



Neutral Citation Number: [2019] EWHC 363 (Fam)

Case No: FD12P00012

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2019

Before :

MR JUSTICE MOSTYN

Between :

NAOMI ISIS BUTTON

Applicant

- and -

(1) TAMER AFIFI MOHAMED AFIFI SALAMA

(2) ELSA SALAMA (by her children's guardian)

Respondents

Mark Jarman (instructed by **Jones & Myers**) for the **Applicant**
Grant Armstrong (instructed by **Goodman Ray**) for the **First Respondent**
The Child was not represented

Hearing date: 20 February 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published.

Mr Justice Mostyn:

1. This case concerns Elsa Salama who was born on 2 February 2007, and who is now aged 12. She is a British citizen and has been a Ward of Court since 3 January 2012. She has been missing in Egypt since 27 December 2011. She was then aged 4³/₄. She is now aged 12.
2. In the concluding words of his judgment given in open court on 19 December 2013¹ Mr Justice Holman described this as a “tragic case”. More than five years later it remains tragic, but ever more so. When Mr Justice Holman gave his judgment, the mother had not seen her daughter for two years. Now, another five years have passed with mother and daughter being apart. Although the father allowed a few occasions of Skype contact, these came to an end in December 2015. The cruelty that is being inflicted on this woman and on this child is formidable. It is hard to imagine the daily agony that this mother must endure.
3. The history up to 19 December 2013 was explained by Mr Justice Holman in his judgment with his customary clarity. I cite paras 5 - 8 of his judgment:

“5. In December 2011 the mother and the father and Elsa all travelled together to Egypt. As I understand it, it was in fact the mother who paid the air fares. The purpose was to have a short holiday together in Egypt over Christmas 2011 and of course to enable Elsa to see members of her paternal family there. It is a fact that Elsa has never returned to England since that supposed short holiday period. It is the mother's case that whilst they were there and staying in an hotel, the father brought it about that Elsa was detached from her and moved to live, apparently, with the father's own mother. The mother of Elsa returned to England shortly thereafter, and a few days later so did the father.

6. Legal proceedings between them rapidly ensued. Elsa was made a ward of this court. Since then, there has been a series of orders made by a number of different judges requiring, in summary and in essence, that the father reveals the actual whereabouts of Elsa and also procures the return of Elsa from Egypt to England. I mention that, so far as I am aware, no order has required the return of Elsa actually into the care of her mother.

7. Throughout the whole period now of almost two years since the first of those orders in January 2012, the father has steadfastly refused either to cause the return of Elsa to England or even to reveal her whereabouts. As a result, there has been a series of orders requiring him to do so, and a series of orders committing him to prison for contempt of court for his failure to obey those orders. It is the fact that the father has now been detained continuously in prison since 5 January 2012. Since today is 19 December 2013, and his current release date is 24

¹ <https://www.bailii.org/ew/cases/EWHC/Fam/2013/4152.html>

December 2013, he has now been in prison continuously for almost two years. That is of course the equivalent of a custodial sentence of almost four years' imprisonment, after allowance for release after serving half any such sentence.

8. At the hearing on 27 September 2013, for the reasons which I fully explained in my publicly-available judgment of that date, I did two things. First, I sentenced the father to a further term of six months' imprisonment for his contempt of court by failing to obey the earlier orders made by Roderic Wood J on 2 July 2013. Second, I repeated, in substantially the same terms as previously, a range of orders, the essence of which was, and is, that the father must disclose the whereabouts of Elsa in Egypt and cause her return to England and Wales. The mother has sworn a recent affidavit on 9 December 2013, in which she deposes, first, that the father was properly served with that order, and second, that he has not complied with it at all. The father has himself made a statement, dated 4 December 2013, which I have read. In that statement he says in effect that he is unable to comply with the terms of my order of 27 September 2013 and indeed the earlier orders to the same effect. He does not suggest that he has in any way actually complied.”

4. By 19 December 2013 the father had been in prison for nearly two years for his continued refusal to reveal the whereabouts of Elsa and to cause her to return to England and Wales. The mother sought the imposition of a further period of imprisonment. Mr Justice Holman pointed out that the father had now served the equivalent of a sentence of four years' imprisonment, in circumstances where the maximum sentence for an individual contempt of court was two years imprisonment. At para 24 he stated:

“The reality of this case is that this man has taken a stance, at any rate for so long as he remains in prison. He asserts that he cannot comply with these orders. Judges, including myself, have been sure that he can comply and is, rather, choosing not to comply. But that is the stance which he has taken. Although successive orders are legally permissible, the reality in this case is that from day one this father has manifested an absolute determination not, under pressure of court orders, to reveal the whereabouts of his child and not to cause her return to England. That is a very grave contempt of court in the circumstances of this case, but it was no less grave at the outset than it is now. The reality is that he made very plain indeed at a very early stage that he would not comply with these orders. For that flagrant contempt he could of course have been sentenced to the maximum term. The maximum term was two years' imprisonment. It seems to me that the court has to be very cautious indeed not to subvert altogether the will and intention of Parliament, when enacting section 14 of the Contempt of Court Act 1981, by now contemplating sentencing for aggregate periods that are more than double that term. It seems to me that

this case has moved beyond the scope of what was described by the Court of Appeal in *Re W*, and that the man cannot be further punished.”

5. Earlier, in his judgment at para 10, Mr Justice Holman stated:

“I have not heard any oral evidence at the present hearing. I do, however, very clearly remember the previous hearing and the evidence which the father gave face-to-face in the witness box on that occasion, and the impression which I formed on that occasion. I described this in particular in paragraphs 13 to 17 of my judgment of 27 September 2013. On that occasion I was satisfied so that I was sure that the father could have complied substantially with the earlier orders of Roderic Wood J made on 2 July 2013. Frankly, nothing has changed between 27 September 2013 and today, and so for the purposes of this judgment, but only for the purposes of this judgment, I will proceed on a working assumption (without making an express judicial finding) that the father could indeed, between then and now, have complied with the orders that I made on 27 September, and that his failure to do so is a contempt of court.”

6. At para 17 the judge held that the father had committed no offence under the Child Abduction Act 1984.
7. In his earlier judgment of 27 September 2013² at para 13 Mr Justice Holman had found the father’s evidence to be “clearly shifty, evasive and plainly dishonest” (as had Mr Justice Wood in an earlier judgment on 2 July 2013³). At para 17 Mr Justice Holman held: “I am also left in no doubt at all that if he chose to do so the father could send instructions to Egypt requiring whoever it is that is caring for the child to now cause the return of the child to England”.
8. It seems to me that while the father cannot be further punished for his contempt in continuing to refuse to reveal the whereabouts of Elsa and to cause her to return to England and Wales it ought to be incumbent on the prosecuting authorities to consider criminal proceedings against him for at least two offences namely conspiracy to commit the offence under section 2 of the 1984 Act and perjury. I shall direct that a copy of this judgment is to be sent to the Commissioner of the Metropolitan Police for her to consider what steps in this regard should be taken.
9. In August 2012 the mother began proceedings in Egypt for custody of Elsa. On 23 August 2012 the North Cairo Court for Family Affairs awarded her custody in what has been described as the “short custody order”. That was replaced by what has been described as the “long custody order” in November 2015. These orders required Elsa to be delivered up to the mother. They reflected the principle of Egyptian law which gives the priority of custody to the mother until the child reaches 15 years of age. The Egyptian authorities in fact prosecuted the father for breach of the order for return and he was sentenced to 12 months’ imprisonment in his absence. He appealed that sentence

² <https://www.bailii.org/ew/cases/EWHC/Fam/2013/2972.html>

³ <https://www.bailii.org/ew/cases/EWHC/Fam/2013/2474.html>

(using money which were released to him from a frozen fund for the purposes of allowing him to engage in the Egyptian custody proceedings) and the term was reduced to three months. The father has not been to Egypt since the sentence was handed down.

10. The reason that the mother has not been able to execute the Egyptian order for custody in her favour is that she does not know where Elsa is.
11. The father's position is set out in his various statements and is encapsulated in his most recent statement of 7 February 2019. I set out in full his evidence:

“Elsa's circumstances in Egypt can be read in the notes prepared by my solicitor Mr Kevin Skinner of his phone conversation with the head of my family regarding this matter. I personally have not been allowed any opportunity to speak to the head of the family as he refuses to speak to me while I am in this country.

