

Re: ABCDEF (Fact Finding: Honour Based Violence) (2019)

[2019] EWHC 406 (Fam)

10/01/2019

Barristers

Brian Jubb

Court

Family Division

Practice Areas

Public Children Law

Judgment of Keehan J (1) dismissing allegations of honour-based violence, (2) finding that the mother had wrongly and maliciously sought to exclude the father from the child's life, and (3) making a non-party costs order against an expert reporter who had serially failed to comply with court directions.

The court was concerned with three children of the mother ('M'): D (five), E (three) and F (six months). They had the same mother ('M'). All three children had different fathers. Much of the hearing centred on allegations made by M against D's father ('F').

The relevant chronology was as follows [paras.1-11]:

- M and F had married in Pakistan in April 2011. F returned to England and M came here in May 2012.
- Child D was born in August 2013.
- In February 2015 the family travelled to Pakistan for a holiday, where M had sexual intercourse with another man and conceived child E.
- They returned to the UK. In August 2015, on the mother's first scan, it became clear to F from the due date of the child that he could not be the father.
- M remained in the family home with F, D and wider members of the paternal family for another two months. On 21 October 2015 she left with D to stay with a friend without telling F.
- Three weeks later M made allegations of domestic abuse against the father and was placed in a refuge.
- Child E was born in December 2015. M registered E's father as F. As expected, subsequent DNA tests confirmed he was not the father.
- In February 2016 F made an application to spend time with D. M opposed the application, asserting that she had been the victim of domestic violence and was at risk of honour-based violence from F and the paternal family. M remained in secret locations.
- The proceedings were subject to huge delays in the Derby court, not least of all due to a delayed report from Dr Kaur-Kelly, an expert in honour-based violence. Eventually the proceedings were transferred to be heard by Keehan J, who conducted a fact-finding hearing in December 2018.

- M had subsequently met parent C, undergone an Islamic marriage to him and given birth to his child F.

The judgment: findings

The judge set out a brief summary of the law [paras.12-15]. He was particularly concerned to give himself 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.' [para.14].

Keehan J then addressed succinctly each allegation in the Scott schedule in turn [paras.17-26]. In brief, he concluded (contrary to M's allegations) that:

- The marriage to F was not a forced marriage.
- M had not been a 'prisoner in her own home' during the marriage.
- F and his family had not threatened to have M deported to Pakistan.
- It might well be true that F had told the community, his family and M's family that child E was not his biological child, but 'I see nothing wrong with that if it be true.' Child E was not his child and M had an extramarital affair.
- F's family had not threatened to kill M, nor had F. Indeed, it was M's family (her brother) who had made threats to kill her if she came to Pakistan. Contrary to M's assertions, she had lived for two months in the family home after the paternity of child E had come to light and made no allegations that there had been threats against her at that time.

The judge's concluding finding at para.26 is damning:

'I am entirely satisfied that the mother made a false case and false allegations against the father. There is no truth whatsoever in any of the allegations that the mother has made... It is, in my judgment, appalling that this little boy and this father have not seen each other for some three and a half years solely because of the malicious conduct, as I find it to be, of the mother.'

The judge subsequently considered the more recent involvement of parent C, who was the father of child F [paras.27-32]. He concluded that M had entered into an Islamic marriage with C 'solely for the purposes of [C] making an application for a visa relying upon his relationship with the mother and relying upon the birth of their daughter.'

Expert's Report [paras.7-11, and 33-41]

The judgment indicates that Dr Kaur-Kelly had been instructed in December 2017 to provide an expert report by 5 February 2018 but that she did not report until 21 May 2018. She was ordered by Keehan J in August 2018 to provide an addendum report by 28 September 2018. She applied for an extension, which was refused. No report was filed and Dr Kaur-Kelly and all parties appeared before Keehan J on 2 October 2018. An extension to 15 October 2018 was agreed. No report was filed. The direction for an addendum report was discharged.

Keehan J considered whether Dr Kaur-Kelly should pay the parties' costs of the hearing on 2 October 2018 (and a subsequent directions hearing on 10 October 2018). There is a helpful summary of the authorities on non-party costs orders at paras.34-38. Whilst the judge accepted that Dr Kaur-Kelly suffered from an adverse health condition, which was regrettable, she was a professional witness and had a duty to the court. His Lordship considered that she had failed serially to comply with court orders, whether for the initial report or the addendum, and should pay the parties' costs.