

Neutral Citation Number: [2023] EWHC 3524 (Fam)

Case No: FD23P00307

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 December 2023

Before :

MR JUSTICE KEEHAN

Between :

A FATHER

Applicant

- and -

A MOTHER

Respondent

Re A (Article 13b, Ukraine) [2024] EWHC 3524 (Fam)

Ms Martha Gray (instructed by **Russell Cooke Solicitors**) for the **Applicant**
Mr Mani Singh Basi (instructed by **Wimbledon Solicitors**) for the **Respondent**

Hearing dates: 30 November and 1 December 2023

Approved Judgment
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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Introduction

1. This matter concerns an application under the Hague Convention. The father applicant seeks the return of his daughter A born on 03 December 2019. This was opposed by respondent mother.
2. The mother in defence relies on Article 13b of the 1980 Hague Convention saying the child would be at grave risk of harm if returned, in light of the serious domestic abuse subjected by the father over the course of the long marriage and in more recent times since A was born and she witnessed the domestic abuse.

Background

3. The parties have been married for 26 years and are Ukrainian nationals. Prior to the Mother leaving, they lived in a Ukrainian town called Turnopil. There is currently a war between Ukraine and Russia. It would appear that their hometown, the western part, has not been highly impacted by the war. In January 2023, the mother left the family home and Ukraine and travelled to Greece. The father commenced enquiries of her and A's whereabouts, he found out she left the country, and they were in Greece. Learning of this, the mother departed from Greece on 24th March and came to the United Kingdom and has been living with A since. There's been no contact since January of this year between the father and A.
4. The first hearing in this court was a without notice hearing on 29th June before Ms Justice Russell where a location order was made. Subsequent hearings have taken place leading to this final hearing before me today. There are no family members in UK except for the mother's brother and his family. All others live in Ukraine.

The law

5. I have heard from counsel for mother and Mr Basi and counsel for the father and Ms Gray. I have been very helpfully referred to the leading authorities by Mr Basi and Ms Gray which I have taken into account insofar as they are relevant to this case.

Analysis

6. The mother had disputed that A's removal from Ukraine was in breach of the father's rights of custody due to the Martial Law. Having had benefit of both parties considering the expert report, that is no longer pursued, and it is accepted by her that the removal was in breach of father's right of custody.
7. There have been two court hearings in Ukraine in respect of parties' marriage. The first instance decision was in May 2023. That decision didn't require the mother to enter into negotiations for reconciliation with the father. It acknowledged the request for a divorce from the father and he referred to a report of domestic abuse made by the mother to the police in December 2022. The court found the report showed unfounded allegation of domestic abuse against the father towards the mother. The lower court however was satisfied that the mother's fear of harm to herself and A from the Father was well founded. The Father appealed and the Appeal Court upheld the findings by Lower Court save that it set aside the findings of the lower court as Mother's fear of domestic abuse to herself, and her child was not proved on the basis of no evidence filed by the mother. It is agreed between the parties that I should have regard to those decisions of the lower court and appeal court but neither preclude me from having regard to the mother's allegations made to this Court at their highest.
8. There was a preliminary issue where the mother sought to adduce an audio recording and transcript of a conversation between herself and father which she submitted demonstrated the abusive language of father. On the basis that I was not hearing oral evidence and not being invited to make findings I declined to admit the recording as evidence.
9. Mr Basi confirmed that the mother resisted an order for A to be returned back to Ukraine based on Article 13b defence, but that if the court was minded to make an order for return, she required more extensive measures to be put in place than those that had been offered by the father. The court needs to look at protective measures to go back. The mother indicated that she didn't feel safe to return home and wanted accommodation back in Ukraine. This would be confidential for herself and A and would be paid for by the father. She would receive an adequate amount of maintenance and any order made in this court will be lodged by the Father with the Ukrainian court prior to her return.

10. Miss Gray has taken the father's instructions and he's agreed to take those protective measures. He agrees to pay a sum of £450 to source accommodation for her and A. The first payment will be three months paid in advance and then monthly thereafter. She will also receive £400 for maintenance three months paid in advance and then monthly thereafter both payments to last until a hearing before the Ukrainian Court

11. The father contended that the parties had a happy relationship, although sadly he acknowledged that the mother and he had suffered the heartache of having 4 miscarriages and 3 stillbirths before A being born. This rosy picture of life of the mother and father in Ukraine does not sit well with the mother's decision to leave her home and Ukraine with A in January this year. The father doesn't suggest she did this for any other reason but the war. The absence of any reason to me is that the mother's actions equates to the allegations that she was a victim of domestic abuse and adds weight to the mother's allegations. This view accords with some of the recordings by the Ukrainian court in which it is recorded that whilst the father expressed affection for their child he didn't for the mother. In pursuit of his application, he looked at reconciliation and gave reasons. It focused much on the message it would send to others and their neighbours rather than reasons relating to their loving relationship. Therefore, I am satisfied it is appropriate to take the mother's allegations of domestic abuse at their highest.

12. I need to consider the protective measures being given by the father and the risk of harm to the mother and A so that it no longer crosses the high bar of article 13b. I am satisfied with the protective measures now offered by the father to provide confidential address and financial provisions and the following order by me that he doesn't threaten, pester or harass the mother. The protective measures in place and the order of this court will be lodged with the Ukrainian court prior to her and A's return. It's appropriate and in the child's best interests for the summary return of her to Ukraine. I acknowledge the war exists, but I am satisfied that where they live is not affected by the war to a degree that it would limit the ordering of return.

13. A backstop date should be set at the end of February on the basis that the parties have liberty to apply in UK for an earlier return or delay return until protective measures in place or alternatively, the mother can apply to set aside the return order on basis the father has failed to comply with the protective measures I have just outlined.

Conclusion

14. In conclusion, for the reasons I have given, whilst I accept the defence given by mother, I am satisfied the protective measures are sufficient. It is in the child's best interests and should order her return to Ukraine.