an allegation that featured in the Schedule of Allegations and related to what the mother said had occurred later on 24 November 2021 when the family returned home. In addition, the finding in B(i)(j) included that the father "did not allow Mother's parents to attend J's operation", when they had attended; and the finding in B(i)(k), that the father "did not care about J's health", was not supported by the evidence which had dealt only with J's operation in December 2021.
52. Ms Guha submitted that the effect of the above is that the judge's findings in respect of Physical Abuse and Emotional Abuse (categories 3 and 4) are unsustainable. All the various elements painted a clear picture of the mother falsely depicting herself as a victim of domestic abuse. Against the background of the mother's deceit and false assertions, the many inconsistencies in her evidence and the judge's rejection of the mother's other, serious, allegations, there needed to be a very careful scrutiny of the remaining allegations of physical and emotional abuse. This was not present in the judgment because the judge had, instead, "adopted a broad-brush approach" in which "too many pieces of the jigsaw are missing". Why, Ms Guha asked, did the judge accept the mother's case in respect of these allegations "wholesale ... when she was disbelieved (and yet the father believed) about the most serious allegations"? This, she submitted, was not explained in the judgment.
53. Mr Gratton pointed to the limited circumstances in which this court is entitled to interfere with findings of fact and submitted that many of the father's submissions conflicted with the established principles as set out in *Volpi v Volpi* [2022] 4 WLR 48, at [2] ("*Volpi*"). He also submitted that the judge should have been, but was not, invited

to remedy any perceived deficiencies in her reasons for making the challenged findings: *Re O (A Child) (Judgment: Adequacy of Reasons)* [2021] EWCA Civ 149.

54. Mr Gration’s overarching submission was that the judge had been entitled to make, and had adequately addressed, the findings which she made at the conclusion of a three-day hearing during which she had heard oral evidence from the parties who had been extensively cross-examined. It was, he submitted, significant that the judge “did not simply accept the mother’s case over the father’s (or vice-versa) but showed discernment between particular ‘categories’ of finding sought by the mother”. In addition, the criticisms being made of the mother’s evidence in support of this appeal repeated those which had been made to the judge during the hearing below and of which the judge was well aware. He also pointed to aspects of the father’s account of events which had changed or “developed” between his written and oral evidence.
55. In respect of the specific challenges to the individual findings made against the father, Mr Gration accepted that the judge had not made the finding set out in Schedule B(i)(e) and that, at least part of it, conflicted with the mother’s evidence. He was not sure how this came to be in the Schedule but was prepared to accept responsibility. This was, he submitted, not an error in the judge’s reasoning but in the drafting of the order and could be remedied by its removal from the Schedule.
56. As for the other challenged findings, Mr Gration submitted that there was evidence on which the judge was entitled to make those findings. There were differences in the mother’s accounts but not such as to make the judge’s findings about the father’s behaviour irrational or unsupportable. In this context, I would additionally note two submissions made to the judge below, namely that she should consider “the entire narrative of the evidence ... rather than focusing on specific allegations” and that “Due to the significance of the other allegations, the allegations of emotional abuse were not significantly canvassed in oral evidence”.
57. The Guardian adopted a neutral position on this appeal.

### **Legal Framework**

58. The limited circumstances in which an appellate court can interfere with factual findings made by a trial judge have been addressed in many authorities. I propose to refer, briefly, to three.
59. In *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911, Lord Neuberger PSC said:

“[52] ... The Court of Appeal, as a first appeal tribunal, will only rarely even contemplate reversing a trial judge’s findings of primary fact.

[53] As Baroness Hale JSC and Lord Kerr of Tonaghmore JSC explain in paras 200 and 108 respectively, this is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on

the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first).”

60. In *Henderson v Foxworth Investments Ltd and another* [2014] 1 WLR 2600, Lord Reed said, at [67]:

“It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.”

61. In *Volpi*, Lewison LJ said, at [2]:

“[2] .... the following principles are well-settled:

(i) An appeal court should not interfere with the trial judge’s conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb “plainly” does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be

discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

62. The above are relevant to Ms Guha's reliance on *Re B* in which Peter Jackson LJ set out, at [59], the elements of a "good judgment". It provides valuable guidance as to the structure and content of judgments. This appeal is, however, concerned with whether the factual findings made by the judge in this case are susceptible to challenge. The approach I must apply when determining that issue is set out in the cases above.
63. I should also refer to PD12J of the Family Procedure Rules 2010 which addresses "Domestic Abuse and Harm". Paragraph 29 provides that, where the court makes findings of domestic abuse, it "must record its findings in writing in a Schedule to the relevant order".

