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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2024] EWHC 920 (Fam)



No. FD24P00712

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 20 March 2024

IN THE MATTER OF THE SENIOR COURTS ACT 1981
AND IN THE MATTER OF ELENA SMOLIK (A CHILD) (DOB 02.05.19)

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

WIEM BEJAOUI

Applicant

- and -

RASTISLAV SMOLIK

Respondent

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

THE RESPONDENT FATHER did not appear and was not represented.

J U D G M E N T

MR JUSTICE FRANCIS:

- 1 I am dealing today with an application in relation to Elena Smolik, a girl who was born on 2 May 2019, and she will therefore shortly be five years old. I have made no findings in this case because I have not heard any evidence, and this Judgment is to be read of course on that basis. But from what I have been able to glean from what Mr Bennett (who appears for the mother in this case) tells me, it does appear to me, at least so far, to be a very serious case of child abduction. Elena's mother is Wiem Bejaoui, who is a Tunisian national living in the United Kingdom, and her father is Rastislav Smolik, who is Slovakian, but who I am told has British citizenship, presumably arising as a result of the European Union rules which have only recently closed. Importantly, Elena was born in England and she has British nationality. She may or may not be entitled to a Slovakian passport. Various orders have been made in this country for the return of Elena to this jurisdiction.
- 2 Children cases in this court are almost always heard in private for very obvious good reason: that children are entitled to privacy, as are their parents, particularly when the issues that they litigate over are often concerning deeply private and personal matters that should be of no interest to others. Occasionally in child abduction cases we make publicity orders because it may assist in the recovery of the child concerned. Here we are dealing with a child who is living in Slovakia, and therefore in the European Union, and not in some far-flung remote part of the world where finding people is really very difficult.
- 3 The short background that I have been given is as follows. The parties met and started a relationship in June 2018. They were in due course married and, as I have said, Elena was born in May 2019. I am not going to say anything in this Judgment about the personal difficulties between these parents. Suffice to say that they separated, having fallen into considerable difficulties within their relationship. Allegations have been made which I do not need to recite here, particularly as I have heard no evidence and therefore have made no findings. I am told that the father took Elena to Slovakia from 1 to 8 June 2023 for a holiday, with the mother's agreement. That I think probably was the school half-term week, although of course Elena then would only have been four years old, but was, I am told, at school. He brought Elena home. So when he wanted to take her away again on 23 October, which would have been, I imagine, the autumn half-term, the mother agreed, and it was agreed that Elena would go to Slovakia from 23 to 31 October. The father was due to return on the 31st, and the mother was going to collect Elena on 1 November, the following day. The mother had sent a message on 1 November to ask how the flight had gone. The father said that they had got to the airport in Slovakia and because, he said, he did not have Elena's passport, they did not board the flight. The father claimed that he had lost the passport. I make no finding whether that is true or not, but certainly in the light of the events that have followed one has reason to be suspicious as to whether the father was telling the truth about why he could not bring Elena back on 31 October. After all, we are now towards the end of March and Elena is still with the father in Slovakia. Even worse, the mother has not been able to speak with her daughter since November last year.
- 4 I have said before and I repeat here that child abduction is a scourge on those affected by it. Its impact on children is appalling.
- 5 Mr Bennett has very properly drawn my attention to a decision of the Court of Appeal in *Re S (Abduction: Hague Convention or BIIa)* [2018] EWCA Civ 1226; [2018] 4 All ER 806, where I am told Moylan LJ said, albeit *obiter*, that, absent good reason, within Brussels II cases the application should be made to the court where the child has been taken rather than the home court. I raised with Mr Bennett why his client had not made an application through the Central Authority in Slovakia, which of course she would have been entitled to

do. The answer that I have been given is that the mother has legal aid here to bring this application, and has received Slovakian legal advice that she would not get legal aid or any form of free legal assistance in Slovakia. Mr Bennett additionally drew my attention to Slovakia's having exercised its right to make a reservation under Article 42 of the Hague Convention and declaring, pursuant to Article 26, that it would not be bound to assume any costs resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs might be covered by its system of legal aid and advice. I accept what Mr Bennett has told me, particularly as he is instructed by very experienced solicitors, Dawson Cornwell, one of the most experienced firms of solicitors in this area of the law. In my judgement, if free legal assistance is not available to her in Slovakia, it is perfectly proper that the mother has made an application to this court for Elena's return. I do not see the Judgment of Moylan LJ in *Re S* (above) as setting down a blanket ban on Hague applications being made in the home country, albeit that may be the proper course in most cases. Moreover, Moylan LJ was dealing with a Brussels II case.

- 6 I am going to make a fresh return order, and I am going to make the various directions that Mr Bennett has invited me to make, and they do not need to form any part of this Judgment.
- 7 What appals me is that, on the basis of what I have read and heard so far, there is reason to believe that this was a planned abduction by the father. Again, I am not, for the purposes of this Judgment, going to go into the detail of that, particularly as I have made no findings. But it is appalling, it is dreadful for the mother to be deprived of her child but even worse for the child to be deprived of her mother. The child is entitled, unless there is a very good reason to the contrary, to a relationship and contact with and to live with both of their parents. The father, it appears to me at the moment, has deprived Elena of the right to the company of her mother. He has taken Elena from her mother in England, which was the chosen home for this international family. He has broken his agreement to bring her back to England on 1 November last year. His excuse that he lost her passport seems to me to be wearing thin, given that we are now some four and a half, nearly five months on from the time when the mother last saw her daughter. The fact that the father has denied Elena contact with her mother speaks volumes and appears to make clear that it's a simple lie that the reason that he could not return to England with Elena, is that he lost her passport.
- 8 I have agreed to publish this short Judgment and to give the mother permission, if she wishes, to issue a photograph of her daughter, together with a copy of this Judgment or any paragraphs within it. I do so having great respect for the privacy to which I earlier referred at the start of this Judgment, but it may possibly help in Elena's return. I am not in any sense requiring or expecting the mother to contact the press or anybody at all about this case. She has very experienced counsel and solicitors who will be able to advise her about that, and the decision, if she does contact the press, will of course be hers. But I would hope that it is possible that if this case is made public, there may be pressure on the father in his home country of Slovakia. I do not know what his family and friends out there know or have been told. I would like to think that most right-minded people would be appalled at the idea of a father retaining his daughter in a foreign country - which is, after all, what Slovakia is to Elena - and retaining her there without the permission of her mother and without even speaking to or seeing her mother. It may be that I will be told by the father, if he does return to this court, that he has a very good reason to be doing what he is doing, but at the moment I am bound to say that I find that inherently unlikely, and I have been given no reason at all to think that there is anything wrong with the care that the mother has given to her daughter. On the contrary, it seems to me that she has, since the parties separated, been the primary carer, and it is tragic for her and tragic for Elena that this situation has arisen. However, if the father believes that there are reasons why Elena should not see her mother and should be

moved to Slovakia to live, then he can make that case in the proper way to the home court, ie the Family Courts of England and Wales.

- 9 I hope that the father will be persuaded, embarrassed, shamed even, to agree that Elena should return to this country - this country being the country of habitual residence for Elena - and can then resolve any issues that there may be between the parents. If the father does have anything to say which would, in his view, support his decision to keep Elena in another country, then he can come to this court and he can give those reasons, and a judge will make a decision based on their consideration of those reasons. I repeat that I have made no findings in this case because I have only seen the written evidence of the mother, I have not heard oral evidence from her, and I have no evidence at all from the father. But I am confident that I can say that, on the evidence that I have presently heard, Elena was habitually resident in England and Wales when she went on holiday from here with her father in October, and I can confidently say that it is highly likely that the mother's evidence is correct, which is that the father wrongfully retained Elena in Slovakia after the October holiday was due to end. Whether or not he has lost Elena's passport, one thing is clear, he could easily apply for a new one or some other form of permit to travel. And if there is any sense of that being the reason why Elena has not been returned, the father would have done what any decent parent would do, which is to get on the phone to Elena's mother, to talk to her, to explain it to her, to arrange video contact between them via WhatsApp or Facebook, etc. He has, I am told, done none of those things.
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CERTIFICATE

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