

Ref. EX16P00049

Neutral Citation Number: [2018] EWHC 2229 (Fam)

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

Royal Courts of Justice
Strand
London

Before MR JUSTICE KEEHAN

IN THE MATTER OF

MR A W (Applicant)

-v-

MS K J (Respondent)

THE APPLICANT appeared in person

MR MICHAEL GRATION, Counsel, appeared for the Respondent

JUDGMENT

25th JUNE 2018 16.52-17.18

(AS APPROVED)

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights reserved.

MR JUSTICE KEEHAN:

I propose to give judgment in short order. If any party requires me to give further or other reasons they have only to ask. I shall order that the transcript of this judgment be prepared at the joint expense of the parties.

Introduction

1. I am concerned with one child, E M W, who was born on 5 October 2015, so she is two and a half years of age. Her father is the applicant, A W, who was born in the United States of America, and her mother is K J who was born in Latvia.
2. This is an application made by the father for the return of E from Russia where the mother asserts she has lived with the child since February 2016. The mother opposes the father's application for a return order and invites the court to dismiss the father's application and to list the matter for a substantive determination of where E should live and with whom she should spend time.
3. The parties met in 2012 and they were in a relationship at the time that E was born on 5 October 2015. Their relationship ended in early 2016.
4. The mother, in the course of her statements and her oral evidence today, has asserted that she was the victim of domestic violence at the hands of the father. The father vehemently denies those allegations and I have not been invited, they did not form part of the compass of this hearing, for me to make a determination in respect of those allegations made by the mother. Suffice for me to observe that the mother plainly considers herself to have been a victim of domestic violence at the hands of the father and when during the course of her evidence she was speaking about these matters did so with very real emotion. Indeed, at one point towards the end of her evidence she said she doubted she could carry on giving evidence much longer.
5. The position is that the father suspected that the mother was going to remove E from the jurisdiction because, as the mother asserts, the father knew that she wished to return to Latvia with E. Accordingly, on 9 February 2016, in the Family Court at Exeter, the father issued an application for an order prohibiting the mother from removing E from the jurisdiction. An order in those terms was made by Her Honour Judge Robertshaw on the same day. Subsequently, orders in similar terms and a vacation order were made by Mr Justice Baker on 26 February 2016.
6. As the mother candidly accepts, in breach of that first order made on 9 February 2016, the mother removed E from the jurisdiction of this court on 16 February. She told me in evidence that it had been her intention to return with E to Latvia, in particular to R, where she had then a property. She told me that she found herself in the days before she left this jurisdiction caring for a young baby in destitute circumstances when she asserts (and I have not found) living in fear of the father.
7. In desperation, she went to the Russian Embassy on 15 February where E was issued with a Russian passport. The father questions the validity of that passport. That is not a matter for me. I simply note that a sovereign state took the step of issuing a passport to E. Accordingly, on 16 February, E and her mother flew to Russia where the mother maintained she has since lived with E at the same given address together with the maternal grandparents.

8. The mother asserted in evidence that E has led a settled life in Russia with her mother since the time of her arrival. Since August of last year she has attended a local nursery. She is appropriately registered in accordance with the requirements of Russian law.

9. The father, despite the many assertions he has made, has not at all suggested that the mother is a bad mother, nor that she does not greatly love and care for her daughter. The father has asserted that the court should be cautious in attaching any weight to the evidence of the mother because of the fact that (a) she has admitted wrongly removing E from this jurisdiction in February 2016 and (b) she had lied to the Metropolitan Police in or about June 2016 as to her whereabouts, leading the police to believe she remained within this country with E but when we know that she was living out of this jurisdiction.

10. The parties did attend mediation. Unfortunately, that was unsuccessful. In the early months after the removal of E, the father's then solicitor made contact with the mother and it is claimed, from emails that I have seen, that the mother was open to accept proposals for contact between the father and E. The mother told me in her evidence today that she was not against and had not been against the principle of E seeing or spending time with her father but she said, because of what she perceives the treatment at the hands of her father, she would not want any contact to take place between the father and E in her current home in Russia.

There was one contact by Skype on E's second birthday, 5 October 2017, which was, according to the father short-lived and unsuccessful, so unsuccessful that the father told me he did not want to and did not repeat the exercise.

11. The position is that since February 2016, E has lived in the full-time care of her mother and she has not seen her father since she was some four months of age. In the course of evidence, the mother complained that the father, save for this call in October 2017, had not attempted to make any contact with E at all. He had not sent cards, had not sent letters, had not sent presents. Father asserted that he had bought many presents for E which he has kept for her in the hope he would be able to give them to her in due course.

Law

12. Mr Gratton, on behalf of the mother, very importantly referred me to the case of *Re J (A Child)*, *Re (Child returned abroad: Convention Rights)* UKHL 40 and also to the case of *Re G DHR* [2017] EWCA (Civ)1675. He reminded me that in considering this application for return, E's welfare and best interests are my paramount consideration: s.1(1) Children Act 1989 and that, insofar as it was relevant, I should have regard to the various provisions of the welfare check-list: s.1(3) Children Act 1989.

