

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE FAMILY COURT  
SITTING AT THE  
HIGH COURT OF JUSTICE

No. FD19P00139

NCN: [2021] EWFC 38

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 5 March 2021

Before:

MR JUSTICE COHEN

(In Private)

B E T W E E N :

AB

Applicant

- and -

CD

Respondent

---

MR E. DEVEREUX QC and MR M. EDWARDS (instructed by Vardags) appeared on behalf of the Applicant.

MISS S. KING QC and MISS J. RENTON (instructed by Payne Hicks Beach) appeared on behalf of the Respondent.

---

# J U D G M E N T

MR JUSTICE COHEN:

- 1 C is now aged ten years old. I shall refer to him as C. His mother is CD, who I shall refer to as ‘the mother’ or when dealing with money matters ‘the wife’, and his father is AB, who I shall refer to as either ‘the father’ or ‘the husband’ as is appropriate. C’s father, AB, is not his biological father. That was only discovered in late 2018. The person who is C’s biological father plays no part whatsoever in C’s life and to his credit the father has treated C in exactly the same way as he did before the information came to light in December 2018, namely as if he was, and is, C’s one and only father.
- 2 The issue before me is whether in the circumstances that arise I can safely permit C to travel abroad with his father. His father wants to be able to take him all over the world. The mother wants contact to be restricted to England and Wales until such time as the father has paid or put on deposit the lump sum which I ordered him to pay. She fears that if I let the father take C abroad he will hold C as leverage to negotiate a lower financial settlement than that which I ordered him to pay.
- 3 The brief background is that both parents come from enormously wealthy international Indian families. The parents were based in London during the marriage. For the latter part of the marriage C lived with his parents in a large house in London, almost next door to the houses where respectively his paternal grandparents live and his paternal uncle lives. C goes to school in London at a well-known private day school.
- 4 Following the separation of his parents in spring 2017, C has lived with his mother in the matrimonial home. He has enjoyed frequent contact with his father which until the end of 2018 has included holidays in family homes of the parties in the south of France and a skiing chalet in Switzerland and elsewhere. The standard of living has been quite extraordinarily high.
- 5 To expand somewhat on the contact, following the breakdown of the marriage the father had staying contact with C without the mother in 2017 in Dubai, France and Mauritius and in 2018 in Dubai, France, India and on a yacht in the Mediterranean. C was due to go with his father to Dubai in early 2019, but at the end of the previous year the news of C’s paternity was revealed and the father did not feel ready to take C away immediately. But in February 2019 C did go with the father for a week or so skiing in Switzerland. That was the last time that C has been abroad with his father.
- 6 The father was deeply wounded by the discovery that he was not C’s biological father. He unleashed a torrent of litigation against the mother in all three divisions of the High Court. In January and February 2020, I heard over a period of three weeks the wife’s application for financial remedy orders. I found in those proceedings that the husband had been untruthful in his disclosure and had sought to minimise his assets in a blatant way. I also found him to be resentful and bitter about the wife’s infidelity. It is right to record that the father does not accept my criticisms of his disclosure.
- 7 I ordered him to pay £64 million, comprising the redemption of the mortgage on the matrimonial home and its transfer to the wife (£15 million) and a lump sum of £49 million payable in two tranches. One year later he has paid nothing. He sought permission to appeal my order and was refused permission. The first tranche of £30 million and the transfer of the property mortgage-free was due to take place by the end of September 2020. Just a day or two before that date, he issued an application to vary or set aside the order on the basis of a change in his circumstances as a result of the pandemic. I dismissed the application, and he is seeking permission to appeal.

- 8 Notwithstanding his apparent acceptance that he must pay something, he has paid nothing whatsoever on the basis that (1) his application for permission to appeal remains undetermined and (2) as the wife has not applied for decree absolute, the sum is not yet due. That latter proposition is incorrect. The payment is due but it is not enforceable. It may be that the wife will have to wait for some time for her money and it is eminently predictable that the husband's legitimate legal manoeuvres may continue for some time. I note but take with a degree of caution his assertion that he will pay what is due as soon as the appeal process concludes.
- 9 Before leaving money, it is right to record that he has paid both the very substantial maintenance order that I have ordered in the sum of approximately £120,000 a month in addition to child provision and payment of the mortgage on the matrimonial home, and he is paying in instalments the total sum of approximately £750,000 which I ordered towards the wife's legal fees. That though does not provide her with much comfort.
- 10 To go back to 2019 and children's matters, in 2019 both parties applied for permission to take C abroad. I granted the mother permission to take C to India for a summer holiday in the face of the father's opposition, but I required her, at the father's instance, to offer as security for her return with C to this country, a guarantee over the flat in London that was in her name. Her parents had a beneficial interest in the property and as a condition of permission for overseas travel they subordinated their interest in the property to the mother so that she could offer the whole of its value as a bond in case she did not return. The value of that security was around £4.5 million. I was confident that the mother would return on time and she did, but it is relevant to recall the size of the bond in the light of the submissions made on behalf of the father before me.
- 11 The father wished to take C to France in August 2019. I refused his application, but not too much should be read into that. His application was made just the day before the hearing which was fixed to deal with other matters. He or his advisers had given no thought to any question of safeguards and in the context of that hearing it was not possible to give the father's application the proper consideration that it would require.
- 12 On 2 December 2019 I heard a further application by the father to take C abroad, this time to Dubai for a week in December. I refused that application. This, of course, was at a time when the financial remedy proceedings were due to start in just a few weeks' time and relations between the parties were very heated. I was also not much comforted by the report of Mr Ian Edge, a barrister and academic specialist in the family law of the Middle East and the Emirates, as to the ease/difficulty of enforcement if the father chose to extend C's visit beyond that permitted.
- 13 By agreement the mother took C to India for Easter 2020, but they then got stranded there by lockdown and so C was in India for six months between March and September 2020 with his mother. Upon return he spent the October half term with his father in England and he also spent a week with his father in England just before Christmas 2020. These arrangements were very sensibly agreed between the parties directly.
- 14 A second agreed trip to India took place just before Christmas 2020 by C with his mother. That too became extended by another lockdown, but pursuant to an order that I made, the mother returned with C towards the end of January 2021 and C spent what is agreed to have been a very happy month staying at a paternal family home in the countryside with his grandparents, his father, his father's new partner and for the last few weeks of his stay their newborn daughter. Thus C was there to welcome his sister into the world and by all accounts he was thrilled by her arrival and besotted with her.

- 15 The mother has remained in the family home and C lives with her and goes to school nearby. The father and his parents have relinquished the tenancy of the home they rented in Dubai and his parents have returned to live in their home in London. The father, however, has chosen to base himself in Monaco. He says that his move from Dubai to Monaco was the result of three things. First, his desire to be closer to London to facilitate contact. Secondly, his setting up home with his new partner. She is a renowned designer with premises in various places, including Monte Carlo, but with her atelier in London, requiring her to visit London a couple of times a month. Thirdly, of course, the beneficial tax regime.
- 16 It is against that background that the father applies for permission to take C wherever he wants around the world. In particular he wants to have C with him in his rented apartment in Monaco (at a rent of €60,000 per month), the family home in France, the skiing chalet in Switzerland, and to the country Z where all his partner's family live, and elsewhere around the world, including Dubai where he has first cousins. The father says that he presents no risk to C, that he knows how much C loves his mother and that C is completely embedded in London where most of the father's immediate family reside, where his mother lives and where he attends school. The father's partner says, and this I accept, that if she was known to be a party to an unlawful child retention that would have a devastating effect on her business with its clientele of royalty and A-listers.
- 17 It is agreed that: (i) C would very much like to have holidays with his father in France, Monaco and Switzerland; (ii) It is important that C should feel that he is an integral part of his father's new family; (iii) That he has an extremely close relationship with both his parents and (iv) it would be devastating to C if he were to be wrongfully removed and/or retained by his father when his primary home is with his mother. I should add (v), namely, that by all accounts C is a delightful, empathetic, creative child who is an enormous source of pleasure to both his parents.
- 18 It is against that background that I should apply the well-known tripartite test set out in *Re A (Prohibited Steps Order)* [2014] 1 FLR 643. I note, of course, that it was a case involving non-Hague Convention countries, but exactly the same principles in this case apply.
- 19 I ask, first, what is the magnitude of the risk of breach of the order if permission is given. Before considering it, I ought to say this. Risk is not set in stone. It can vary from time to time. At the present time I assess the risk as being small, but not hypothetical. I do not think that the father has any current intention of retaining C. I judge that he is set on pursuing his legal remedies here. But if all his appeals and applications in financial proceedings came to nought, that might well heighten the risk. The father is a man of great, some might say excessive, self-confidence and he can be dominating and controlling. He does not accept anyone's view that he does not share; at least that is the judgment that I have formed of him. I accept that his new status as a father of an infant and, even more, the partner of someone who is as successful as he is and with so much to lose if he was to misbehave are factors that limit the likelihood of a breach.
- 20 On the other hand, I accept also the mother's evidence that as recently as October 2020 C said to his mother that, "Daddy says you stole his money" and so I do not accept that the father's resentment against the mother has gone, albeit it may have reduced. The mother says that restrictions mean little to a man of the father's wealth. He can charter a private plane at any time. He could say that he was going to go to Nice, fly there and simply board the next flight to Dubai. All that is true, but it is equally true he could have done that at any time since separation.

- 21 I well understand the mother's fears. She said, and I completely sympathise with her, that she feels very insecure and uncomfortable. She does not own her own house and has no idea where she stands financially. This is entirely of the father's own making. He could perfectly easily, if he wanted to, at the very least have paid off the mortgage and transferred to her the home.
- 22 I have thought very carefully whether I should make that a condition of any overseas travel with father by C, but I conclude that it would be wrong for me to use these proceedings as a lever to extract money from the father. That would not be a child-centred approach.
- 23 I assess the risks as they are today and, as I have mentioned, the father is still seeking to exhaust his legal remedies to reduce or recalibrate the timing of the lump sum award. Of course, it may be that the Court of Appeal will determine his application for permission to appeal next week. Just before I was due to deliver this judgment, the hearing having concluded yesterday afternoon and it now being Friday morning, the mother put in a proposal that I should adjourn this application until after the Court of Appeal has ruled and if permission to appeal is given until after the appeal has been heard. I considered this possibility myself, but I do not accede to it for a number of reasons.
- 24 It is possible that if permission to appeal is given there might be the best part of a year before the appeal is determined. It may be, and it is easy to envisage, that financial proceedings continue for some time afterwards, regardless of the outcome of the Court of Appeal. There may be further applications by the father under the powers contained for variation within the Matrimonial Causes Act and it is not attractive, having heard all the evidence, to adjourn a case without giving my findings on what I have heard.
- 25 I recognise that this case may need to come back to me for reconsideration if circumstances do change, because risk, as I have already said, is not static. If the Court of Appeal has ruled and there is no payment of what is due, whatever it might be, and there has been decree absolute, I make it quite clear that I shall consider suspending such overseas contact as I may permit now.
- 26 In looking at the magnitude of risk it is also important that I should mention the evidence of Mr Edge given during this hearing on the law applicable to the UAE, although I have to say I do not think it has advanced the case at all. That is not a criticism of Mr Edge in any way, but (i) the importance of his evidence had been reduced significantly as the father and his parents now no longer reside in the UAE; (ii) I can see no reason for C to go there; (iii) There have been recent revisions to the relevant codes which Mr Edge told me about. They are intended to make the legal system more friendly to foreigners who wish to avail themselves of their native legal systems and to make overseas orders and judgments more easily enforceable. But, says Mr Edge, there is no indication yet as to whether the more conservative members of the judiciary in the UAE will apply these revisions or whether they will stick to the application of Sharia law.
- 27 If the parties request, I would be prepared to expand on his evidence by way of supplement to the judgment, but I do not think it is necessary. The upshot of his evidence was that it was a very difficult case to call as to what would happen if the father did retain C in the UAE, bearing in mind that (i) the father is named on the birth certificate, even though in fact he is not the biological father; (ii) he would *prima facie* be regarded as the father with guardianship rights which would (iii) require the mother to prove that the father is not the biological father as judged by the standards of proof required in the Emirates. This was just one of many conundrums which made Mr Edge say that he simply could not predict the outcome of proceedings in the UAE in the event that the father retained C there.

- 28 The second matter I have to consider is the magnitude of the consequence of breach if it occurs and I can deal with that in two sentences. Wrongful removal or retention is a despicable act and is severely damaging to children. The effect would be devastating on C.
- 29 So I come to the third and perhaps most difficult question, namely the level of security that may be achieved by building into the arrangements all of the available safeguards. The father on the first morning of this hearing offered to lodge his personal shares in a company X together with the one third of the shares in X I found him to own beneficially in the name of Y. That would require the consent of his father and brother, but he anticipated no difficulty in obtaining this. No doubt the amount of this offer which is worth some £4 million came about as he realised that having sought security in this approximate sum from the mother when she went to India in 2020, it did not look good offering the far lesser amount of security that he had proposed until then. The mother's response was that the only security that would mitigate the risk was the deposit in an escrow account of the whole amount that is due under my order or any replacement order and, in addition, she would want the deposit of the shares or £4 million.
- 30 I am ruled by the provisions of the Children Act and the welfare checklist which I must apply and there is no doubt, and it is agreed, that it would be in C's interest and in accordance with his wishes if I was to let him spend time with his father abroad, but it is crucially in C's interest that at the end of the holiday he returns to his mother's care.
- 31 The purpose of a bond or surety is twofold. Mr Devereux QC, who appears with Mr Edwards for the father, says that its purpose is to provide a fighting fund. I do not accept that it is so limited. It is also intended in an appropriate case to act as a strong incentive to comply with any permission that is given. What is a strong incentive will vary from case to case, depending both on the level of incentive needed and on the parties in any given case. To make the point obvious, to most people £1 million is an enormous sum and the loss of it would be unbearable. To a very rich man it might be small change. Mr Devereux sought to argue that anything more than £1 million would be an unprecedented sum for the court to order. I do not accept that. There have been many cases where greater sums have been agreed and cases where greater sums have been ordered. Indeed, I need only look at what the mother had to provide in this case in 2020.
- 32 My conclusions are the risks are minimised to an acceptable level at the current time, and I stress those words "at the current time", if the following conditions apply:
- First, the bond will have to be much greater than the father offered. It will comprise two parts. The first is the offer of the deposit of shares or their value. I put it in that way for this reason: I am not going to require them to be sold with whatever tax consequences that might follow if they can be held in a form that provides ready access for their sale, if that is what the court so orders and with the payment of the proceeds to the court's order. The father, of course, must obtain the consent of his own father and brother to provide the appropriate irrevocable form of deposit. If he cannot provide the appropriate access to those funds, then he will have to provide either the proceeds of their sale or an alternative security.
- 33 Secondly, he must provide a bond or surety to the tune of a further £5 million in England. If that requires him obtaining the consent of his parents to take out a charge on their properties in London and/or the countryside, so be it. He says that each is subject to a mortgage. That does not impress me very much. This family are sufficiently wealthy that shifting charges from one asset to another or borrowing money is no problem. I need only refer to my judgment in the money proceedings. I cannot order his parents or his brother or, indeed, anyone other than him to do anything, but bearing in mind what these family members have

chosen to say about the total confidence that they have in the father to return C on time, it should not be any skin off their noses, to put it colloquially, to do what the mother's parents did for her and provide the security. Of course, it is open for the father to provide the sum by security to the same value in a different way if he so wishes.

- 34 Thirdly, I limit the geographical area of travel to France, Monaco and Switzerland. These are the countries in which the father has or has the use of family homes. France and Switzerland are the countries of which C has fond memories. I am not prepared at the present time to let the father go further afield with C. The father needs to show that he can be trusted. Dubai has all the problems to which I have already adverted. Country Z is the home of the father's partner's family, not his family. Once matters have settled then that issue can be reconsidered. When financial matters are concluded the risk will be reduced but, on the other hand, if the father exhausts his remedies in England and still has not paid the money that has been ordered, I make it clear that the permission that I grant now may be suspended or revoked if I take the view that the risk has increased.
- 35 Fourthly, the father has offered, but the mother has considered it to be of little value, advance recognition under Articles 23 and 24 of the 1996 Hague Convention. If the mother requires the father to obtain such recognition, she must inform the father through his solicitors within seven days.
- 36 Finally, I make an order that the father shall return C at the end of each period of overseas contact on time and that will be penally endorsed. The father should realise that if he was in breach of the order he would be likely to be in contempt of court and the surety or bond for C's return is unlikely to be released.
- 37 I discharge the provision that C's passport should continue to be held by the mother's solicitors. It is to be held by her, save when required by C. In my view, she presents no risk whatsoever in terms of C travelling abroad with her.
- 38 I recognise that the mother may think that I am being naïve or taking an unacceptable risk. I do not think that I am being either, but, as I have made it clear, I am judging this case on the risks as I perceive them now to be. If the matter comes back before me and the Court of Appeal has refused permission to appeal, the father should be aware that I may need to consider payment of sums to the mother or into escrow, so I strongly advise him now to start planning for that contingency.
- 39 That is my judgment.

#### **L A T E R**

- 40 I have decided that I am not going to make an order for costs and let me explain why. The reasons that I have come to that conclusion are various. If the parties look at my judgment of 19 January at paragraph 28, the order for costs that I was asked to make was for £188,000 for Children Act costs and £368,000 for an artwork dispute, almost exactly 2:1 weighted to the artwork dispute. So insofar as CD has to pay £158,000 towards her future costs, about £50,000 of that would be attributable to the Children Act dispute and £100,000 attributable to the artwork dispute. The reason I made the order that CD contribute towards her costs was because of the substantial increase that I made in her maintenance provision which I put at about £120,000 a month. It seems to me appropriate, and I felt then, and it has not been appealed, that out of that sum she should pay a contribution towards her own costs.

41 So far as this litigation is concerned, I do not think it is easy to put one's finger on who has been the winner. It is often said in children's cases there are no winners and I do not think there are winners in this case. The mother has succeeded on some points, the father succeeded on some points. I fully accept the force of what Ms King said, namely that the security provision that the father put forward was not even in the right ballpark until the day of the hearing, but I do not think that that would have led to anything other than the contested hearing that has taken place over the last couple of days. I accept that there will be extra costs of implementing this order, but the fact that the parties have only needed one hour of the court's time today will, I hope, provide a little bit of a reserve fund to act as a starting point for the meeting of those costs, but for all those reasons I am going to make no order as to the costs of this application.

---

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

**\*\* This transcript has been approved by the Judge \*\***