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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION



No. FD22P00491

Neutral Citation Number: [2022] EWHC 3692 (Fam)

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 12 December 2022

IN THE MATTER OF THE SENIOR COURTS ACT 1981
AND IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT
AND IN THE MATTER OF CHILDREN ACT 1989

Before:

ICC JUDGE MULLEN

(Sitting as a judge of the High Court)

(In Private)

B E T W E E N :

T

Applicant

- and -

(1) V

(2) A CHILD

Respondents

MR M BASI (instructed by Dawson Cornwell LLP) appeared on behalf of the Applicant Mother.

MISS Y ADEDEJI (instructed by Emmanuel Solicitors) appeared on behalf of the Respondent Father.

MS C BAKER (instructed by Goodman Ray Solicitors LLP) appeared on behalf of the Second Respondent Child.

J U D G M E N T

ICC JUDGE MULLEN:

- 1 This is my judgment in relation to this application for an inward return order. I set out the background in very brief summary. In July 2021, the mother, T, travelled to Iran with their two children, W, born in 2008, and X, born in 2012. Their father, V, was living there. The parents were married in the United Kingdom, participating in a religious marriage in 2007 and thereafter a civil marriage. The children were born here and, at the time that they went to Iran, had been brought up here, both being in full-time education.
- 2 Return tickets for that trip had been booked for 24 August 2021. On 3 August 2021, however, the mother sought to return to the UK with the children. They were stopped at the airport by the immigration authorities and the children were not allowed to leave. The mother made a decision to return to the UK. She says that this was because she feared that the registration of her religious marriage in Iran would have the effect that the father could prevent her from leaving too. The mother says that she left the children in the custody of her parents; the father says that she abandoned them at the airport and that the mother wanted to live a new life free of the children.
- 3 I have seen a letter from the Family Wellbeing Service of the local authority confirming that the mother contacted them on 4 August 2021, i.e. the day after she left Iran, to say that her children had been stopped at the airport and to seek advice as to how to get them back. There followed a period in which the mother says that she sought to negotiate with the father for the return of the children. It appears that an application was made to the court in Iran for custody, and that was withdrawn in March 2022. The mother says she was persuaded to withdraw it to protect the children. However that may be, an application was not made to this court until 21 July 2022. That application was for a passport order as the father was due to visit the UK. That was granted by Judd J on 22 July 2022, the father's passport was seized. The mother made an application on the same day for an order for the return of the children. The matter returned before Judd J on 7 September 2022, when the father was represented. She gave directions for evidence in relation to the passport order and directed that the order and port alerts continue.
- 4 W is now fourteen and X is ten. By an application dated 15 September 2022, W, via solicitors, sought disclosure of the papers and an adjournment of the hearing listed for 16 September 2022 so that he could be advised as to joinder. On 16 September 2022, Peel J did adjourn the matter, noting that the father opposed the mother's application for a return order on a jurisdictional basis in relation to habitual residence and also on the basis that Iran was the appropriate forum in any event. He gave further directions and continued the passport order and port alerts.
- 5 At the next hearing, on 11 October 2022, His Honour Judge Scarratt, sitting as a deputy High Court judge, joined W as a respondent and directed that CAFCASS serve a report as to the children's wishes and feelings. He gave directions and listed the matter for a pre-trial review. He, again, continued the passport order and the port alerts.
- 6 Mr Nick Lill of CAFCASS reported on 16 November 2022. His standard safeguarding checks included a search of the Police National Computer, which revealed a long list of aliases for the father, together with a number of convictions. He spoke to W and X by telephone. He saw them briefly by video as well but the connection was apparently somewhat disrupted. For present purposes, I need only say that Mr Lill was satisfied that the views expressed to him were the authentic views of the children and not influenced by the mother. He concluded:

“The accounts of both children raise considerable concerns for their welfare as they describe being detained in Iran against their wishes with little or no integration in their local community of which they are fearful for several reasons. Indeed, they are currently not living with an adult who has Parental Responsibility, and they are not attending school and have not done so on any significant basis for over a year. In terms of their emotional welfare, the children, aged 14 and 10, are largely responsible for looking after each other and W feels responsible for his younger sister. Both children raise a concern about the further risk of harm in the event that their father returns to Iran whereby it is unclear to what extent their basic needs would be met or if this would deteriorate’

7 The matter returned to this court on 18 November 2022 for the pre-trial review before Newton J. His order needs to be referred to in a little more detail as it defines the issues for the hearing before me, dealing with the question of jurisdiction and what he was told about the location of the children’s Iranian and British passports. The recitals provide:

“2. All parties, including the respondent father, agree that the Courts of England have a substantive welfare jurisdiction in respect of the children and therefore the only issues for the final hearing are as follows:

- (a) whether it should exercise that jurisdiction;
- (b) whether to make an order for the summary return of the children to the jurisdiction of England and Wales and child arrangements;
- (c) whether to discharge or to continue the passport orders.

3. It is declared the Court in England and Wales has jurisdiction in respect of the children and that the children are wards of this Honourable Court and are dual British Iranian citizens. They were born in and are domiciled in the United Kingdom and currently are travelling outside England and Wales with United Kingdom and Iranian passports, although neither are in their possession and control, and the respondent father, having informed the court that:

- (a) the Iranian passports were seized in August 2021; and
- (b) he lodged the children’s British passports with an Iranian Family Court.”

8 There are two further references in that order to the location of the passports, as described in that paragraph. The first is paragraph 8:

“The respondent father indicated at this hearing that the children’s Iranian passports are with the Iranian authorities and that he had provided the children’s British passports to the Iranian courts. The mother sought further evidence to substantiate this claim.”

9 The second reference is paragraph 22:

“The respondent father shall, by 4.00 p.m. on 2 December 2022, serve on the parties evidence that the Iranian authorities have the children’s Iranian passports and that he lodged the children’s Iranian passports with the Iranian courts. This evidence must include the date on which such actions took place.”

10 Newton J directed that the children be returned to the jurisdiction so that they could attend the hearing and provided for the father to exercise a notarised consent to permit the children to leave the Republic of Iran, having first been returned to the maternal grandparents’ care. He directed that they should attend this hearing. He left over the question of whether there should be oral evidence at this hearing to the trial judge. Despite Newton J’s order, when the matter came before me last week, the children did not appear, the notarised consent had not been executed and the children had not been returned from Iran.

11 All parties were represented by counsel. Mr Basi appeared for the mother, Ms Adedeji for the father and Ms Baker for W. I acceded to the request of the mother and father to adduce further witness statements. The mother’s is principally an updating statement. The father’s two statements are largely comment and submission, but raise concerns about W returning to this jurisdiction on a number of welfare bases [detail removed].

12 Oral evidence was given by Mr Lill as to W and X’s wishes and feelings. I also directed oral evidence as to the location of the passports, which was agreed by the parties. I did not permit oral evidence as to welfare generally for reasons that I gave at the time. In summary, I made that decision because the court was not dealing with the final determination of a child arrangements order; I was considering whether summary return should be ordered. In my judgment, in light of the evidence and the allegations made, the information that I required for those purposes was principally set out in the papers. Moreover, no directions had been given for evidence or reports as to welfare more generally. W, by virtue of the fact that he was not in court, was not in a position to give instructions to his lawyers in relation to matters that might have been raised in oral evidence.

13 Having set out that background, I turn to the legal principles in relation to the appropriate forum. All parties agreed that the first question was to consider the proper forum for determination of the question of the upbringing of W and X going forward. I was referred to *Re K (A Child)* [2019] EWHC 466 (Fam), in which Williams J set out the following principles at paragraph 35:

- “(i) The burden is upon the applicant to establish that a stay of the English proceedings is appropriate.
- (ii) The applicant must show not only that England is not the natural or appropriate forum but also that the other country is clearly the more appropriate forum.
- (iii) In assessing the appropriateness of each forum, the court must discern the forum with which the case has the more real and substantial connection in terms of convenience, expense and availability of witnesses. In evaluating this limb the following will be relevant; (a) the desirability of deciding questions as to a child’s future upbringing in the state of his habitual residence and the child’s and the parties’ connections with the competing

forums in particular the jurisdictional foundation; (b) the relative ability of each forum to determine the issues including the availability of investigating and reporting systems. In practice judges will be reluctant to assume that facilities for a fair trial are not available in the court of another jurisdiction but this may have to give way to the evidence in any particular case; (c) the availability of witnesses and the convenience and expense to the parties of attending and participating in the hearing; (d) the availability of legal representation; (e) any earlier agreement as to where disputes should be litigated; (f) the stage any proceedings have reached in either jurisdiction and the likely date of the substantive hearing; (g) principles of international comity, in so far as they are relevant to the particular situation in the case in question. However public interest or public policy considerations not related to the private interests of the parties and the ends of justice in the particular case have no bearing on the decision which the court has to make; (h) it has also been held that it is relevant to consider the prospects of success of the applications.

- (iv) If the court were to conclude that the other forum was clearly more appropriate, it should grant a stay unless other more potent factors were to drive the opposite result. And
- (v) in the exercise to be conducted above the welfare of the child is an important (possibly primary), but not a paramount, consideration.”

14 In my judgment, the proper forum for consideration of the children’s upbringing is England and Wales. I say that for the following reasons –

- a. This is the jurisdiction with which they have the most substantial connection. They were born and brought up here. This has been their home for the majority of their lives. There was no common intention to relocate them permanently when the family travelled to Iran. They had return tickets and the father went so far as to contend in this hearing that, had he been asked for his permission for the children to return to the UK when they were stopped at the airport, he would have granted it. Although both parents have Iranian heritage and both the parents and the children are dual British and Iranian citizens, the mother has lived in this jurisdiction for some twenty years and she works as a teacher here. While she spent the first twenty-nine years of her life in Iran, she is now settled here.
- b. All the parties speak English fluently and can engage with lawyers. There is a dispute as to how well W and X speak Farsi. The father says that W is fluent, but both W and, indeed, the father’s counsel in her position statement, say that he is not. I cannot resolve that dispute, but I can be certain that all the relevant parties communicate effectively in English without the need for translators.
- c. The father says that the mother can travel freely to and from Iran but she is concerned that the father, as her husband, will be able to prevent her leaving Iran. Again, I cannot resolve that dispute, but I know the parties can travel freely to this jurisdiction without fear of arbitrary detention.

- d. Both children went to school here and their histories are here. A welfare assessment worth the name will need to engage with schools and so forth. Neither W nor X has physically attended school in Iran, though it is said they will do in future. The reality is that the majority of the information as to the children's needs and development will be located here and will need to be obtained from here. Given the limited engagement that W and X appear to have with society in Iran, it is by no means clear there is likely to be much in the way of relevant information there.
- e. I have no information about the availability of legal representation in Iran, but all competent parties can be represented here. Importantly, W can be effectively represented here as a *Gillick*-competent child, the significance of which I shall refer to further later. For present purposes, I need only say that there is no dispute that W is *Gillick* competent, and I know that there are effective procedures in this jurisdiction for bringing both his and X's wishes and welfare considerations before the court.
- f. Proceedings are on foot here and no such proceedings are on foot in Iran. While applications appear to have been made to the court in Iran and withdrawn, and there are, again, competing reasons given for the withdrawal of the mother's application, it seems to me that there is no question of submission to the jurisdiction of Iran or election to accept the exclusive jurisdiction of that court. Ms Baker, who appears for W, also drew my attention to the judgment in *AB v EM* [2020] EWHC 549 (Fam) in which MacDonald J, at paragraphs 41 to 43, summarised the effect of a foreign custody order in circumstances where the foreign court was not a signatory to the relevant reciprocal treaties. It is clear from that case that such an order would not be a bar to this court concluding that it is nonetheless the appropriate forum. In the instant case that there is nothing to create any sort of issue estoppel between the parties in relation to forum and none is relied upon.
- g. In relation to the delay in bringing these proceedings, I can see the force in the submission made on the mother's behalf by Mr Basi that proceedings here had to wait for the father to be physically present in the jurisdiction. There seems to me to be no bar to the bringing of proceedings when the mother did. The delay in doing so must however be considered in the context of the children's welfare.
- h. I am further satisfied that there is a reasonable prospect of success in the sense that this court will be able to make an order advancing the welfare of W and X. That might include return to Iran or it might not.

- 15 The question of welfare is linked to the issues in relation to the questions that I have to decide in relation to the substantive application for summary return, but in considering the forum I bear in mind that the welfare of W and X requires their voices to be heard effectively. There is simply no evidence at all as to how that might be done in Iran. I will turn to the welfare of the children more generally in due course.
- 16 It is entirely clear to me that the father has not shown that England is not the appropriate or natural forum or that Iran is clearly the more appropriate forum. Instead, I am satisfied that the most natural and appropriate forum with which the children and the parties have the primary connection is England and Wales.
- 17 In those circumstances, it is appropriate for me to consider the substantive application for summary return. Iran is not a signatory to the Hague Convention, and this application is

made under the court's inherent jurisdiction. I have been referred to *Re J (A Child)* [2005] UKHL 40, in which Lady Hale of Richmond set out the following propositions. She said:

- “24. This House, in the leading case of *J v C* [170] AC 668, regarded it as clearly decided by *Re B's Settlement* and *McKee v McKee* that the existence of a foreign order would not oust the jurisdiction or preclude the operation of the welfare principle. This applies *a fortiori* where the foreign court would have had jurisdiction to make an order but has not done so, so that no question of comity arises ...
25. Hence, in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration. This was so, even in those cases decided around the time that the Hague Convention was being implemented here, where it was held that the courts should take account of its philosophy... The Court of Appeal, in *Re P (A Minor) (Child Abduction: Non Convention Country)* [1997] Fam 45 has held that the Hague Convention concepts are not to be applied in a non-Convention case. Hence, the first two propositions set out by Mr Justice Hughes in the case were entirely correct: the child's welfare is paramount and the specialist rules and concepts of the Hague Convention are not to be applied by analogy in a non-Convention case.
26. Thirdly, however, the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases. The principles were summed up by Lord Justice Buckley in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, at p.264, rightly described by Lord Justice Ward in *Re P* and *Re JA* as the *locus classicus*:

‘To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be

persuaded that it would be better for the child that those merits should be investigated in a court in his native country.’

27. He went on to emphasise that in doing so, the court was not punishing the parent for her conduct, but applying the cardinal rule.

...

28. It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping of a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child.

Making the choice

29. How then is the trial judge to set about making that choice? His focus has to be on the individual child in the particular circumstances of the case. The policy considerations which have led this country to enter into international treaties for the good of children in general are irrelevant. The policy considerations which have led this country to enter into international treaties for the good of children in general are irrelevant. A fortiori, the hope that countries which have not yet become parties to such treaties might be encouraged to do so in future is irrelevant. There may be good reasons why those countries are unable to join the club. They may well believe that it would be contrary to the fundamental principles of their laws to accept the reciprocity entailed. As my noble and learned friend, Lord Hoffmann, pointed out in the course of the argument, they may have no incentive to join if their children are returned to them without their having to return other children to a system which is so completely different from their own. This is all pure speculation and has nothing to do with the welfare of the little boy whose future has to be decided in this case.

...

32. ...the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever.
33. One important variable, as indicated in *Re L*, is the degree of connection of the child with each country. This is not to apply

what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his ‘home’ country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this.

34. Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests. A child may be deeply unhappy about being recruited to one side in a parental battle. But if he is already familiar with this country, has been here for some time without objection, it may be less disruptive for him to remain a little while longer while his medium and longer term future is decided than it would be to return.

...

38. Hence, our law does not start from any *a priori* assumptions about what is best for any individual child. It looks at the child and weighs a number of factors in the balance, now set out in the well-known ‘check-list’ in section 1(3) of the Children Act 1989; these include his own wishes and feelings, his physical, emotional and educational needs and the relative capacities of the adults around him to meet those needs, the effect of change, his own characteristics and background, including his ethnicity, culture and religion, and any harm he has suffered or risks suffering in the future. There is nothing in those principles which prevents a court from giving great weight to the culture in which a child has been brought up when deciding how and where he will fare best in the future. Our own society is a multi-cultural one, but looking at it from the child’s point of view, as we all try to do, it may sometimes be necessary to resolve or diffuse a clash between the different cultures within his own family.”

18 I was also referred to *Re NY (A Child)* [2019] UKSC 49, in which Lord Wilson JSC, with whom the other justices agreed, set out principles for an outward return order in a Hague Convention case. In *Re N (A Child)* [2020] EWFC 35, Mostyn J summarised those principles as follows, by reference to paragraphs of Lord Wilson’s judgment:

- “i) The application for the return order may be framed either as a claim for a specific issue order under section 8 of the Children Act 1989 or for an order pursuant to the inherent power of the High Court. However, the latter course should only be invoked exceptionally. Exceptionality may be demonstrated by reasons of urgency, complexity or the need for particular judicial expertise: [44].
- ii) Notwithstanding that the application is for a summary return order, the court must nonetheless conduct a proper welfare enquiry pursuant to section 1 of the Children Act 1989. The

evidence must be sufficiently complete and up-to-date to justify the making of a return order. In the welfare enquiry the child's interests will be the paramount consideration. The court must specifically consider all the matters mentioned in section 1(3), the first of which, of course, is the ascertainable wishes and feelings of the child concerned: [51 -53], [56], [57], [58].

- iii) The respondent must be given sufficient notice of the application to seek a return order: [54].
- iv) Where there are contested allegations of domestic abuse the court must specifically consider whether any enquiries should be conducted into them and, if so, how extensive that enquiry should be: [59].
- v) The court must be satisfied by evidence as to the living arrangements for the child if a return order were to be made: [60].
- vi) The court must specifically consider whether the parties should give oral evidence at the hearing and if so on what aspects and to what extent: [61].
- vii) The court must consider whether a Cafcass officer should be directed to prepare a report, and if so, what aspects and what extent. It will be important in this way to establish the child's wishes and feelings: [62].
- viii) The court will need to consider the ability of the court in the other place to reach a swift resolution of the issues between the parents in relation to the child: [63].”

In that case Mostyn J accepted that those principles also applied to an inward return order.

- 19 In relation to the checklist under section 1(3) of the Children Act 1989, it has been summarised in the judgment of Lady Hale to which I have made reference, but I will read it into any transcript of this judgment here:

“... a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;

- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.”

I bear all of those factors in mind, though some, of course, loom larger than others in the individual case. I will now turn to the individual elements of the welfare checklist.

- 20 First, dealing with wishes and feelings, the CAFCASS report is unequivocal. In relation to W, he told Mr Lill that he felt like a prisoner. He said:

“There’s no integration. It’s not our home. It’s not our life. It doesn’t make sense.”

He missed his mother, although he has a good relationship with his paternal uncle. He also missed his friends. He accepted that he had got in with a bad crowd, but said that he had moved beyond that and things were improving at school while he was in the United Kingdom. He felt scared as to what would happen if it were discovered that he was a British citizen, and he described feeling unsafe as a result of current civil unrest in Iran. He had done limited online schooling in Iran, which he considered to be something of a waste of time because he spoke limited Farsi, and did not get out much.

- 21 The same is true of his feelings as represented to Ms Broadley, who is the solicitor instructed on W’s behalf. She is a solicitor with a long experience of representing children in child abduction cases and she said of her discussions with W:

“He was clear, earnest and very much aware of the circumstances he was in and what he wanted to happen and why. He was earnest in his wishes and feelings about returning to England. He was very direct in the way he speaks, but cushions this with understanding, insight and respect towards me and my role and the court process, demonstrating to me maturity in his patience and understanding. I am wholly satisfied that he is legally competent and able to instruct his own solicitor and is determined in his views and wish to be represented. W has a maturity and awareness that is probably a result of [removed]. In my view his emotional maturity is certainly commensurate to his chronological age.”

Ms Broadley also explained that W told her that he was too frightened to leave the house at times and felt stuck, and that his wish was to return to the United Kingdom.

- 22 In relation to X, she felt lonely and she missed her mum a lot. She said she had no children to play with. She said she was scared of her father, and she described the activities that she formerly enjoyed, such as drawing and painting, going out and seeing friends.
- 23 Counsel for the father sought to emphasise the positive. X is still able to listen to music and play video games, and she has some online friends. W is able to go swimming, which he seems to regard as something of a lifeline for his mental health. Both in Ms Broadley’s witness statement and in the CAFCASS report, however, the children’s sense of isolation is palpable. They have been cut adrift from their home, their mother and their way of life in the UK.

24 W is *Gillick* competent and I was referred to the decision of Mostyn J in *AS v CPW* [2020] EWHC 1238 (Fam), where, having set out the evolution of the law he said, at paragraph 18:

“I would go further. In my judgment it is not merely a question of giving ‘due regard’ to the wishes of a *Gillick*-competent child on a particular issue. In my judgment, if the decision of the House of Lords in *Gillick* is not to be hollowed out, the wishes of a *Gillick*-competent child on a particular issue, where they are not objectively foolish or unreasonable, should normally be given effect.”

As submitted by Ms Baker on behalf of W, far from being objectively foolish or unreasonable, it is apparent to me that W’s wishes reflect his welfare needs.

- 25 In relation to physical, emotional and educational needs, no full assessment of these can be carried out at this stage, but the emotional needs expressed by the children are evident from their statements to Mr Lill and, in W’s case, to Ms Broadley. They have not physically attended school in Iran, having simply been enrolled in an online course, and they have little in the way of friends or contact with peers. While it is said they will go to school in due course and will develop friends, that is speculative. As I have said, there is a real question-mark about the extent of their language skills that would allow them to develop a sense of belonging in Iran. There is a real risk in my judgment that W and X’s educational attainment will be adversely affected if they do not return to an educational environment with which they are familiar.
- 26 While they have been out of the country for some seventeen months, it is evident where their sense of cultural attachment lies. There is a real risk, in my judgment, of those cultural attachments deteriorating if they remain in Iran during the course of any proceedings concerning their future. It is also evident that W and X rely on each other emotionally, and it was accepted by counsel for the father that they should not be separated.
- 27 This leads me on to the question of change of circumstances. While W and X have been out of the country for seventeen months, they still regard England as home. Mr Lill expressed his concerns for their psychological health if remaining in Iran. Their expression of wishes make it tolerably clear that there is less of a risk in them returning to this country, which they regard as home, than in continuing to live in Iran. They are not integrated in Iran but, rather, isolated.
- 28 I turn now to the risk of harm, and much of the submissions advanced on behalf of the father centred on the risk of harm and of W going off the rails. He pointed to W’s difficulties in school in 2020 [detail removed]. Although W was referred to Family Services, no safeguarding concerns were identified and no further action has been taken.
- 29 Those incidents also seem to be the foundation of the comments from W’s school, referred to by Mr Lill. These note difficulties, but it was also noted, however, that the mother attended all school meetings and she was open to support, and it similarly seems that W has insight into those events, which he describes as a “bad period” from which he had moved on.
- 30 The father raised further welfare issues in his latest statement, which he demonstrates by way of text messages from W’s phone which are concerning [detail removed].

- 31 As was noted by Mr Lill, retaining the children in Iran on the basis of these issues alone, for their safety, would be extreme. Iran, as is well known, is undergoing a period of particular disruption, and W is afraid of going out as a result of the potential reaction to him as a Westerner. Both children have expressed fear of their father and alleged violence. X has expressed concern about the behaviour of some of her father's friends [detail removed]. I cannot determine the truth of those allegations, but I bear them in mind.
- 32 I also note the risk of harm in the form of pressure being placed upon the children in order to obscure their views if they remain in Iran. I have seen a document dated 24 September 2022, which is in the name of W but is apparently signed by both W and X and bears what purport to be their thumbprints and an official-looking stamp. It states that W has not instructed anyone to represent him and that any statement apart from the instant one is as a result of coercion. Ms Broadley reports that W told her that he made this under pressure.
- 33 I should say that I am entirely satisfied that W has freely instructed solicitors here. I take Ms Broadley's statement at face value. She is an officer of the court and experienced in representing children. She was not cross-examined on her statement to challenge the authenticity of her account, and the account she gives is consistent with the views expressed by W to Mr Lill.
- 34 I am concerned as to how the statement made in Iran came to be made and, in this context, I have listened to recordings of telephone conversations between W and his father. These were put in evidence in the form of transcripts by the father to indicate that W was being influenced by his mother. Listening to the recordings places a different complexion on them. W sounds bored and somewhat browbeaten. The tenor of the conversation is rather more like cross-examination by his father, who puts leading questions and propositions to him repeatedly. It appears to be more of an attempt by V to influence what W says about an incident that took place at the home of a relative. I agree with what Ms Broadley says about this:
- “He believes his father will never listen to him and his true wishes and feelings, and he has almost given up on any hope that his father will listen to him and return them home.”
- I am troubled by those recordings and the father also readily talks about the mother to W in extremely negative terms. There is a real risk in my judgment that the children's voices may be stifled if they remain in Iran and principally subject to control by their father.
- 35 In dealing with the abilities of the parents, I have dealt with the concerns of V which, as I say, I cannot resolve in this forum, and neither do I need to. The limited information that I have raises no concerns about the mother; on the contrary, she seems to have been willing to engage with W's school and social services to address the problems that were identified some two years ago.
- 36 Finally in relation to the welfare factors, I consider the range of orders. I have already noted that this is a hearing to consider summary return. I am only considering where the children should be while final decisions about their upbringing are decided. This court will be able to direct their return to Iran if that is the proper decision to be made for their welfare. If either were returned today, I am not preventing an order relocating the children to Iran being made in due course.
- 37 So, in conclusion, in relation to W, he is *Gillick* competent, and I give great prominence to his views. In my judgment, I should indeed give effect to them. They accord with his

welfare. He needs to be restored to the culture with which he is most familiar so that his life can return to what he reasonably regards as an acceptable form of normality while his future, going forward, is decided. The further erosion of his connection to his home will be detrimental to his welfare. He needs to be in an environment where his voice can be heard and his views effectively put before the court. I do not accept that the risk of harm is such that he should be kept in Iran, or that his wishes are tainted by his activities in the UK. The concerns identified are not such that they cannot be managed in this country if they remain concerns at all. It is plainly in his best interests that he returns to his home country and the alternative is to risk his emotional and educational wellbeing.

- 38 There are no similar harms, or risks of harm, identified as a reason why X should not return to England, but the risk to her of remaining in Iran are much the same, with the additional concern about the alleged sexualised attention. It was accepted by the father that the siblings should not be separated, and it would plainly be detrimental to X to be separated from her brother. Her wishes are also clear, and while she is not said to be *Gillick* competent, her wishes are consistent with her welfare. She too must be in an environment where her voice can be heard, where she feels safe and where she can feel comfortable in the culture and educational environment with which she has been familiar while the question of her welfare in the longer term is concerned.
- 39 I will therefore order the summary return of both children.
- 40 I am also asked to consider the question of the children's passports. The mother's evidence on the circumstances in which the passports came to be taken was not wholly consistent. She had not raised her account as to this before, but I accept that her principal focus in preparing her evidence was on the substantive question of the return of her children and not the accounts of how that should happen. It is also the case that, by the hearing on 18 November 2022 before Newton J, the question of what had happened to the passports appeared to have been settled.
- 41 The mother gave evidence-in-chief on this, saying at first that she presented her British passport to the passport control officer when attempting to leave the country on 3 August 2021 and gave them the children's Iranian passports. They checked the children's names and said that permission to leave had not been given. She decided that she would need to return to the UK and gave, she says, the children's British passports to her parents. She was told by her father that these were later taken from her father by her husband. Her father also went to collect the Iranian passports from the Iranian authorities and was told that they had been taken by the father. The mother says that her children told her they had seen these in their father's briefcase and that they may now be held by a friend of his, who may be a judge in Iran.
- 42 In cross-examination, she said that she had presented all three British passports to the officer and was then asked if the children had Iranian passports, which she then presented. It was suggested to her by counsel for the father that she was making her evidence up on the spot. First, it was said that she had made no mention of her passport in her evidence and, secondly, her evidence was challenged on the basis that she had said that she had travelled to Iran on her British passport, but that passport, when presented on the second day of the hearing, shows no visa or entry stamp.
- 43 The absence of previous reference to the circumstances in which the passports were taken and the inconsistencies in the mother's evidence are, in my judgment, readily explicable by the circumstances in which they were taken. She intended to leave the country with her children. Whatever the precise circumstances in which this came about, she found that she

could not do so. I doubt that the order in which she presented passports was uppermost in her mind at the time, and nor was their role in the mechanics of the return of her children. I also bear in mind that the question was apparently settled at the hearing before Newton J.

44 The mother, immediately on returning to England, sought advice as to the return of her children from Family Services and, I am told, is privately paying for representation in these proceedings. It is inherently improbable that she would have retained and is now concealing the British passports that would facilitate the return of the children, as suggested by the father. It was also suggested that the passports could not have been collected by the father without a receipt that would have been given to the mother. There is no evidence as to the practice of the Iranian authorities on this and, again, I consider that it is inherently improbable in the circumstances that the mother would be concealing a receipt.

45 In relation to the father's evidence, this was described, I must say moderately, by Ms Baker as wholly unimpressive. He was evasive and his answers simply did not accord with the documentary evidence. He would not answer a question as to whether he would sign an agreement, appropriately notarised, to facilitate the return of the children if ordered to do so; instead, he turned to why he had not done so already. He plainly understood the question but he did not answer it.

46 He has now resiled from the position as recorded in the order of Newton J of 18 November 2022, which refers in three places to the Iranian passports having been seized by the Iranian authorities and the father having lodged the British passports with the Iranian Family Court. Two of the paragraphs refer to him having informed the court of that.

47 He was provided with a draft minute of order and he made a number of comments on it and proposed amendments to it, although it is not clear whether the amendments were proposed with the assistance of his then counsel or his McKenzie Friend. He returned the amended document directly to the mother's solicitors on 22 November 2022. He says nothing about paragraphs 3 or 8 and, in relation to the provision requiring him to lodge evidence of the location of the passports and file evidence if he had not been able to obtain them, simply commented, "No such things have been said or ordered." That, in context, must refer to the order for evidence as to obtaining them. It is inconceivable to my mind that the father or those acting on his behalf, who meticulously and trenchantly commented on the draft order, would not have noticed three clear references to him having lodged the passports with the Iranian Family Court and not corrected that statement if it did not reflect what he said to the court.

48 Even in correspondence of 30 November 2022, which appears to have raised previous inconsistencies in his account of what happened to the passports, he does not take the opportunity to say in terms that he did not provide the British passports to the Iranian court. The mother's solicitors emailed him on that date and said:

"You previously stated that your solicitors in Iran held the children's documents. You now state that the Iranian authorities hold both passports. Please provide evidence that you have contacted the Iranian authorities asking for the passports to be immediately released and their response. If they refuse to release the documents, please provide evidence that you have contacted the relevant authorities to obtain emergency travel documents for the children to return ahead of the hearing."

49 He replied:

“Fifthly, your client, in her previous witness statement, stated that there was a decree absolute granted by the English court, and when I then rebutted it in my further witness statement, exposing her lies, your client, in the second witness statement, now has said she made a mistake. A mistake such as stating in a statement signed off as true that there was a decree absolute is not a mistake but a deliberate lie that will be further exposed on 8 December 2022. Am I not, in a similar vein, as a human, infallible from making mistakes? When I say it is the authorities in Iran who are holding both the children’s passports to which your client is a witness, I was not and was only told no evidence is required from me other than your client indisputably was present at Tehran Airport seeking to sneak the children out of Iran without lawful authority and breaking the law in that regard, so your client is the person required to provide evidence and this will be further explained on 8 December. I have nothing further to add in this regard any longer.”

- 50 I am satisfied that the British passports were placed into the control of the father after 3 August 2021. I reject the father’s evidence. He has produced nothing to suggest that they were deposited, whether with the Iranian courts or anyone else, in such a way that he is unable to retrieve them. Indeed, had there been any impediment to his retrieving them from the Iranian Family Court, I have no doubt that he would have said so at the last hearing, or at this hearing, and he was given the opportunity to file evidence on the question but he has not done so. His account, which was unequivocally described in Newton J’s order, has not been gainsaid in so far as it suggests that the passports were in his custody, and he has provided no evidence that he has placed them beyond his control.
- 51 I am satisfied that the British passports therefore remain under his control and that he similarly collected the Iranian passports. As I have said, it was suggested that, if the Iranian passports had been taken by the authorities, the mother would have been given a receipt and the father would have been unable to collect them. There is no evidence of that and, as I have said, I find it inherently improbable that the mother would be withholding a receipt for the passports in circumstances where she has been seeking the return of her children for some time.
- 52 Subject to hearing from counsel as to the wording of the order, I shall therefore direct that the father cause the children to be returned to this jurisdiction by midnight on Friday, and that the father shall execute and have notarised all such requests and permissions as may be required of him by the Iranian authorities or the mother’s solicitors to effect the same and do all other things that may be required of him by the Iranian authorities or the mother’s solicitors for the purposes of providing the children with their passports or arranging such other emergency travel documentation as may be necessary for effecting their return as ordered. That concludes my judgment.
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