13. I have regard of course in coming to my judgment to the Article 6 and Article 8 rights of the father, the mother and, most importantly of all, E, but I remind myself that where there is a further tension between the Article 8 rights of the child on the one hand, and the rights of a parent on the other, the rights of the child prevail: *Yousef v Netherlands*, [2003] 1 FLR 210.

14. I also bear in mind that I gave a judgment in this case on 28 February of this year when I decided that the courts of this jurisdiction were first seized of the matters relating to E because the mother has subsequently to the father's 2016 application made an application for custody in the courts of Russia. Those proceedings have been ongoing for some considerable time and there is, I am told, a further hearing before that court in Russia on Monday 2 July.

15. Earlier this year, the father made a 1980 Hague Convention application to the Russian courts for the return of E to this jurisdiction. There is a hearing in respect of that application before a different court of Russia on Friday of this week, 29 June 2018.

Analysis

16. The mother struck me in evidence as an entirely loving and caring parent, who readily accepted that she had wrongfully removed her daughter from this jurisdiction, but, as she explained in her evidence, she did so in a state of desperation when she felt completely alone and fearful of the father.

17. The father has complained that there is little documentary proof about where E lives or how she is doing or where she is living or where she goes to nursery and the like. He therefore questions about how settled E is in Russia. Given the acceptance that, despite past wrongs and despite past lies, this mother is a loving and caring mother, I accept that she would not cause E to live in inappropriate or inadequate circumstances. Therefore, I accept and find that she has more than adequately cared for and provided for E over the last two years.

18. I accept the mother's evidence that she has been in Russia. The observations I have just made apply equally if the position, in fact, is that the mother and child have moved between Russia and Latvia.

19. The father in his evidence and in his presentation of the case has been focused, indeed obsessed, on the rights - his rights of parental responsibility, on E's rights to live in Russia or her rights to live in this jurisdiction.

20. Whilst I entirely accept that the father loves his daughter, what he does not appear, in my view, to have at the forefront of his mind are the welfare best interests of this little girl. He has made various assertions about the concerns he had in Hungary for his own safety, where he used to live working as a translator, and still has in relation to where he now lives in this country, at an address which he has been permitted not to disclose other than to the court. These involve threats against him, thefts he has suffered and damage most recently to his motor car. There is not a jot of evidence that any of these matters have anything to do with the mother whatsoever let alone that she is responsible for them.

21. And whilst, eventually, accepting that position, the father nevertheless thought it appropriate and necessary to raise them at this hearing. He also raised in evidence for the very first time a suggestion that he may have cancer and that his life may therefore be time limited. There is, despite the vast volume of material in this case, not a jot of medical evidence to support that assertion. I can only draw a conclusion that the father raises it now at this hearing in some way to put pressure on the court to accede to his application for E to be returned to this jurisdiction.

22. So, in contrast to what I find to be the father’s approach, I must focus on the welfare best interests of the child. She has lived the last two years and four months with her mother in Russia. She has seen her father in all that time just once. As I reminded the father in the course of his evidence, I have the power to order the child to be returned to this country. I do not have the power to order the mother to return to this country. The mother is clear she cannot and will not return to live in this country, for what appear to me to be entirely good and proper reasons.

23. The father kept repeating throughout the course of his evidence that if the child did return to this country with the mother, he and the mother would be able to agree arrangements whereby E could live between their two households. I had to repeatedly ask him, as did Mr Gratton, what his position would be if the child was returned but the mother did not come back to this country. At one point he accepted that it was not in the best interests of E to live solely with him in this country. He kept repeating that it was however in the best interests of E to return to this country. When he eventually answered the question of whether it would be in the welfare best interests of E to return without her mother to this country, he said, “It wouldn’t be in her best interests to return the child to me but put her in social services care”.

24. It would appear to me that the father has given no thought to the emotional and psychological damage that would be caused to this little girl if she were forcibly separated from her mother and placed in this country with her father, albeit a loving father, who is in fact a complete stranger to her. Worse still he appears to have given no thought or consideration to the serious emotional and psychological harm that would be bound to be suffered by this little girl were she to find herself in the care of a local authority in this country.

25. I cannot conceive in any circumstances how that would be in the interests, let alone the welfare best interests of this little girl. I entirely accept what the father says about the importance of E having a relationship with him and wanting in due course to have contact with her father and benefiting from having a relationship with her father. The mother, it would appear, would agree, too, with all of those sentiments. That is achieved not by ordering the return of E to this country but by there being a proper welfare investigation into how the needs of this little girl might best be met, how her living arrangements as between her parents can be arranged and as to how it could be the case the father is enabled to enjoy spending time with his daughter and, more importantly, E is allowed to enjoy spending time with her father.

Conclusion

26. I am absolutely clear that those commendable and admirable outcomes are not achieved - quite the reverse - by me ordering the return of E to this jurisdiction. Accordingly, in those circumstances, the father’s application under the inherent jurisdiction to return E to this jurisdiction is refused. The matter will now be listed for a hearing in due course on the substantive welfare matters relating to this young girl. That is all I propose to say.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge