

IN THE LIVERPOOL FAMILY COURT

Neutral citation: [2024] EWFC 138 (B)

Case No. LV23C50833

Courtroom No. CT 25

35 Vernon Street
Liverpool
L2 2BX

Thursday, 18th April 2024

Before:
HIS HONOUR JUDGE PARKER

B E T W E E N:

B

and

C & D

MR ROBERTS appeared on behalf of the Applicant
MS MALLON & MR KHAN appeared on behalf of the Respondent Mother
MS SPADAFORA appeared on behalf of the Respondent Father
MS HARRISON appeared on behalf of the Child through the Guardian

EX TEMPORE JUDGMENT

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HHJ PARKER:

1. This is an ex tempore judgment. The Court is concerned with the welfare of the child A, born 19 February 2023, currently aged 14 months. The local authority has issued proceedings on 8 December 2023- the local authority, B, represented by Mr Roberts. The mother in this case, C, was represented by Ms Mallon during the hearing, Mr Khan, the judgment. The father is D, represented by Ms Spadafora. The child, A, by Ms Harrison taking her instructions from the children's guardian, E.
2. The Court has hitherto proceeded on the basis that as a fallback, the Article 11 provisions of the Hague Convention 1996 could be employed on an emergency basis whilst the Court wrestled with the issues of jurisdiction. There have been hearings previously when the issue of jurisdiction has been considered but no decision made, 13 February 2024 and 8 March 2024. The main reason for that is that it was known that there were previous proceedings which took place in Hungary. Information about them was sought. On 8 March, all parties were asked to serve skeleton arguments on the questions of jurisdiction, and also, should the Court be satisfied that it has jurisdiction on the basis of habitual residence, then to consider whether there should be a request for transfer pursuant to Article 8 of the Hague Convention 1996. I am very grateful to the advocates for their extremely helpful skeleton arguments which have been supplemented by equally helpful oral submissions.

Background

3. A was born in Hungary. In 2008, the mother was diagnosed with paranoid schizophrenia following psychotic episodes. She also has reported that she is the victim of sexual abuse and reported domestic violence and harassment by the father. The Court has expressed concern around the mother's capacity previously, and an assessment by F was directed to include a capacity and cognitive functioning report, and that report is now available. The mother is assessed as having litigation capacity but a low-average range of cognitive functioning.
4. Before A was born, the mother and father resided in England. The father and mother are both currently in receipt of state benefits paid by the English Department for Work and Pensions. The father is in receipt of employment support allowance and universal credit.
5. On 2 March 2023, A having been born in Hungary, he was placed in temporary care by the Guardianship Authority. That status was terminated on 21 April 2023 as improvements

appeared to have been made. The Family and Child Welfare Centre continued to assess the family during visits several times a week, and in a report dated 1 June 2023 a protective care order was recommended to safeguard A. The issues raised were as follows:

- a) Mother's failure to take medication;
- b) conflict between the parents;
- c) Father lacking parenting skills;
- d) paternal grandmother not providing support envisaged;
- e) Father leaving the child in the care of the mother alone;
- f) Mother being subject to a public order notice due to abusive neighbours; and
- g) Mother admitted to a closed psychiatric ward.

6. By 1 June 2023, the parents were living separately. The mother was receiving psychiatric treatment and/or hospitalised. A was in the care of his father, supported by the paternal grandmother. The Guardianship Authority had a hearing on 5 June 2023. A was formally placed into protective care. The father confirmed at the hearing that he agreed with the need for protective care and that he would maintain contact and cooperation with the family support worker and case manager. The Guardianship Authority required that the parents cooperate with support from the Family and Child Welfare Centre and the Family and Child Welfare Service, and in particular;

- a) to maintain close contact with the family in the Child Welfare Centre;
- b) to cooperate with professionals; for Mother to take medication;
- c) to avoid arguments between the parent;
- d) regular contact from the father with the health visitor and paediatrician, and,
- e) the guardianship authority sought for the family in Child Welfare Centre to prepare a childcare and raising plan for A within 15 days.
- f) If the parents refused to cooperate, then it would be open to the authority at that stage to initiate other protective measures such as fostering.

The review date was set for June 2024.

7. Notwithstanding that history, the parents left Hungary and came to England. They brought A with them. Initially they lived in London. The mother and child were known to Brent Children's Social Care. The family then moved to [redacted] in August 2023. In October 2023, the child was taken to [redacted] by ambulance, the mother reporting that he had fallen out of his travel cot and sustained a bruise to the head. The mother reported that she was a victim of domestic abuse by the father, and she and A moved to a refuge. On

11 October 2023, the mother took A to meet the father at a hotel he was staying at in [redacted]. The mother claimed that the father had threatened to take back the baby back to Hungary if she did not attend to meet him. A strategy meeting was convened on 19 October 2023, with a decision to present A to the initial child protection conference. On 2 December 2023, the mother admitted to refuge staff that she had slapped A as A pulled her hair and scratched her. She also said that the baby is angry with her because she had to leave him with foster care. On 6 December 2023, information was received from Hungary that the family were known in Hungary and the mother was deemed unsafe to care for A, and there has been a significant amount of email correspondence with E. On 7 December 2023, the mother stated to refuge staff that she felt as though she as having a good day and she did not feel like hurting A. The local authority instigated care proceedings on 8 December.

8. I am required to decide two issues today:

- 1) Is the child habitually resident in the jurisdiction of England of Wales for the purposes of Article 5 of the Hague Convention 1996? If so;
- 2) Does this Court believe that the Hungarian authorities are better placed to assess the best interest of the child, and therefore should the Court request the Hungarian authorities to assume jurisdiction to take such measures as it considers to be necessary with the assistance of the central authority through the International Child Abduction and Contact Unit.

The law

9. Article 5 of the Hague Convention 1996 states.

“The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property”.

Article 8 states:

“By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the case to assess the best interests of the child, may either.

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that State”.

10. In the case of *London Borough of Hackney v P & Ors* [2003] EWCA Civ 1213, the Court of Appeal considered the appropriate time at which to decide the issue of habitual residence. In the lead judgment, Moylan LJ, at paragraph 123, said this:

“Finally, I deal with the judge's observation that ‘the logical consequence of his conclusions is that the question of habitual residence will fall to be confirmed at each hearing’. I agree that this is theoretically right because the child's habitual residence might have changed. However, while the court clearly needs to be satisfied that it retains jurisdiction at the date of the final hearing, I do not consider that this issue needs to be reviewed at every hearing. In this respect, as submitted by Mr Pugh, there would need to be substantial grounds to justify the court reconsidering the issue which, typically, would have to be raised by one of the parties. Further, as referred to above, the court will clearly know the child has moved to live in another country, for which the court's permission or approval would likely have been required”.

11. Paragraph 125:

“In summary, my conclusions on the issue of jurisdiction are as follows: The court must determine the issue of jurisdiction at the outset of proceedings by reference to the date on which the proceedings were commenced; jurisdiction under the 1996 Convention can be lost during the course of proceedings if it was based on habitual residence and the child has ceased to be habitually resident in England and Wales”.

12. In the case of *Warrington Borough Council v T, R, W and K* [2021] EWFC 68, MacDonald J summarised the position as follows:

Paragraph 35: “The concept of habitual residence is central to the determination of jurisdiction both under Art 5 of the 1996 Hague Convention and, if necessary, under s.3 of the Family Law Act 1986. In circumstances where the concept of habitual residence operates in the 1996 Convention to determine jurisdiction, it is a concept that must be interpreted autonomously having regard to the purposes of the Convention”.

Paragraph 36: “Within the foregoing context, habitual residence falls to be established by reference to the extent to which a child is, as a matter of fact, sufficiently connected to the jurisdiction in question. Within this context the test for habitual residence provided in *Re A (Area of Freedom, Security and Justice)* (C-532/01) [2009] 2 FLR 1 with respect to Brussels IIa, namely that for the child to be habitually resident the residence of the child must reflect some degree of integration in a social and family environment, would appear apt when determining habitual residence for the purposes of Art 5 of the 1996 Convention”.

Paragraph 37: “Whether there is some degree of integration by the child in a social and family environment is a question of fact to be determined by the national court, taking into account all the circumstances specific to the individual case. As Moylan LJ observed in *Re M (Children)(Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105: ‘This requires an analysis of the child's situation in and connections with the state or states in which he or she is said to be habitually resident for the purpose of determining in which state he or she has the requisite degree of integration to mean that their residence there is habitual’”.

Discussion

13. In accordance with the guidance of MacDonald J, I consider the following criteria:

- a) *Duration, regularity, and conditions for the stay in this jurisdiction.* The parents moved here in September 2023. The child remained in this jurisdiction until the local authority commenced care proceedings in early December 2023. The father made no attempt to take the child back to Hungary during this period. A place of residence was obtained ultimately on the [redacted]. The parents are both even now in receipt of state benefits from this jurisdiction. The father has medical care in this country. He has a property in London. Pre-September 2022, the parents had both lived in this jurisdiction for extended periods.
- b) *The reasons for the parents move to stay in this jurisdiction.* I consider it likely that there was an intention to move to and live in England when they moved in September, even though it may be that the father decided in October 2023 that he wished to move back to Hungary. The child has remained in this jurisdiction ever since. There is no evidence to suggest that the father has attempted to take the child back to Hungary since arrival here in September last year.
- c) *The child's nationality.* The child was born in Hungary. He has lived half of his life in Hungary from the date of birth. He is a Hungarian national. Significantly in my judgment, the parents are both Hungarian nationals and each of them requires an interpreter within proceedings in this jurisdiction.
- d) *The place and conditions of attendance at school.* The child is too young to attend school or nursery school.
- e) *The child's linguistic knowledge.* The child is too young to assess his linguistic knowledge.

- f) *The family and social relationships the child has.* The child has extended family members in Hungary. The father lives in Hungary and wishes to live there permanently. It is only the mother who wishes to reside in England.
- g) *Where the positions were brought, whether there is a right of abode, and whether there are durable ties with the country of residence.* Each of these parents has settled status in England. Significantly in my judgment, on 15 October 2023, the Hungarian authorities made the following decision:

“The guardianship authority terminated the minor’s protection in accordance with Section 47, sub-section 1 of the General Administrative Procedure Code due to the minor’s stay abroad and the consequent lack of compliance with and monitoring of the care and education plan on the grounds that the proceedings had become devoid of purpose”.

- 14. As I have said, the parents and the child have left Hungary to come to England to reside in September 2023. It is this factor- the fact that the Hungarian authorities had terminated their involvement, which tips the balance by a very small margin in favour of the Court finding habitual residences in the jurisdiction of England and Wales. I say that despite the very short time that the child had been living in this country before the local authority commenced care proceedings, and in addition to the fact that the father appears to have moved back to Hungary in October 2023. There is very little evidence to reflect a degree of integration by the child in a social and family environment in England, although I recognise that the child appears to have been left with the mother in October 2023, and I accept that it was her intention to remain in this jurisdiction. It is likely that she moved here to escape the involvement of the authorities in Hungary and speaks of her fear of returning her because she had been locked up in a psychiatric institution. However, the father did not attempt to return the child to Hungary, even when he left. Therefore, I conclude by a very fine balance for the purposes of Article 5 the jurisdiction is founded in England based in the child’s habitual residence. However, there is an overwhelming case for this Court to request the Hungarian authorities to assume jurisdiction to take measures of protection as it considers to be necessary, on the basis that the Hungarian authorities are better placed to assess the best interest of the child.
- 15. There has already been extensive involvement of the Hungarian authorities in the life of this child and the parents. When he was two weeks of age he was placed in temporary care by the guardianship authority due to issues in relation to the mother’s neglectful care in pregnancy and her untreated paranoid schizophrenia, conflict within the relationship with the

parents, and poor living conditions. The temporary care status was terminated in April 2023 based on apparent improvement. However, on 1 June 2023, a protective care order was recommended to safeguard the child. The mother had been admitted to a closed psychiatric ward. The parents were then living separately. A was formerly placed into protective care on 5 June 2023.

16. There have clearly been a number of assessments of these parents within the Hungarian proceedings and it is likely that there is a lot of evidence available to the Hungarian authorities already. If this Court retains jurisdiction, the assessment processes will have to start all over again and are likely to take many months. Bearing in mind the need to carry out assessments in Hungary and the language barriers, these proceedings will extend way beyond the 26-week timetable set out in section 32 of the Children Act 1999. It is in the parents' best interests, particularly regarding the right to a fair trial pursuant to Article 6 of the European Convention on Human Rights and Fundamental Freedoms 1950 and, therefore, also in the child's best interest that the proceedings take place in a tongue that is the parents first tongue. I note today that three interpreters were sitting in the courtroom. In the case of *N (Children)* [2016] UKSC 15, Lady Hale said this:

“The court is deciding whether to request a transfer of the case. The question is whether the transfer is in the child's best interests. This is a different question from what eventual outcome to the case will be in the child's best interests. There is no reason at all to exclude the impact upon the child's welfare in the short or the longer term of the transfer itself”.

Because of the extensive involvement of the Hungarian authorities, it is likely that proceedings will be concluded more swiftly in Hungary than they would here. The proceedings can be conducted in the mother tongue of the parents and in the country where the child was born. The father now lives there. The extended family members are there. The whole process of reassessment by the English courts would begin from square one and, if the Hungarian authorities accept jurisdiction, that would be avoided, and the Hungarian authorities can essentially pick up from where they left off. The proceedings can also fully reflect the child's Hungarian heritage. Overall, I consider it to be in the best interest of this child that the request for transfer is made forthwith through ICACU. That concludes this judgment.

End of Judgment.

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