



Neutral Citation Number: [2025] EWHC 857 (Fam)

Case No: FA-2024-000359

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**ON APPEAL FROM HHJ TOLSON KC**  
**SITTING AT READING FAMILY COURT**  
**RG24P00086**

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Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 09/04/2025

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD**

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**Between :**

**GM**  
**- and -**  
**VB**

**Appellant**

**Respondent**

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**Anita Mehta and Eleanor Bruce (instructed by Clifton Ingram Solicitors) for the Appellant**  
**Nasstassia Hylton (instructed by Freeths LLP) for the Respondent**

Hearing dates: 27<sup>th</sup> & 28<sup>th</sup> March 2025

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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 9<sup>th</sup> April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HONOURABLE MRS JUSTICE JUDD**

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.

**Mrs Justice Judd :**

1. This is an appeal against case management orders made at a hearing which took place on 9<sup>th</sup> December 2024.

Background

2. The case concerns three children of primary school age. The parents are married but separated in late 2023 following an incident in which the father assaulted the mother, his brother and sister in law. He pleaded guilty to offences which included assault occasioning Actual Bodily Harm, intentional strangulation, battery and criminal damage.
3. The father issued an application for child arrangement orders in January 2024 when mother would not allow him to see the children. He was seeking contact and shared care. The mother stated that the incident in late 2023 was the culmination of some years of domestic abuse which included a pattern of coercive and controlling behaviour in relation to herself and the children, which sometimes included the use of physical violence.
4. A safeguarding letter was filed by Cafcass which stated that there were serious allegations of domestic abuse being made, and therefore that direct contact between the father and children (including video contact) was not recommended until the completion of the section 7 report. This recommendation was repeated following receipt of the level 2 checks.
5. The father applied for an early hearing for contact to be considered but this was refused by the District Judge. A schedule of allegations was filed by the mother, and responded to by the father. In June 2024 he pleaded guilty to the charges arising out of the 2023 incident. On 6<sup>th</sup> September 2024 a District Judge ordered that there should be a fact finding hearing with respect to the allegations of domestic abuse in addition to the offences to which the father had pleaded guilty, although he required the mother to reduce the number of specific incidents she relied upon to 8. The fact finding hearing was listed for three days in February 2025. The parties were ordered to file narrative statements.

The hearing before the judge

6. On 9<sup>th</sup> December 2024 a directions hearing was listed to take place before the circuit judge who was to deal with the fact finding hearing. That judge was unwell and so His Honour Judge Tolson KC took over the case at short notice and in a busy list.
7. At that hearing the father applied for the fact finding hearing to be vacated on the grounds that following the father's admissions contained in his witness statement it was not necessary. The judge agreed. He ordered that an independent social worker ("ISW") be instructed to prepare a report. Paragraph 7 of his order directed that the report should address the following:-
  - a) A plan for the re-establishment of direct face to face time between the children and their father;
  - b) Consideration of the evidence and father's admissions;

- c) The ISW must note that the court has expressly determined that a separate fact finding hearing is not necessary; and
- d) The ISW may view past and future video recordings.

8. The order followed from what the judge stated was required in the last three paragraphs of his judgment namely:-

*“The parties should also agree the identity of an independent social worker whose function before 3 February next year will be to report with a plan to re-establish time with the father for the children. The plan will have to take into account the father’s admissions. I think the ISW should see the video of what I am going to call the knife incident. The parties know what I am referring to.*

*And she should be instructed expressly on the basis:*

*i) That the court does not think a fact finding hearing is necessary,*

*ii) That the court is nevertheless looking towards honesty from the parents as to what has happened in the past and as to the way forward,*

*iii) That she is to make no assumptions as to what may or may not have happened in the past, but*

*iv) She is to assist the court by advising on her reflections as to what happened in the past and how it sounds at present and will sound in future;*

*in short – and an experienced ISW can do this – just what sort of case this is. It seems to me that will inform her plan. I do think we should record that this court feels the plan will have to include contact supervised by the ISW at least in the future”.*

9. The judge further ordered that indirect contact via video calls should start and continue at a rate of once per week. He did not consider that should be supervised, albeit the mother could monitor some of it should she wish to do so. The order provided that the calls could be recorded by either party and the recordings could be given to the ISW.
10. There were some differences between the views the judge expressed in his judgment and the order. Counsel told me that the judge made some amendments to the draft they submitted, for example, he amended the direction to the ISW to state that the court had concluded that a separate fact-finding hearing (as opposed to a fact finding hearing at all) was neither necessary or proportionate in the case.
11. The judge refused the father’s application for face to face contact including any contact that the ISW might propose, stating that this must be the subject of a future judicial decision.