The last occasion he allowed me a phone call with him was when I was in Egypt from December 2015 to March 2016, when Mrs Justice Roberts ordered me to go to Egypt and return to England to report to her ladyship any information I could obtain. The court might find it helpful to read the statement I prepared for her ladyship which was requested for 11th April 2016 and was read by the court at the hearing on 15th April 2016.

The circumstances as I was told by my mother, can be summarised in the following:

Elsa is a happy, healthy and well-behaved child whose welfare is looked after by her parental Grandmother. Elsa and my mother live at their own place of residence, which is secured and paid for by my family members. I was not told any further information regarding the location of their residence or any other details that might identify that place.

Elsa's education is going well. More can be achieved if the anxiety and fear imposed by Ms Button's potential unpredictable actions and her unstable drugged mindset are alleviated.

Elsa is fluent in her mother tongue (Arabic) and no longer communicates in English, given that she lives in an Arabic speaking country where English is not used in the day to day life. She studies the English language curriculum provided at school and she attains good grades.

Elsa achieves good grades in science, Arabic, French, social studies, Maths and all other subjects taught at school.

Elsa frequently and persistently expressed her wishes that she does not want to return to her mother house in Leeds or to be anywhere near [redacted] (the teenager who used to molest her)

Furthermore, ever since Ms Button told Elsa in one of their skype contact about her new husband and her new child, Elsa felt like she does not have a place in her mother's life and that her mother has people in her life of higher importance.

Elsa does not wish to leave her Grandmother or to be with anyone else. Given the strong bond Elsa and her grandmother formed over the years, this wish of Elsa does not come as a surprise.

Elsa rejected all my requests and pleas to her that she should have Skype contact with her mother.

Elsa always cited that she was hurt and angered by Ms Button's dismissive responses and disbelief whenever the child brought the subject of [redacted]'s abuse to her when she was a little baby.

Elsa also was very disturbed and upset when Ms Button invited to one of their skype calls individuals from Julie's house where Elsa experienced sexual molestation and abuse. This was what pushed the child over the tipping point and made her unwilling to attend any further skype calls with Ms Button as she found those contacts to be a source of distress and emotional pain.

Elsa developed a strong resentment toward Ms Button after the child saw her paternal grandfather dying of his cancer and his death wish to see his oldest son was prevented by Ms Button.

For more than 8 years now my family withheld any information about Elsa's address, photos and the location or the name of her school. They did not even reveal that information to secure my release from prison and left me there to rot for two years.

This position they took was and still is a result of their concerns for the safety of Elsa and due to their concerns of any criminal action Ms Button and her aids might attempt to kidnap Elsa out of Egypt and subject the child to an abhorrent damaging experience.

My family are fully aware that that there are British mercenaries hired by private security firms who carry out all sort of barbaric crimes and any dirty business the English Authorities back up behind the scene but do not get directly associated with.

Both the Egyptian and British media are full of stories about those private firms and the criminals who operate their barbaric criminal activities under the silent and unspoken blessing of the English Authorities.

What is making things worse is the fact the English High Court has always demonstrated a sever (sic) level of bias and lack of concern for Elsa's welfare and privacy, which had aggravated my family's concerns and solidified them.

My family members are aware that the English Court is using everything in its powers to break me down and keep the maximum amount of pressure on my life. They fear that if they share this information with me and I pass them to the court, this will leave Elsa vulnerable to harm and potential attempts of kidnap by Ms Button and those who assist her in Egypt and in the UK.

Now, my question is: does anyone in her/his right mind really think that my family would allow me any knowledge of these information?

They will not take that risk of sharing these details and me breaking down and passing them to the English Authorities and their mercenaries.

Elsa's carer for the past 8 years, since Ms Button and I left her in Egypt, was and still is her paternal Grandmother.

My contact with Elsa for over a year now did not exceed a few and sporadic 5-10 minutes phone calls I receive from a withheld number at the frequency of once a month. These calls are only made when Elsa wants to speak to daddy and therefore there are no fixed dates for them.

