



Neutral Citation Number: [2018] EWHC 2956 (Fam)

Case No: FD17P00707

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/11/2018

Before:

MR JUSTICE HOLMAN

Between :

LEILA KASSEM HAMMOUD

Applicant

- and -

TALAL QAIS ABDULMUNEM AL ZAWAWI

Respondent

MR ALEX VERDAN QC (instructed by PAYNE HICKS BEACH) for the applicant mother
MS LAURA MacLYNN (instructed by CAF/CASS) for the children's guardian
The respondent father was not present nor represented

Hearing dates: 29 and 30 October 2018

JUDGMENT
(As approved by the judge)

MR JUSTICE HOLMAN:

1. This is a profoundly sad case in which three children, who love and wish to have a relationship with both their parents, are suffering because of the animosity between their parents.
2. The essential factual background is as follows. The father is aged 47. He is a citizen of Oman and lives there. The mother is aged 36. She is a citizen of the Lebanon but, as I will describe, she currently lives in London. The parents married in July 2005 with lavish ceremonies in both Oman and the Lebanon, which the mother told me cost in aggregate about US \$5.5 million plus the cost of a specially chartered large aircraft. The whole cost was paid by the father, and that set the tone for the very high standard of living during the marriage.
3. They lived initially in the father's family compound in Oman. Their three children are twins, H (a girl) and Q (a boy) born on 7 August 2006, who are now aged 12, and N (a girl) born on 27 October 2009 and now aged just 9.
4. There was a first divorce in Oman in 2013 but the parties remarried in October 2016. The marriage soon broke down again. In July 2017 the mother, who by then was habitually resident in England and Wales, issued a petition for divorce here in England. Before it had been served on the father he divorced her in Oman in October 2017.
5. Meanwhile, in 2015, the family had moved to live in London. They bought a house in Fulham, in the name of the mother, and she and the children have lived there continuously ever since. Both parents agree that the main motivation for the move was so that their children could be educated in England. The father himself says at paragraph 7 of his statement dated 13 December 2017 (now at bundle page C32) that "...our move was motivated by our mutual desire to educate our children within some of England's most prestigious educational institutions." The children were indeed placed in English private schools, and all three of them currently regularly attend English private schools, although H has recently had a change of school.
6. So, apart from holidays abroad, including trips to Oman, all three children have now lived since 2015, first with both parents, and since summer 2017 with their mother, in the house in Fulham. They are all well settled and happy in their schools here and all have many friends here. It is beyond argument that all three children are habitually resident here and, accordingly, that this court has jurisdiction over them and their welfare. Further, in the eyes of English law and that of the Member states of the European Union, this court, being a court of the state in which the children are habitual resident, is the court of primary jurisdiction.
7. I stress that I cannot, and do not, say that this court is the court of exclusive jurisdiction. The court of the Sultanate of Oman, in the name of HRH Sultan Qaboos bin Said, has very recently made a judgment and order in relation to the children to which I will refer again below. The formal judgment and order does not expressly recite the basis upon which that court has exercised jurisdiction, but I have no reason to doubt, and indeed I respectfully and unreservedly accept, that the courts in Oman

do have parallel or concurrent jurisdiction in relation to these children, if only on the basis that all three of them are citizens of Oman and of no other state.

8. During October 2017 the children spent a holiday with their father in Oman from which he duly returned them to England and their mother. The father also saw them regularly here in England. However he appears to have ceased living in England since about January 2018, and the tragic fact is that the last time he saw, or attempted to see, his children face to face was during an outing with them in London on 28 January 2018. I am unclear as to whether the father has ever even been in England or the UK since about that date. He speaks to the children quite regularly by ringing the landline telephone at the mother's house. But although the children have iPhones (provided by him) and access to computers, he has not sought to communicate with them visually by such now standard means as FaceTime or Skype.
9. The mother said in her oral evidence that it does not surprise her that the father has not attempted to communicate with the children by FaceTime or similar electronic means. She said that he is very isolated. He lives in a cocoon. He does not have friends, but only an entourage. He does not engage in modern forms of communication such as FaceTime, and in fact she would have been surprised had he attempted to do so.
10. The children have not seen their father's face for nine months since January, and he has not seen theirs, although the mother assures me that she regularly sends him photographs, including short video clips, of the children going about their routine daily activities.
11. The father can well afford to come to England and is accustomed to using private jets. His position appears to be that his children should be living with him in Oman and that, meanwhile, he is not willing to take any steps to see them here.
12. There are now two sets of proceedings before this court. Following the divorce in Oman the mother applied pursuant to Part III of the Matrimonial and Family Proceedings Act 1984 for financial relief following an overseas divorce. I myself have twice heard significant, but interim, hearings under that application on 19 April and 24 July 2018. My judgments of those dates have been transcribed and are publicly available on the Bailii website under neutral citation numbers [2018] EWHC 1214 (Fam) and [2018] EWHC 2436 (Fam) respectively. I incorporate them by reference into this judgment.
13. I regret to say that the father, in his capacity as former husband, is in very significant breach indeed of the orders in those proceedings. He has not paid any of the costs funding of £240,000 payable by six monthly instalments between May and October 2018, and the wife now owes her solicitors over £450,000. As I described in my judgment of 24 July 2018, the father had nevertheless paid £95,000 to his new solicitors, Stewarts, in the space of one month in June / July 2018 alone. I made a pound for pound order on 24 July 2018. The father's reaction has been to cease to instruct or fund any solicitors at all, but still he has not paid a penny towards the wife's legal costs.