12. The mother applied to the judge for permission to appeal his order for unsupervised video contact and for a stay, but this was refused.

The appeal

13. The mother then applied to this court. On 19<sup>th</sup> December 2024 I stayed the order for video contact and the instruction of the independent social worker.
14. The mother appeals against the judge's decision on three grounds. The first ground is that the judge was wrong to vacate the fact finding hearing listed in February, which a previous judge had determined was necessary and proportionate. The second ground is that the judge was wrong to direct the ISW to prepare a plan for the re-establishment of face to face contact with the children. The third ground of the appeal is that the judge was wrong to order unsupervised video contact.
15. On 22<sup>nd</sup> January 2025, I granted permission to appeal on all grounds and listed the matter for hearing.
16. Very unfortunately there were difficulties in listing the matter for hearing for a variety of reasons. The matter was originally to have been listed before another judge but there was a mistake in the order so that he was not available. In the event I found time to put the case in my list in March. It is not satisfactory that it has taken so long to list an appeal against a case management decision and I am sorry that the parties and children have had to wait.

The appellant's case

17. On behalf of the appellant mother, Ms. Mehta and Ms. Bruce submit that the judge should not have interfered with the decision of the District Judge who had previously determined that it was necessary and proportionate, and in circumstances where it had already had a three day fixture in February.
18. Ms. Mehta and Ms. Bruce accept that the judge amended the order to provide that the court had determined that a *separate* fact finding hearing was not necessary (as opposed to what was said in the judgment, which was that a fact finding hearing was not necessary). They submit, however, that in those circumstances the judge should at least have ordered a full section 7 report with the ISW to have made recommendations on an either/or basis. As it was, the judge seemed to have set up the instruction of the ISW on the basis that the father's version of events was correct. Following on from this, the judge was wrong to direct that the ISW should report on a plan for the re-establishment of direct contact.
19. They also submit that the judge was wrong to order 'live' video contact where the appellant did not support it, and assert that it would expose her and the children to an unmanageable risk of harm. In so doing, they argue that the judge failed to take into account the advice of Cafcass, the evidence of the local authority assessment, and PD12J. Additionally, they argue that too much weight was attached to the wishes of the children.
20. Ms. Mehta took me to the schedule of allegations, which included the allegations made by the appellant and the responses of the respondent. She submitted that the

admissions made by the respondent father were, at most, partial, and sought to blame the appellant mother for being abusive to him, for triggering his PTSD, and alienating the children. She said that the gulf between the allegations and the admissions was very significant and needed to be determined by the court.

21. Finally, Ms. Mehta said that the judge appeared to have misunderstood the mother's position at the hearing before him, believing that she was not seeking orders for no contact in the long run, subject to the outcome of any risk assessment. This led him into error in his approach to the case all round. She said that the judge's decision was somewhat confusing, given differences between what he said in his judgment and the order (which he amended when submitted by counsel).

#### The respondent's case

22. On behalf of the respondent, Ms. Hylton submitted that the judge's directions could not be regarded as wrong, on any view, and pointed out the high hurdle that an appellant must surmount in order to successfully challenge case management orders.
23. In her skeleton argument, Ms. Hylton set out the provisions of PD12 which requires the court to consider whether to order a fact finding hearing, and, in particular, the matters to take into account when making such a decision. She also made reference to the well known Court of Appeal authorities, and a more recent example of a case where the judge had adopted a pragmatic approach, pointing out there are cases where separate fact finds are neither necessary or helpful in a private law dispute. In that case as, Ms. Hylton says, in this, there is a strong overlap between 'facts' and 'welfare'.
24. Ms. Hylton set out the history and background to the case with care including the difficulties that the family had encountered when they were living abroad, and also following their return. She submitted that the father had pleaded guilty to the offences for which he was charged at the earliest opportunity, and had taken many steps to try and address the mental health issues which lay behind the behaviour he had exhibited.
25. She took me through numerous parts of the father's statement in which he had acknowledged behaving in a very abusive way to the mother, and extended heartfelt apologies to her for what had happened. Ms. Hylton stated that the judge quite properly took this into account. She said that differences between the accounts of the parties did not warrant investigation by fact finding, and could be considered by an expert ISW and the court without that. The father, for example, denied physical abuse of the children but he did accept some limited chastisement, and that was the very sort of issue that could be considered by the court without a factual determination.
26. In this case, it is submitted that the judge conducted a careful welfare analysis, applying the correct legal principles, stating clearly in his judgment that the court will only investigate what has happened in the past to the extent that it will make a difference to the outcome. He took into account the allegations and the father's admissions. Ms. Hylton stated that the judge was specifically concerned with a separate fact finding hearing rather than a composite fact finding and welfare hearing, and had deliberately not said that he would shut the mother out from pursuing her allegations in the future. He had asked the ISW to set out a plan for contact and to

watch the videos taken by the mother with a view to seeing ‘just what sort of case this is’ and to give advice to the court at the next hearing, which he listed for half a day.

27. Ms. Hylton also pointed out the wealth of evidence that the children had had a very good relationship with their father, that they engaged very fully in the video recorded contact that they had, sending messages of love to their father and telling him all about their activities. This was not a case where there had been no contact at all for months, albeit the contact was recorded rather than ‘live’.
28. Ms. Hylton also emphasised the father’s plea in the Crown Court, that a consultant psychiatrist had accepted it was likely he was suffering from PTSD at the time of the incidents, and that the judge in the Crown Court had accepted the father was genuinely remorseful. He had continued to engage in therapy and programmes to look at his behaviour and minimise risk. The probation reports were very positive. These were all factors that had properly been taken into account by the family judge, and should not be the subject of interference by this court.
29. In coming to his decision that there should be video contact between the children, the judge was properly taking into account how well the recorded video messages (by father and the children) had worked. Although this was not ‘live’ contact it was very interactive, with the children responding to the videos they had been sent, and vice-versa.

#### The law

#### Appeals

30. Pursuant to Family Procedure Rules r30.12, an appeal can only be allowed when the decision of the court below was wrong or unjust because of some procedural, or other, irregularity.
31. An appeal court must not substitute its own judgment and must give deference to the trial judge who heard and read all of the evidence. The court must apply the principles set out in the case of *Piglowska v Piglowski* [1999] UKHL 27, bearing in mind the exigencies of daily court life are such that reasons for judgment will always be capable of being better expressed; these reasons should be read on the assumption that, unless it has been demonstrated to the contrary, the judge knows how to perform his function and which matters they should take into account.
32. PD30A paragraph 4.5A provides that where the application is for permission to appeal from a case management decision, the factors to which the court is to have particular regard include whether the issue is of sufficient significance to justify an appeal, the procedural consequences of an appeal outweigh the significance of the case management decision, or whether it would be more convenient to adjourn the determination of the issue.
33. An appeal court will only interfere with case management decisions in very limited circumstances. In *Re TG (Care Proceedings: Case Management: Expert Evidence)* [2013] EWCA Civ 5, Sir James Munby, P stated:

*“a judge making case management decisions has a very wide discretion and anyone seeking to appeal against such a decision has an uphill task.....Robust case management.....very much has its place in family proceedings but it also has its limits.*

*The task of the case management judge is to arrange a trial that is fair; that is, judged both by domestic standards and by the standards maintained by Articles 6 and 8. The objective is that spelt out in r 1.1 of the Family Procedure Rules 2010, namely a trial conducted ‘justly, expeditiously and fairly’ and in a way which is proportionate to the nature, importance and complexity of the issues’, but never losing sight of the need to have regard to the welfare issues involved”.*

#### Fact finding hearings and domestic abuse

34. The principles governing decisions as to whether to order a fact finding hearing are set out in PD12J of the FPR, and the cases of Re H-N and others (children)(domestic abuse: finding of fact hearings) [2021] EWCA Civ 448 and K v K [2022] EWCA Civ 468.

#### The appeal hearing

35. For this hearing I read all the documents in the bundle provided to me, which included the skeleton arguments from both parties, position statements, the Grounds of Appeal, a composite schedule of findings and responses, the parties’ lengthy statements, a transcript of the sentencing hearing and sentencing remarks, the psychiatric reports for the criminal proceedings, probation reports, and various safeguarding letters and local authority assessments. I read the judgment in the court below and transcripts of the hearings on 9<sup>th</sup> December. I also watched a video clip of the knife incident and various videos made for the father of the children. That video clip was available at the hearing before the judge but the pressure of time was such that he was not able to view it.

#### Decision

36. As these proceedings are still going on, and important decisions still lie ahead, I will avoid descending into any more detail of the case than is necessary.
37. I am very conscious that I am dealing with case management decisions, and that considerable deference must be given to the judge who heard the case on the day. He assimilated a great deal of information in a short time and plainly sat over the lunch hour to try and deal with the case for the benefit of the parties. He fitted more than one hearing in this case before him that day and gave an extempore judgment. He wished to avoid the trauma and expense for the parties of having a lengthy hearing but equally there was no question that he took the violence and domestic abuse as alleged in this case very seriously. It is vital to be aware of this when considering the decisions he made.
38. I also wish to acknowledge that the father has made significant admissions, and that he has been engaging very well with his probation officer. He has expressed remorse

and is desperate to resume a relationship with his children.

39. Nonetheless, I have come to the conclusion that the judge was wrong to make the orders he did and that they must, therefore, be set aside. They are all decisions which were likely to have a significant impact on the outcome of the proceedings.
40. The three decisions which are the subject of this appeal are all linked, and stem from what I believe was a misapprehension by the judge that the question of whether or not the father should be able to have some form of face to face contact with the children in the medium and longer term was no longer seriously in issue. That misapprehension affected his entire approach to the case.
41. At paragraph 8 of his judgment, the judge recorded that ‘mother’s position is that before she consents to any form of direct contact there has to be a proper professional risk assessment. She does not say in the long term there should be no direct contact. She does say there should not be such contact at the present time. Much though I would like to advance this case substantially, I think the mother is correct in that assertion’.
42. At paragraph 12, he went on to say ‘thus with the children’s welfare as my paramount consideration and applying the welfare checklist, I believe it can fairly be said that there are strong reasons to believe not just that the children want, but that they need a relationship with their father. That is why in no way should an attempt be abandoned to establish a relationship between father and children, but the reality of them meeting their father again after more than a year may not be as simple as that’.
43. In fact, the mother’s case was that she wished to have a risk assessment based upon either realistic concessions by the father or the outcome of a fact finding hearing before being able to say whether she would support face to face or live video contact at all. She remained very frightened of the father and the risk of harm that he posed. There is no doubt that the judge considered that the introduction of contact should be delayed until there was a proper plan and that it should proceed very cautiously with the safety of the children in mind, but he was still focussed on moving the case on and tried to do this by cutting out what was a necessary stage.
44. There is a significant gulf between the mother’s allegations and the father’s admissions and, in my judgement, the judge was wrong to decide that the already listed fact finding hearing was not necessary and should be vacated. The allegations made by the mother are extremely serious, and include physical violence, strangulation, threats to kill herself and others, threats of suicide, property damage and verbal abuse. She alleges that a significant amount of this behaviour occurred in front of the children. The father’s admissions fall some way short of accepting this. He accuses the mother of significant exaggeration. He alleges that she was abusive and violent herself, that she was controlling and dominating in the relationship, and that sometimes her actions triggered his symptoms of PTSD which, in turn, led to him losing control.
45. These are very different accounts which are relevant to the welfare outcome for the children as they affect the level of risk posed by the father.



46. I think Ms. Hylton is right when she submitted that the judge expressly did not exclude a composite welfare and fact finding hearing taking place in the future but the directions he made for the ISW report did not require her to undertake a risk assessment or a full section 7 report for the next hearing but to devise a plan for the re-introduction of face to face contact for the court to consider. That was premature.
47. So too was the order for unsupervised video contact. Even if it was not specifically pleaded as such, it was clear from her statement that the mother was alleging a pattern of abusive and bullying behaviour on the part of the father which included threatened and actual violence. The risk to the mother and children is of emotional and psychological, as well as physical, harm, and the fact that the contact was to be virtual is not an answer to that. This issue needed to be weighed in the balance before any interim order was made in accordance with the provisions of PD12J. In his judgment, the judge referred to the need for the court to be satisfied that any interim order did not expose the child or parent to an unmanageable risk of harm, but only in the context of direct (by which he meant face to face) contact.
48. Ms. Hylton pointed out how interactive the recorded video messages had been, and how naturally the judge's order followed from this, but the exchange of recorded video messages has more protection built in. It permits the messages to be screened in advance, video contact, even if it is recorded, does not. The mother would have had to have carried out some monitoring of the video contact as it happened, with the father engaging with the children over a live link in the family home.
49. For all the reasons I have set out, I allow the appeal on all three grounds. I will remit the case to Ms. Justice Henke, who is the Presiding Judge for the South East Circuit, to determine allocation and next steps. I sincerely hope it will be possible to provide this case with judicial continuity, given the sensitivities involved, and the now substantial delays.