Due to the amount of medication I am prescribed to take and due to the lack of concentration and poor memory these medications cause to my head, I am unable to remember the exact dates of those past calls. I would not even find them on the phone log as my phone is very old (since 2010) and for the past two years I had to format it frequently as I cannot afford buying a replacement.

The last time I received a call was about 4 weeks ago and it lasted for about 10 minutes.

As far as I am told, she never asks to speak to Ms Button and even when I open the subject with her, her voice becomes tearful almost immediately, which triggers her Grandmother to step in, shout at me and end the call. The Grandmother had warned me

frequently that if I keep distressing Elsa with that requests, she will not call me again.”

The father’s allegations against the mother, justifying his cruel and heartless conduct, are obviously untrue, and to my mind are an aggravating factor.

12. In the first section of his evidence the father refers to “notes prepared by my solicitor Mr Kevin Skinner of his phone conversation with the head of my family regarding this matter”. The head of the family is said to be his paternal great-uncle Mr Haj Mohsen, although the mother has never heard of such a person. The conversation took place nearly two years ago on 23 February 2017. The father says that he was given the telephone number by his brother and that he then gave it to Mr Skinner. I have ordered that the number be disclosed to the mother. The notes contain the following statements from the speaker in Egypt:

“[Elsa] is very well, she lives a lovely life. You have to know I am recording this conversation right now and I am going to send a copy to [the father]. ...

I have to tell you that nobody was honest with their commitments towards me. I was promised several things and nothing so far has been done. The problem is in your hands, not in ours. The girl lives a normal life here in Egypt, she does not need anything from anyone. Your court has allowed the media to write wrong things about us. That is why I am not happy dealing with you again. You have to know that the girl will be staying permanently in Egypt and she will not be leaving Egypt. If the mother wants to see her daughter, which is her right, the court must cancel all the wrong stuff which was ordered. The mother has issued court cases against [the father] and he is now detained in your country and all the allegations are wrong and the girl will not leave Egypt.

Your court did not fulfil the promises and they treated us unfairly. They have used false documents and the ruling of the court is not fair. The things in the newspaper are totally wrong and has to be revised. The court cases here and in Egypt need to be revoked. I have said everything I need to say.

[Before indirect contact would be allowed] the mother has to drop all the cases and the media has to respond to what they have said. All cases in Egypt or England and issued by the mother have to be dropped.

...

I am a very busy man and as far as we are concerned this case is over. The little girl lives here, happy, settled and with lots of support around her. I am not going to talk to anyone anymore.”

This speaks for itself.

13. Although I heard no oral evidence, I am satisfied so that I am absolutely sure that the father's statement that he does not know Elsa's whereabouts is completely false. I am convinced that Elsa's continued abduction is done with the active complicity of the father and is at his behest. The findings made by Mr Justice Holman still hold good, in my judgment.
 14. The mother has done the following to try to locate her daughter, all to no avail.
 - i) Every year since Elsa turned six in 2013 she has enquired of the Egyptian Ministry of Education where Elsa might be at school. She has enquired both by reference to her name and her date of birth. But no trace of her has been found.
 - ii) On 27 June 2013 she secured a meeting with the Rt Hon Alistair Burt MP, Minister of State at the Foreign and Commonwealth Office who told her he would do what he could to help.
 - iii) In 2013 she met Sir John Casson, then British Ambassador to Egypt, who also said he would do what he could to help.
 - iv) She has regularly contacted the Egyptian Embassy in London seeking their assistance.
 - v) She has continued to instruct a lawyer in Egypt.
 15. In my judgment the time has now come for me respectfully, but formally, to ask the Secretary of State for Foreign and Commonwealth Affairs, the Rt Hon Jeremy Hunt MP, to use all available diplomatic measures, whether through the British embassy in Egypt or otherwise, to seek to persuade the authorities in Egypt to locate this missing child, who is a British citizen and a Ward of the High Court. Once she is located the mother will then be able to take steps to execute and enforce the custody order awarded in her favour by the courts of Egypt.
 16. I will adjourn this case to a date in the forthcoming Easter term. I invite the Secretary of State to inform the court at that hearing what steps have been taken following my request, either by means of a written submission to the court or by instructing counsel to attend.
 17. That concludes this judgment.
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