14. The father also remains in continuing breach of the order to pay periodical payments to the wife at the rate (excluding the payment for the driver, whom, in breach of the order, he continues to pay directly) of £26,000 per month. I understand that there are now seven months' arrears totalling £182,000. The final hearing of the Part III claim is listed in March 2019.
15. Separately, the mother has applied for orders in relation to the children under the Children Act 1989 and under the inherent jurisdiction of this court. Currently, and since December 2017, the children have been wards of this court. By my order today I will discharge the wardship. The court has ample power to protect the children under the Children Act 1989, and the wardship is now unnecessary, unjustifiable, and inappropriate. The mother is caring well for these children. They do not need to be wards of court, and she should not have to apply to the court, or defer to the court, when decisions require to be made in relation to them.
16. The mother asks the court to make child arrangements orders to the effect that the children live with her, and making provision as to the time they spend with their father, or otherwise have contact with him. It is the mother's applications in relation to the children which are before me this week and which this judgment addresses.
17. In making all decisions in relation to the children I must, and do, make their welfare the paramount consideration, and I must, and do, have regard in particular to the matters listed in section 1(3) of the Children Act 1989. When I express findings or conclusions as to the facts in this judgment, I do so on the ordinary civil standard of the balance of probabilities.
18. On 12 April 2018 the father, who until recently has been represented by prestigious firms of solicitors and leading counsel, issued an application in Form C2 in which he applied in paragraph 6 (now at bundle page B97) as follows:

“The applicant father believes it is in the children's best interest to return to Oman, which is where they were born and brought up and where their close friends and family live.

The applicant and respondent moved to England in late 2015. This was always intended to be a temporary move for the purposes of the children's education, with a view to returning to Oman thereafter, which is where the centre of their interests remain. Unfortunately the children are struggling in school in London, which the applicant attributes to the stresses of living in an unfamiliar environment without the support of their close friends and family in Oman. The applicant believes that it is in the children's long term educational interests to return to their former schools in Oman.

Furthermore, the costs of living in England have been far greater than anticipated and can no longer be afforded.

He therefore respectfully asks the court to make an order that the children relocate to their home country, Oman, to live permanently with him.”

19. The father there used the word “relocate” and this has been described for shorthand as the father’s relocation application. The father has never made a statement in support of, or since issuing, his relocation application, despite judges, including myself, giving him extensions of time and every opportunity to do so. Paragraph 5 of my order dated 17 September 2018 (itself made over 5 months after the relocation application had been issued) gave to the father a last opportunity to file a statement in support of his relocation application by 5 October 2018. Paragraph 5 provided that if he failed to do so his relocation application “shall hereby automatically stand dismissed and at the final hearing on 29 October 2018 the court will not give any consideration to ordering the return or relocation of any or all of the children to Oman.” The father was thus given very clear and fair warning.
20. Despite that, the father did not file any further statement by 5 October or indeed at all, save for a letter he wrote to me on 17 October. His relocation application therefore stands dismissed.
21. I am, in any event, crystal clear that it would be very damaging to the welfare and interests of each of these children to be forced to return to live in Oman now or in the foreseeable future. As the evidence of both the mother and the independent children’s guardian, Ms Kay Demery of Cafcass, make quite clear, each of the children are in fact very well settled and happy here and in their schools here. They wish to see their father. They do not wish to live, or go to school in Oman. Further, I am crystal clear that, whatever the father may protest, the children would not be permitted to live with, or be cared for by, their mother in Oman and she would be largely, if not wholly, excluded from their lives. That, further, is the language of the very recent court order made in Oman last week on 23 October 2018. It provides that “custody of the children should be removed from [the mother]”.
22. Realistically, the inevitable consequence of the father’s relocation application having been dismissed is that the children should continue to live with their mother, here in England, where she and they currently live. There is no realistic third alternative. It is, however, necessary and appropriate to put some more detail on that conclusion.
23. I deal, first, with the current immigration position of the mother and the children. None of them are British citizens. They all entered lawfully with the leave of the Secretary of State for the Home Department (SSHD), in the case of the children, on student leave visas. As I understand it, the leave of the youngest child, N, remains current until she attains 11 in October 2020. So she is still lawfully here. As I understand it, the mother applied during the currency of her existing leave for an extension which is still under consideration by the Home Office. So she, too, is currently still lawfully here. The twins, however, are not. Their leave expired when they attained the age of 11 and the parents did not apply before its expiry for an extension.
24. The mother says that as far as she was concerned she overlooked it, because she was preoccupied with the breakdown of her marriage and the stress of this litigation. The mother says that she believes that the father is hoping and relying that the elder children will in any event be forced back to Oman, by the SSHD making and then implementing a decision to remove them. That that is his position and attitude is