#### *Determination*

64. On first reading the judgment, I was troubled by the broad way in which the judge appeared to deal with the allegations under the headings of Physical Abuse and Emotional Abuse. If a court is making findings, it is obviously important that it is satisfied as to specific elements *if* those elements are to form part of such findings. An alternative open to a judge is, of course, to decide not to include such details and to make a more general finding as to the way in which a parent has behaved.
65. Further, as referred to above, during the course of the hearing it became clear that one of the findings included in Schedule B to the order (finding (i)(e)) did not feature in the Schedule of Allegations and did not feature in the judgment. As accepted by Mr Gration, there was, therefore, no basis for including such a finding at all. It was a finding that the father had been "verbally and physically abusive towards the mother in J's presence including by dragging her by the hair, slapping her face and hitting her". In the context of the findings which were made by the judge, this was a significant additional finding.
66. It is, to put it mildly, troubling that a finding of this nature could have been included in the order. Ms Guha submitted that it could not simply be removed as it undermined other findings and exemplified the deficiencies in the judgment. I do not agree. As Mr Gration submitted, it does not demonstrate an error in the judge's reasoning but an error in the drafting of the order. It shows that insufficient attention was paid in this case to ensure that the findings as recorded in the order properly reflected the findings made by the judge.

67. As set out above, paragraph 29 of PD 12J requires the court to “record its findings in writing in a Schedule to the relevant order”. I understand Ms Guha’s reticence in asking the judge for clarification in respect of her broader challenges to the judge’s determination. This would have been seen as an attempt to reargue the case. I do not, however, think the same applies in respect of the recording of findings in an order. If there is a legitimate basis for questioning whether a finding of domestic abuse proposed by one party properly reflects the finding made by the court, the judge should be invited to determine the issue. It is “the court” which is recording “*its* findings” in the order (my emphasis). For example, it would clearly have been appropriate for the issue of whether paragraph (i)(e) was to be included in the recorded findings to be raised with the judge. The answer would have been that it should not. That remains the position and, this court having all the powers of the court below, it is open to us to direct, as I propose we should, that this paragraph be deleted from Schedule B.
68. I now turn to the father’s case in respect of the other findings recorded in Schedule B.
69. I would first note that there is nothing to suggest that the judge was not aware of, and did not take into account, what Ms Guha described as, “the overall landscape of the evidence”. Indeed, the judgment demonstrates a clear appreciation of that landscape by reference to the relevant history and the evidence. This includes the mother’s credibility and the findings made against the mother by the judge, on which Ms Guha placed particular emphasis. In my view, this is demonstrated, as submitted by Mr Gration, by the fact that the judge rejected significant aspects of the mother’s case and many of the allegations on which she relied. The judge could not but have been aware of her conclusions in respect of these matters. Further, it is obvious to state but the fact that the judge found that the mother lied about some matters did not mean that the judge was not entitled to accept other elements of her case. I do not, therefore, accept Ms Guha’s submission that the judge should have found, in essence, that the mother’s credibility was so undermined that she should have rejected *all* of the mother’s allegations.
70. There is also nothing to suggest that the judge was not aware of, and did not take into account, the inconsistencies in the mother’s evidence in respect of the allegations of Physical Abuse and Emotional Abuse. Indeed, the contrary is clear. For example, the judge expressly referred to differences in the mother’s account as to her allegation of the incident in October 2021: that her statement asserted the father “hit and kick J” while in her oral evidence she said the father “spat at me”. Further, the judge expressly recorded the father’s reliance “on the many inconsistencies in the mother’s account” and the Guardian’s submission that “there were inconsistencies regarding the allegations of abuse”. Again, it is obvious to state but the fact that there are inconsistencies in a party’s evidence about an allegation does not mean that the judge has to reject that allegation and cannot find an account of it which is true on the balance of probabilities.
71. The judge’s analysis is not confined to two paragraphs as submitted by Ms Guha. It can be seen that the judge was analysing the parties’ respective evidence when setting out that evidence between paragraphs 42 and 55 *and* under the heading “Discussion and decision” between paragraphs 75 and 82. For example, at paragraph 47 the judge recorded the father’s evidence that, on 24 November 2021, “the mother spoke to him ‘in a very irritating manner; I was very upset and agitated’”; that, in his written evidence, the father had denied “the mother’s account of any assistance by the priest”,

while in his oral evidence he had accepted that this had taken place and said “it had been his idea”; and that, again contrary to his written evidence as to his relationship with the mother’s parents, in his oral evidence, he was “very critical of the way he was treated by the mother’s father”.

72. This was part of the analysis that fed into the judge’s ultimate conclusions. Clearly the incident on 24 November 2021 was significant because the mother and J permanently left the family home the next day. The judge rejected the father’s suggested reason that this was because the mother needed “to look after her mother”. This meant that there must have been some other reason for the mother and J leaving the home *and* not returning.
73. The judge concluded, as she was clearly entitled to conclude, that the incident that occurred on 24 November 2021 had occurred as set out in the Schedule. I would repeat that the fact that the mother’s account had not been consistent in all respects does not mean that the judge was not entitled to make this finding. Applying the approach referred to in the cases quoted above, it was a rationally supportable finding.
74. The judge was also entitled to conclude that this “was not an isolated occasion” including because, in his written evidence, the father accepted “that situations like this happened” and because the father’s attempt to paint a picture of “limited difficulties in the marriage ... did not match his evidence about what took place on 24 November 2021”. The fact that it was not an isolated occasion was equally supported by the judge’s acceptance of the mother’s evidence that she and J left the family home in October “due to an argument between the parents”. Equally, based on her assessment of the evidence and these conclusions, the judge was entitled to find that it was “more likely that there had been other serious arguments between the parties where the father had been unable to contain his temper and ... is more likely to have physically assaulted the mother in the way she has described”.
75. This and other elements of the judgment support the conclusion that the judge’s evaluation of the evidence was not flawed as submitted by the father. It is also relevant that, contrary to Ms Guha’s submission, the judge has not “simply adopted the schedule of eleven findings sought by the Mother within the category of verbal and physical abuse”. The fact that the judge considered them individually can be seen from her approach to the allegations at 3(a) and 3(e) as referred to in paragraph 41 above.
76. For the reasons summarised above, I do not accept that the judge’s evaluation of the evidence was flawed or that her reasoning was deficient as submitted by Ms Guha. I would again note that, while the inconsistencies in the mother’s evidence and the findings made by the judge against the mother were clearly important, they were only part of the landscape. The judge was required to and, in my view, did take the whole picture into account including, importantly, the father’s evidence. Indeed, in response to a question from Whipple LJ during the hearing, Ms Guha accepted that she could not submit that the findings were not open to the judge. However, she maintained for all the reasons referred to above, that the judge’s analysis and reasoning were sufficiently flawed to justify this court setting them aside.
77. In conclusion, applying the approach from the cases quoted above (such as *Henderson v Foxworth*), I am not persuaded by Ms Guha’s submissions that the judge’s findings had “no basis in the evidence”; nor that they were based on a “demonstrable



misunderstanding of relevant evidence” or a “demonstrable failure to consider relevant evidence”; nor that they “cannot be reasonably explained or justified”. The judge’s analysis of the evidence and her reasoning rationally supported her conclusions in respect of the allegations in the Schedule under 3 and 4.

78. I would also, finally, add that to the extent that Ms Guha has raised issues about the precise formulation of some of the findings (such as whether the mother’s parents attended the hospital or whether the father’s attitude to J’s health was limited to a threat to cancel an operation), such differences or discrepancies are not material in the context of this case. While I do not intend to diminish the importance of findings being accurately recorded, these differences or inaccuracies, if that is what they are, are not relevant to the substantive issue in this case of whether J should return to Egypt and would not justify our interfering with the precise wording of the findings. The judge is well placed to decide what weight to place on these findings and how to factor them into her welfare determination.

### *Conclusion*

79. For the reasons set out above, I have concluded that the appeal should be dismissed.
80. However, before leaving this case, I would just note that it is clear that J’s life has been considerably disrupted by his abrupt removal from Egypt by his mother in May 2022. It is also clear that he has been living in “bleak” circumstances since January 2024. It is, therefore, important that the substantive issue in this case is determined as soon as practicable. I appreciate why the father appealed the judge’s findings but in dismissing his appeal I would finally comment that, without of course seeking to interfere with the task facing the judge, it would seem to me unlikely that the limited findings which have been made by the judge would have a determinative or even a significant effect on the ultimate welfare decision. There are other welfare factors, which would seem likely to have a more significant role in the court’s decision than the findings made by the judge, some of which I have referred to in paragraph 14 above.

### **Lady Justice Whipple:**

81. I agree.

### **Sir Launcelot Henderson:**

82. I also agree.