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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
[2021] EWHC 2492 (Fam)



No. ZC20P01401

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 29 July 2021

**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF A AND S (CHILDREN)**

Before:

MR JUSTICE HOLMAN

**(Sitting throughout in Public)**

B E T W E E N :

THE FATHER

Applicant

- and -

(1) THE MOTHER  
(2) CHILD A

Respondents

MR W TYLER QC and MR W TYZACK (instructed by Vaitilingam Kay) appeared on behalf of the applicant father.

MR T GUPTA QC, MS J PERRINS and MISS J RENTON (instructed by Family Law in Partnership Ltd) appeared on behalf of the respondent mother.

MR C HAMES QC and MISS C WIGODER (instructed by Freemans Solicitors) appeared on behalf of the respondent child.

**J U D G M E N T**

**( A s a p p r o v e d b y t h e j u d g e )**

MR JUSTICE HOLMAN:

1 There have already been several judgments in these proceedings, at least two of which are publicly reported on BAILII, namely that of Mr Nicholas Cusworth QC, sitting as a Deputy High Court Judge, on 1 March 2021, and that of myself on 25 March 2021. They are respectively published under neutral citation numbers [2021] EWFC 17 and [2021] EWHC 890 (Fam). I see no point or purpose in narrating once again the history. Further, the present discrete application is one made by the parties' daughter, A, who is now aged 15. She is sitting in the courtroom as I speak and I will, therefore, be both brief and circumspect in what I say.

2 The current position is that the parents seem to be completely deadlocked on almost every issue, whether in relation to their children or in relation to finance. Both parents and both children currently remain living in London. The mother is desperate to relocate to Barnaul in Siberia where her family are based, and to take both her children with her. She undoubtedly feels trapped here by steps taken by the father. He, on the other side, feels that he cannot personally safely return to Russia, although he is a Russian citizen, and that, to put it bluntly, if the mother and children do return to Russia, he may never see his children again, at any rate for many years. As the younger child, S, is still only four and does currently regularly see her father, the consequences both for her and for him could be profound.

3 In March 2021 the mother asked me to permit her and the two children to travel to Russia for the Easter school holidays. I declined to do so. At paragraph 37 of my judgment of 25 March 2021, I said that:

“...there is little doubt that if these children were now able to travel to Russia with the mother it would be a very long time indeed before they were enabled to return to England.”

I do not resile from a word of that which, in my view, applies no less forcefully today.

4 Since March there have been applications (either made formally or made orally) by the mother to be able to take both children abroad during the school summer holidays, and by the father to be able to take S to Greece (he and she being also Greek citizens). He accepts that currently A, who declines to meet him, would not accompany them. By paragraph 8(c) of the order made by me on 6 July 2021, those cross-applications were placed on the agenda for this hearing this week. Frankly, I had expected that they might occupy at the most the first day of the three-day hearing, namely Tuesday, 27 July 2021.

5 Recently, however, each parent seems to have accepted that those particular applications in relation to this summer were forlorn, which, for various reasons, they undoubtedly were. I could never have been persuaded at the present hearing to permit the mother to travel abroad with both the children, and it is unrealistic to suppose that the father can at the present juncture take S to Greece. Meantime, however, A, who is herself now a party to these proceedings, issued an application last week, dated 22 July 2021, in which she seeks the release of her own Russian and Greek passports to her so that she can travel for about three weeks with her maternal grandmother to Barnaul. Her solicitor, Ms Laura Coyle, has made a statement in support, and A has been very well represented at the present hearing by Mr Christopher Hames QC and, today, Miss Clarissa Wigoder.

6 The current practical impediment to A leaving England and Wales is that her Russian and Greek passports are held by the mother's solicitors, FLIP, to the order of the court pursuant to an order made by Ms Justice Russell on 11 March 2021 at a hearing when the mother was represented by Miss Jacqueline Renton and the father, at that particular stage, represented himself. Mr Will Tyler QC, on behalf of the father, submits at the present hearing that I have no power or jurisdiction to vary that order of Ms Justice Russell so as to permit the release, even temporarily and on terms, of the passports to A. He submits that the current

jurisdictional situation is governed by Article 13 of the 1996 Hague Convention on Jurisdiction in respect of parental responsibility, and by the ruling of Mr Cusworth on 1 March 2021 that this court “must abstain” from exercising jurisdiction, save any jurisdiction pursuant to Article 11 of that Convention in a case of urgency. Whether or not Mr Cusworth was correct in his ruling now awaits the judgment of the Court of Appeal, but meantime that is the extant ruling of this court.

7 I reject that argument. Ms Justice Russell made the order impounding the passports on 11 March 2021 after the ruling of Mr Cusworth on 1 March 2021. If she had any power or jurisdiction to make the order which she did make (and I do not doubt that she had), I must have jurisdiction now to vary it. Ms Justice Russell was exercising a jurisdiction which judges of the Family Division have exercised almost daily in the Applications Court for at least the last 50 years (being the period of my own practice and experience). It is exactly the same jurisdiction which is exercised when Tipstaff passport orders, or location orders including within them a passport order, are made. It happens that in the present case it was not necessary to engage the Tipstaff as the passports in question were already in the actual possession of the father’s previous, but by then no longer instructed, solicitors, Charles Russell Speechlys.

8 The purpose of the jurisdiction is to stabilise the position of children in cases with an international element, and to prevent their unauthorised removal from the jurisdiction of the court while proceedings are continuing. Such orders are very frequently later varied, and it is fanciful to suggest that just because there are parallel proceedings in Russia I cannot now vary that order. Further, it would be remarkable if this child’s right of any access to this court, which is effectively holding her passports, was barred because of proceedings taken by one of her parents elsewhere, albeit that she did become a party to those proceedings. Further still, the father himself was at an earlier stage seeking an order releasing the

passports to him so that he could take S to Greece. Either this court has jurisdiction in relation to the passports or it does not; not merely when it suits him to invoke it.

- 9 I turn to the merits of the application. I completely agree with Mr Tyler that the approach and test which I should adopt is that applicable to any application for the temporary removal of a child from the jurisdiction. The starting point is whether, in principle, the proposal is a reasonable one and one which benefits the welfare of the child concerned. If it does, and if a risk of non-return is raised, the court then needs to evaluate the magnitude of that risk (in the light of whatever safeguards that can be imposed) and evaluate the gravity of the consequences if the child is not returned. The court must then perform a balance as to whether the risk of non-return and the gravity of the consequences outweigh the benefits to the child of the proposed holiday or travel.
- 10 I stress, as I observed during the argument, that the overall judgment or assessment which a court has to make in these situations can rarely be risk free. Contested applications for holidays and travel abroad are very frequent. I have heard dozens during my time on the Bench. Carefully balanced risks do have to be taken. If the court required to be certain that a child would be returned, many children would be denied entirely reasonable and enriching foreign travel.
- 11 A's parents do both agree that she is an intelligent and articulate young woman with the maturity appropriate to her age. She is achieving well at a selective and highly achieving school in London. She is bilingual in English and Russian. In my view, her application to be permitted to travel for about three weeks to Barnaul is eminently reasonable and in principle very much to her benefit. She is dual Russian and Greek but has spent much of her life in Barnaul. She was formerly at school there. Her maternal grandparents, although separated and divorced, both live there, as do her uncle and aunt and four cousins. She has friends there. Her mother has a home there. Although she is currently based in London (I

deliberately avoid any reference to habitual residence), A has very strong current connections with Russia in general, and with Barnaul in particular.

- 12 Because of the conflict between her parents, A has not been able to visit Barnaul for a year now, since August 2020. If it can be achieved without unacceptable risks, then it is very much in her welfare to be able to travel there. Further, at her age and degree of maturity her subjective desire to do so must carry considerable weight. The father raises a range of reasons why, nevertheless, A should not be permitted to do so. I will address them in the same order as he did in his very recent statement made this week on 26 July 2021.
- 13 At paragraph 14 he describes as his “overarching concern” that A has been subject to a prolonged campaign of parental alienation by the mother and her family in which a “key player” has been the grandmother. He refers to various things which he says the maternal grandmother has said to him, or about him, which I have firmly in mind but will not repeat in the presence of A. I make no finding whatsoever about that after a hearing in which I have not heard any oral evidence from the father and only brief oral evidence from the mother. I have, however, heard quite extensive oral evidence from the grandmother.
- 14 It is alleged that she said these things in the period during last October and November when the marriage was clearly breaking down, but both parents and the children and the grandmother were still all residing in the same duplex apartment. It was patently a time of great stress for all this family. Although it is clear that the grandmother still does not hold the father in much esteem, I am not at all persuaded that if A was staying with her in Barnaul she would use the opportunity to denigrate the father or turn A further against him. Tragically, A already declines to see her father for reasons of her own which she prefers not to discuss.

- 15 The grandmother has been living in the London apartment with the mother and the children for several weeks now. Quite frankly, if she is bent on denigrating the father or influencing A against him as he fears, she has already had ample opportunity to do so. To my mind, the single event most likely to bolster or increase A's current negative feelings about her father is not anything which her grandmother may say to her, but the father's own opposition (if it prevails) to A travelling to Russia as she so strongly desires to do.
- 16 Next, under a heading "Potential to cause further confusion as to true wishes and feelings", the father seems to suggest that A does not really want to travel to Barnaul for a holiday and is only making her application under the influence of, or pressure from, her mother. Whether she has been influenced by her mother or not (as to which I make no finding), I accept that the present application and the reasons for it are authentically A's own.
- 17 Next, the father refers to A's health. This, as A herself knows, is a reference to an episode or episodes of self-harming. I am satisfied on the evidence that there was a period in about October and November 2020 (at the time of the breakdown of her parents' marriage and acute tensions within the home) when A did deliberately scratch the outside or upper side of her lower arm or arms, probably with an object such as a safety pin. There were scratches but not cuts. She told her mother that she had been doing so over the previous eighteen months to two years.
- 18 I am not satisfied for the purposes of the present hearing that she had in fact been doing so throughout that period, rather than that she merely claimed to have done so. Neither her mother nor her father (who claims to have been the primary day-to-day parenting figure) noticed any marks during that long period. The mother was obviously deeply concerned when A had scratched herself last October/November and has, I am sure, been alert, as she claims, for any signs that A has continued to do so. The mother herself said that she is sure that A has not done it again. I myself could not use the word "sure"; but, on the limited

evidence currently available to me, I consider that it is probable that A has not done it again.

In my view, there is negligible risk of A self-harming while in Barnaul for the next three weeks if she is permitted to go there.

19 Next, the father expresses concern about the grandmother's own health. This derives from something said by Mr Teertha Gupta QC on instructions from the mother during the hearing on 25 March 2021. I cannot say whether there was confusion between Mr Gupta and the mother due to her rather broken command and use of English; or whether the mother at that time had an exaggerated fear or belief as to the then state of health of her mother who was indeed, or recently had been, in hospital at that time; or whether there was a downright attempt by the mother to mislead the court. I have heard at some length from the grandmother as to her health. She is in fact a retired GP herself. I am satisfied on the evidence currently available to me that the problem in March 2021 was entirely due to injuring her shoulder in a fall down the stairs. There was, and is, no known problem with her heart or circulatory system. She has the perfectly normal health and vitality of a woman of seventy-four, and there is, on investigation, no reason based on the grandmother's health to prevent the proposed trip. The father asks rhetorically in his statement, "What if [the grandmother] was to die whilst A was in her care?" That likelihood is so remote that it is not necessary to speculate an answer to the question.

20 This brings me to what the father describes as his final concern, namely the risk of non-return. I have already described the approach of the court to such a risk if it is raised. I completely agree with the father and Mr Tyler, and accept, that if A were to travel to Barnaul and then not return by the due date, the consequences for her and this whole family would be very grave indeed. Frankly, it would be dynamite to the already very conflicted and untrusting relationship between these parents. It is patent that it would be a very long time indeed before this court could then be persuaded to permit the mother, let alone S, to

travel to Russia, so A would face a prolonged period of separation from both her mother and her sister, very damaging to her and of course very damaging to her sister.

- 21 If I thought that there was any significant risk of A not returning, I would not permit her to go. In my view, however, the risk of non-return is a low one, although I cannot guarantee or be certain that she will do so. First, I have no reason not to trust and respect A herself, who will freely and voluntarily give to me and to her father her signed written promise that she will return by the due date. She is quite old enough and mature enough to understand the gravity of a solemn promise given to a judge and to her father, and the gravity of breaking it.
- 22 Second, formal undertakings will be given by both the mother and the grandmother on affirmation which will carry sanctions if broken. The mother needs clearly to understand that if A does not return, she, the mother, is at risk of a substantial term of imprisonment. I am quite satisfied that although the mother will remain in England, she will have the power, both *vis-à-vis* A and *vis-à-vis* her own mother, the grandmother, to ensure the return of A.
- 23 Third, although it is a terrible thing to appear to make any child a hostage for another, the plain fact is that S and her mother will be remaining here in England, and the mother's passport will be lodged, together with those of S, which are already lodged. The mother understands, and A must now understand, that if A does not return by the due date, it will, as I have said, be a long time before there could be any question of the mother or S travelling to Russia, or, therefore, of A seeing them again.
- 24 In my assessment and judgment, the risk of non-return is a low one and an acceptable one, despite the gravity of the consequences of non-return, and that risk is far outweighed by the benefits to A of the proposed trip and her own strong wish, at her age, to travel there. I will accordingly permit the trip and direct that A's passports are released for the purpose on the

more detailed terms of the order which have already been drafted, and upon the details of which I have heard submissions.

25 In my view, those terms and the above considerations are sufficient safeguards to which a requirement to deposit even as much as £5 million, as suggested by the father, would add little. It would further delay the trip if a sum of that size now had to be raised and remitted here to England and banked here; and the father alleges that the wealth of the mother's family is so great that the loss of even £5 million would, frankly, be unlikely to deter retention if the other safeguards did not do so.

26 I mention that any issues in relation to Covid and quarantine have not been raised or impacted at all in this case, save that A must be back a full fourteen days before the start of the next school term in order to allow sufficient time for any isolation or quarantine requirements which may obtain between England and Russia towards the end of August.

27 Finally, it would be preferable if the grandmother is able to accompany A back to England or at least as far as the necessary change of planes in Moscow, but at her age A is well able to travel as an unaccompanied minor on a journey with which she is very familiar, and I do not stipulate that she must be accompanied by anyone.

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**CERTIFICATE**

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