indeed fairly obviously borne out by what he says on page 2 of his letter to me dated 17 October 2018 from which I quote below.

25. The SSHD has so far made a decision not to grant leave to the twins to remain. The mother, as litigation friend of the twins, issued a claim in judicial review (number JR/5906/2018) from that decision. By an order made in those proceedings on 8 October in the Upper Tribunal, the SSHD has been ordered to reconsider his decision by 7 November 2018. As at the date of this judgment (1 November 2018) I am unaware whether the SSHD has yet made a fresh decision and, if he has done, what it is.
26. I wish to stress very strongly and clearly indeed that immigration decisions are entirely a matter for the SSHD, subject only to statutory avenues of appeal and judicial review. My decision in this case is not intended to impact, and does not impact at all, upon the exercise of discretion by the SSHD.
27. However, even if the SSHD decides again not to grant a fresh leave to remain, there may be further proceedings in judicial review and, in any event, such a decision does not have the effect that the children are removed unless and until the SSHD makes a further decision to that effect and, ultimately, actually removes the children. In the meantime, the position of the children requires to be settled.
28. I turn from the position of the SSHD to that of the parents. In the course of her statements the mother described the father as subjecting her almost from the outset of the marriage to a long period of physical, verbal and emotional or psychological abuse, and ruthless exertion of control over her. She gave a number of specific instances of abusive behaviour, some of it extremely serious, which were later summarised in a Scott schedule dated 22 January 2018 to which the father responded on 20 February 2018. Later, Mr Justice MacDonald took the view that many of the allegations were unnecessarily historical, and by paragraph 6 of his order dated 2 March 2018, now at bundle page B84, he limited the allegations upon which the mother could seek to rely to those numbered 4, 5, 17, 18 and 19 in the Scott schedule.
29. The father is on notice of the present hearing and well aware that it is taking place. He has chosen not to instruct legal representation despite, as I have said, previously instructing some of the most prestigious firms of solicitors and one of the most prestigious of leading counsel. He has not attended the hearing himself. He did cause to be hand delivered at the Royal Courts of Justice a letter to me dated 17 October 2018 which now forms part of the documents in this case.
30. In that letter he says, in part:

“I would however just like to point out a few issues which you may know or may not know which I think are relevant to the determination of the arrangements for our children.

[The mother] has gone to great lengths to portray me in bad light and whilst I accept that I am in default of various financial orders...I am not the person she paints.

In her financial application [the mother] has grossly overstated my wealth. Despite what may have been said about me, my children are my priority. I have a close and loving relationship with them and have always tried to do what is best for them. It is devastating to me that I have not been able to see them for many months now, although I have continued to speak to them regularly and as explained above have at all times honoured my financial responsibilities towards them.

I feel very strongly that it is best for the children to return to live in Oman. They are Omani nationals and have spent almost all of their lives here. They have close relationships with my side of the family, all of whom live in close proximity. The children have a home here which is familiar to them and they could return to very good schools. They will be well provided for, as will [the mother] if she choose to return with them.

I do not know where [the mother] says that the children will live if... her petition for a judicial review of the children's immigration refusals is unsuccessful...

If you determine that it is better for the children to remain in the UK, although this may not be a long term option for them, I would of course want provision to be made for me to spend time with them."

31. Given the non-attendance of the father at this hearing I have not heard oral evidence from the mother even on all the allegations identified by MacDonald J. I did, however, hear relatively short oral evidence from her during which she gave the appearance of being a frank and truthful witness and I accept the reliability of the oral evidence which she gave. She said "The father did not respect me as a human being. I was like a slave. I never felt I was a mother. He always said my kids, my house, and my cars. He ordered his staff that if he said no, I could not take the children out. If the children go to Oman I will never see them... If I was eventually allowed to see them I will see them as a slave. He treated the maids 100 times better than he treated me."
32. In my view this picture of a highly controlling husband is now amply borne out by the course of these proceedings and his conduct within them. At paragraphs 9 – 12 of my judgment dated 19 April 2018 I described the highly controlling attitude of the father in relation to the driver, and the instructions to him that he could not drive the mother if the children were not in the car. I tried to obviate that particular issue by increasing maintenance to the mother on the basis that she would pay the driver. That was of no effect. The father has not paid any general maintenance to the mother, and simply continues to pay the driver directly, such that the father, from Oman, exerts total control over the driver and the mother has none.
33. At paragraph 4 (c) of the order made in these proceedings on 21 December 2017, the father, then represented by leading and junior counsel, undertook to the court not to issue any proceedings in the jurisdiction of Oman in relation to the children. That undertaking has not been discharged and remains in force. In defiance or disregard of it, the father issued proceedings in Oman on 2 July 2018. He sought, and has now obtained, an order dated 23 October 2018 for the children to be removed from their mother and returned to Oman. Those acts show his disregard for this court, and for his

promises to this court, and his disregard for the position of the mother, for whose reassurance and protection the undertaking was initially sought and given.

34. The father pleads that he cannot afford to pay any of the ordered maintenance, and says that his family has recently suffered financial reverses from the known collapse of the British company, Carillion. But the mother said in evidence that the father has recently claimed to the child Q, aged 12, that he, the father, has bought him a pair of unique designer trainers costing £6,000. He has also committed to spending £12,000 upon a birthday party for the younger child, N, this coming weekend. He spent, as I have mentioned, £95,000 on legal fees in England in a single month earlier last summer.
35. I am quite satisfied to the required standard that this is a father who has, as the mother said, treated her with no respect as a wife or mother but as a “slave.” He continues to exert tight control over her from afar. He professes to love and care his children, but he denies to them the emotional intimacy of seeing and spending time with him.
36. The children’s guardian has seen the children several times. In her second written report, dated 14 September 2018, now at bundle pages D23 – 34, she says at paragraph 39 “The children's wishes and feelings have remained constant throughout my involvement. They wish to remain in London and in the care of their mother and to see their father both in the UK and Oman, although Q did have some qualms about going.” Ms Demery says at paragraph 42 that “The children undoubtedly love [their father] very much and are feeling his physical absence from their lives most keenly, but he appears to have had little regard for this.” Ms Demery says at paragraph 44 “I consider that it is in the best interests of the children's welfare that they should remain in the care of their mother and spend time with their father. In my view the children are as settled as they possibly could be in the United Kingdom given the uncertainty about the twins’ immigration status and the lack of a meaningful relationship with their father. They have been in London for three years. They are now all in good schools where they are happy and involved in activities. Both Q and N have established friendships at school and no doubt H will too...” Ms Demery says at paragraph 45 “Given their present circumstances it is my view that the children should remain in their mother’s care and that they would benefit enormously from being able to remain in this jurisdiction for the reasons outlined in the previous paragraph.”
37. The evidence as a whole leaves me in no doubt that it is in the best interests of these children that they continue to live in their present established home in England with their mother, and remain at their present schools. If the SSHD decides, without error, that they must leave, and then seeks to remove them, that will be a matter for him.
38. In my view there can be no possibility in the foreseeable future of the children visiting or staying with their father in Oman or indeed anywhere outside England and Wales. He has repeatedly defied orders of this court. He has breached his undertaking to this court. He has obtained, and is now in possession of, an order from Oman to the effect that the children should be removed from their mother and should live with him. If the children were to visit Oman even for a holiday in these circumstances, the risk that they would not be returned is so high as to be completely unacceptable. I accordingly cannot make any provision for the children to spend time with their father outside

England and Wales for the foreseeable future, and the order must contain such safeguards as it is possible to erect to prevent removal by the father in breach of the order.

39. The children do wish to see him. The mother herself repeatedly said that she wishes him to come and see the children. She is very willing for him to see them at any reasonable time agreed in advance with her. But, and I agree, there has to be an independent third person present as a safeguard against removal, and the order will so provide.
40. The father has access to great funds. He has been in the habit of travelling by private jets from small private airports. He possesses the Omani court order. He disobeys orders of this court and is in breach of his undertaking to it. The risk of an abduction is very high and must be guarded against.
41. Finally, I mention alcohol. The mother has said, and I accept, that the father has a dependency upon alcohol and drinks too much on a daily basis. When he is sober, she has no concern about his capacity to care attentively for them, and indeed she says that when he is not drinking he cares for them very well with an almost obsessive degree of caution. She said that "he himself would wish to be sober while he is with them." The problem is that he can yield to the impulse to start drinking alcohol. A second important reason, therefore, for independent supervision of contact is to ensure that the father does not drink alcohol during contact.
42. For these reasons I now make an order in the detailed terms which have been drafted and which I hope are self-explanatory. It is my fervent hope that the father will now accept that (unless and until the SSHD may actually remove them) the children will remain living here for a long time to come, and that he will now travel here to see them.