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Neutral Citation Number: [2018] EWHC 3361 (Fam)

Case No. FD17P00553

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice

Date: Tuesday, 16 October 2018

Before:

MR JUSTICE WILLIAMS

(In Private)

B E T W E E N :

NG

Applicant

- and -

(1) AV

(2) RB

(3) NV (A CHILD, BY HER GUARDIAN MS RODDY)

Respondents

Re G (Declaration of Parentage: Removal of Person Identified as Mother from Birth Certificate)
(No 2)

DR R. GEORGE (instructed by Goodman Ray Solicitors) appeared on behalf of the Applicant.

THE FIRST RESPONDENT did not appear and was not Represented.

THE SECOND RESPONDENT did not appear and was not Represented.

MS M, CAREW (Solicitor) appeared on behalf of the Child.

JUDGMENT

MR JUSTICE WILLIAMS:

- 1 On the last occasion this was before me I gave a full judgment, which I approved on 4th October. In that I concluded that NG was the biological and psychological father of a child who in these proceedings I am calling Naomi. I concluded that RB was Naomi's gestational mother with a donated egg, and that AV, whilst she had been registered as Naomi's mother on the English birth certificate and became her psychological mother, had no genetic or gestational connection with her. I made a declaration pursuant to Section 55A of the Family Law Act 1986 that the applicant, NG, was Naomi's father. The consequence of that has been that the Registrar General has amended the Register to now show NG as Naomi's father.
- 2 On the last occasion I declined to go the next step, which was to make the declaration that AV was not Naomi's mother and that RB was Naomi's birth mother, because under Section 55A (5) the court can decline to hear or determine an application if it considers that it is contrary to the child's best interests. At that point in time I considered that AV ought to be given a further opportunity to engage in these proceedings, given that I had made clear throughout my involvement in this case, which now goes back to late last year, that the court had reached no conclusions as to who Naomi should live with and what relationship she should have with the other parent, or indeed what country she should live in.
- 3 Following on from my judgment, the order provided for Naomi's guardian, Ms Roddy, to communicate with AV via family members in order to inform her of the outcome of the last hearing and the court's desire that she engage with the process. At that point in time it was believed that AV and Naomi were still in Greece, she having left Bulgaria, according to the authorities, in or about February of this year. In compliance with the order, Ms Roddy sent letters to AV, which seemed to initially gain no response, but early in October it came to the father's attention first of all that AV had married the man who is her older son's father and that she had made an application for him to adopt Naomi, either alone or jointly with her. The understanding of the father is that such an order, which I think was made in early October, can only follow on from a period of six weeks having preceded it, which suggests that the application was made in Bulgaria in about mid-August, which would tie in chronologically with AV perhaps having received the letter from Ms Roddy informing her of the outcome of the last hearing. The inference therefore is that in response to information about the outcome and the declarations I made, but also in response to my invitation to AV to co-operate in these proceedings, she has done diametrically the opposite and has married and has then issued an application to adopt Naomi, thus potentially eradicating NG permanently from Naomi's life and permanently removing the legal status that he has in connection with her as a result of being declared to be her father. As I understand it, the current order in Bulgaria is effectively a provisional or *nisi* order which can be made permanent, and indeed is due to be made permanent at some point in the relatively near future.
- 4 I had listed a further hearing in this matter to review the developments and in particular whether the psychological mother had been traced and whether she had decided to engage in the proceedings, which I believe is listed for next week. As a result of the imminent final adoption hearing in Bulgaria, I agreed to convene an earlier hearing to consider what orders should be made, in particular to assist the Bulgarian court in understanding the legal position in this court and to assist it in pausing, potentially, in the proceedings before it to establish a fuller understanding of how Naomi has come to be subject to that application before the Bulgarian court. It certainly is not my intention to trespass in any way upon the Bulgarian court's jurisdiction because the Bulgarian court has its own jurisdiction, in relation in

particular to adoption, which is not subject to the reciprocal arrangements covered by Brussels IIA, but plainly this court has primary jurisdiction in matters of parental responsibility and has made various orders, including return orders, as well as the declaration as to parentage.

- 5 Contact was made with AV's adult son and I think also with a lady who is his girlfriend, and also with perhaps AV's sister – but most importantly, earlier today Ms Roddy received a voicemail message from a woman purporting to be AV, now known as AM following her marriage, asking Ms Roddy to call her. Ms Roddy did so, and had a conversation the contents of which are summarised in an e-mail which I have been shown. In that call, AV said that she intended to remain in Bulgaria, and that Naomi is in school. She repeated the allegations of – or at least intimated at allegations of – sexual abuse made against the father, which were investigated by police and social services in the UK, and which were considered to be without foundation. She made it blindingly clear that my invitation to her to participate in these proceedings was rejected, and that she intended to litigate anything in relation to Naomi in the courts in Bulgaria.
- 6 Dr George, on behalf of NG, supported by Ms Carew on behalf of Ms Roddy, invite me to now make the declaration that AV is not Naomi's mother and that RB is her birth mother. That would have the consequence of the birth certificate being further amended, which would be transmitted to Bulgaria so that the Bulgarian authorities' records, which appear to be based on the original English birth certificate, would be corrected. That, it is hoped, would protect Naomi from a final adoption order being made given that it would be seen that AV is not in fact her biological or birth mother.
- 7 In addition, an order requiring AV to return Naomi to this jurisdiction was made last year and has been outstanding for all of that period of time. The police had declined to become involved because NG was not named on the birth certificate. They are now engaged and there is the possibility that the CPS will agree that a European arrest warrant should be issued. The Hague Child Abduction Convention proceedings, which were initiated on the basis I think originally of the court's rights of custody in Bulgaria, were transferred to Greece and are now being transferred back to Bulgaria. Although the Court of Appeal in *Re S (Abduction: Hague Convention or BIIA)* [2018] EWCA Civ 1226 said earlier this year that in most cases where the Brussels IIA Regulation applied, return orders should not be made by the English courts, but rather the 1980 Hague Convention process should be left to run its course in that country, that does not, in my view, apply to this case. That dealt with the generality of cases; this is a case unique in the issues raised by it, and in any event return orders were made right at the outset of these proceedings when AV fled England in October 2017.
- 8 So it seems to me that it is perfectly legitimate to seek to deploy a return order in the Bulgarian courts by using the reciprocal enforcement mechanisms in the Brussels IIA Regulation. I believe that the original order required AV to return Naomi to this jurisdiction. It seems to me it is clear that she will not co-operate in the return of Naomi. She has set her face against co-operation with the English court by abducting Naomi on the very day of a hearing in front of MacDonald J, and by then disappearing from Bulgaria to Greece, such that the father and the authorities were unable to pursue the Hague Convention or other proceedings in Bulgaria. In her conversation with Ms Roddy, AV has made clear that she will not co-operate with the English court. Indeed, in every way she has sought to frustrate this court's attempts to determine Naomi's welfare, and the evidence overwhelmingly suggests that she will continue to do so, and so it seems to me that it is appropriate today to make further orders.

9 It is in Naomi's interests for a declaration of parentage now to be made which identifies that AV is not her birth mother and that RB is. It is in her interests because it appears to be one of the few routes, and perhaps the most effective route, left in order to prevent AV pursuing an application which will have the effect of eradicating the father from Naomi's life. So although I held back from it on the last occasion for the reasons I explained, I now consider it appropriate to make that declaration, albeit I am making it a week earlier than I might otherwise have done at the hearing I scheduled on the last occasion. It is plainly appropriate to do so given the imminent Bulgarian hearing and AV's failure to co-operate with this process. I will also vary the previous return order so that it requires that Naomi is returned to this country. In the event that AV chooses to accompany her, she may return with her. If AV does not choose to accompany her, then Naomi will return with the father. I am satisfied that the allegations made by AV of sexual abuse by the father have been considered by the state authorities in this jurisdiction, and, as Ms Carew says, the outcome of that investigation and the other evidence suggests that there is no reason to believe that the father poses a risk to Naomi. So NG will return Naomi to this jurisdiction if AV refuses to do so.

CERTIFICATE

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge