



Neutral Citation Number: [2024] EWFC 112

Case No: FD21P00423

**IN THE FAMILY COURT**

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Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/05/2024

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD**

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**Between :**

**CJ**

**Applicant**

**- and -**

**ME**

**1<sup>st</sup> Respondent**

**-and-**

**P**

**2<sup>nd</sup> Respondent**

**(By her Guardian, Sophie Winsper)**

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**Mark Jarman KC (on a direct access basis) for the Applicant**  
**Roshi Amirafabi (instructed by AFP Bloom) for the 1<sup>st</sup> Respondent**  
**Sam Whittam (instructed by Creighton & Partners) for the 2<sup>nd</sup> Respondent**

Hearing dates: 13<sup>th</sup>-15<sup>th</sup> May 2024

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**Approved Judgment**

This judgment was handed down remotely at 2pm on 24<sup>th</sup> May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HONOURABLE MRS JUSTICE JUDD**

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.



**Mrs Justice Judd :**

1. In this case I am asked to make orders which permit a girl aged 10 (who I shall refer to as P) to be able to spend holidays with her mother in Japan. The application is opposed by P's father. I am also asked to make a final order as to child arrangements.

Background

2. P is 10 years old. She is the only child of her parents' marriage. Her mother has been married before and has two daughters from that relationship. The oldest (Q) is at university here. Her relationship with the mother is very strained at the moment and they do not see each other. The next daughter (R) is about to go to university and has a good relationship with the mother. Their father sadly died in 2022. The sisters see each other and have a good relationship with P, taking into account their different ages.
3. The mother was born and brought up in Japan. Until about 2007 (the exact timing is not clear) the mother was a Japanese national. It is not possible to have dual nationality under Japanese law so when the mother became a US national through her marriage to her first husband her Japanese nationality was formally lost. In fact the mother did not notify the authorities about this and kept her Japanese passport and travelled on it. P obtained Japanese nationality. The parents submitted their marriage certificate (they married in another country in the far east) to the Japanese Embassy in that country and it was accepted (apparently in error).
4. The family moved from the other Far Eastern country to the Middle East in 2014, and three years later to England. A nanny from the Far East accompanied them and still lives with the family in England. In 2017 the mother returned to live in the Middle East leaving the three children with this father. In 2018 the mother went to live in Japan with her partner. In the years that followed she spent time in England with P and her older daughters, returning to the family home in England where the father still lived.
5. In 2020 the mother told the father she would like P to spend a year living in Japan. The father was willing to discuss this but reluctant. Quite soon after this he expressed a strong objection to this. Proceedings were started. The parties went to mediation but it was not successful.
6. During the course of 2021 matters came to a head between the parties. The father became concerned that the mother would remove P without his consent and took her passports out of the house for safekeeping. The mother attempted to get a passport from the Japanese embassy but states that she quickly withdrew her application (it seems likely that this was around 23.6.21). A prohibited steps order was made by Peel J on 25.6.21, without notice. The day before that, the mother called the police and made allegations that the father had been violent to her. He was charged with causing Actual Bodily Harm and coercive and controlling behaviour. Those charges were later dropped.
7. In November 2021 the mother made an application to relocate P to Japan. Directions were made for the filing of evidence, including expert evidence. On 29<sup>th</sup> April 2022 a final order was made. The mother came to a decision not to pursue her application for

P to live in Japan, and the parties came to terms about her visiting for holidays. The intention was that they would enter into a conciliation agreement in Japan which could then be registered as a court order, effectively a way of achieving a type of mirror order as a safeguard against P not being returned.

8. In May 2022 the mother's Japanese lawyer issued a petition in Japan for a conciliation of child custody order, referring to the mother as a US citizen. This prompted the father's Japanese lawyers to check the Japanese family register (known as the Koseki) for details. This led to the discovery that the mother had unilaterally submitted a notification of divorce in Japan on which there was a forgery of the father's signature. The document declared that the mother had sole custody of P and the father's contact details were left out. The mother had used the document she obtained to then make changes to the Koseki.
9. The discovery of the divorce document caused the father grave anxiety about the mother's motives, and the risk she would seek to retain P in Japan. In those circumstances he refused to go ahead with the conciliation agreement and the proceedings stalled for several months. The father's solicitors then suggested that the single joint expert should be instructed again to answer questions about the impact of the divorce document. In May 2023 the mother applied to vary the order of 29.4.22, and in July 2023 the father applied to discharge the provision providing for P to spend time with the mother in Japan. Those applications culminated in the hearing before me.

#### The parties' respective cases

10. The mother seeks for P to be able to spend regular holidays with her in Japan, including a lengthy period in the summer holidays and also at other times such as Christmas and Easter, alternating with the father. She seeks to spend time in England with P (that is not contentious).
11. The father objects to P going to Japan, stating that the risk of the mother refusing to return her is simply too great.
12. The parties have agreed P's schooling. She and the father are to move to another part of the country, where she will board at a new school for a while in the hope a day place will become available soon. The father has relatives there.
13. The Guardian has prepared two reports for the proceedings. She has remained neutral with respect to the application save to say that there are no safeguarding issues with respect to any holiday in Japan.

#### The legal framework

14. This is a decision relating to P's upbringing and therefore her welfare is the court's paramount consideration. I must have regard to the matters set out in the welfare checklist at s1(3). There is a presumption that the mother's involvement in P's life will further her welfare.
15. The leading authorities with respect to temporary removal from the jurisdiction are those of *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084; [1999]

EWCA Civ 1851, confirmed in Re R (A Child) [2013] EWCA Civ 1115. Whilst these cases concern the removal of a child to a non-Hague country, the same principles apply with respect to travel to a Contracting State although the level of risk will usually be very different.

16. In a case such as this, the court must have regard to three particular and inter-related factors, namely:
  - a) The magnitude of the risk of wrongful retention or a breach of the order if permission is given;
  - b) The magnitude of the consequences of the breach of the order; and
  - c) The level of security which may be achieved by building into the arrangements all available safeguards.
17. It is necessary for the judge to keep all three elements in focus when making the ultimate welfare determination.

#### The evidence

18. I read all of the documents in the bundle including the parties' statements, exhibits, expert reports and reports from the Guardian. I heard evidence from the mother, father, and court appointed expert, Ms Mizuuchi.

#### Expert evidence

19. Ms Mizuuchi is an attorney who practices family law in Japan, with a particular specialism in international family law, including custody disputes and applications under the 1980 Hague Convention. She provided two main reports and answered a number of supplementary questions following each of her reports being submitted.
20. Her oral evidence was given by video link from Japan, through an interpreter who also appeared by video link from a different location. This had some challenges, particularly as the expert was inclined to give some very long answers which placed some pressure on the interpreter, and there were also delays on the line which made intervention difficult. Nonetheless the process worked reasonably well even though it took time.
21. It is intended as no criticism of anyone that the expert evidence about the legal situation in Japan has not been easy to follow. Not least that is because of the need to interrogate the significance of the divorce notification document which was filed by the mother in Japan and the consequent amendments to the Koseki, or family register.
22. The essence of the expert evidence was this. A Child Arrangements Order made by an English court is very likely to be recognised in Japan as long it is not against public policy and the proceedings were properly served. Although there is no system in Japan by which a foreign court order can be registered automatically, the mother and father can make an agreement in conciliation regarding child arrangements which mirrors the order here, and that is enforceable in the courts of Japan. In those circumstances if a child is retained, the parent living in the foreign country may seek a

handover in adjudication proceedings or for relief under the doctrine of habeas corpus. If the child is not handed over the parent can apply for enforcement.

23. Japan is signatory to the 1980 Hague Convention, and so the father could apply for a return order under this procedure. ADR is available too. As in this country the application is made to the Central Authority, and the court will apply the principles as set out in the Convention. The burden on the taking parent to show grounds for non-return is high. Most of the arguments in such cases are about habitual residence or whether the grounds for the exercise of a discretion to refuse a return order are satisfied. The Hague Implementation Act was passed in 2014 and amended in 2020 to address issues of enforcement and to make it easier and faster. If an appropriate order is obtained enforcement officers visit the place where the taking parent and child are present to pick up the child. For the year 2020 to 2021 the court ordered such an enforcement process in 5 cases and in 3 of those the return of the child was effected. In her second report Ms Mizuuchi states that whilst enforcement officers would execute a ruling, if P resists it could be unenforceable.
24. After it was found that the mother had obtained a divorce in Japan by forging the father's signature on the divorce implementation document which also gave her sole custody of P, and had successfully amended the Koseki to reflect this, the expert was asked to consider the potential effect of this on any applications by the father for P's return in the event that the mother retained her in Japan. The particular issue of significance is the mother having sole custody, which could affect the operation not only of domestic law but also the 1980 Convention whereby, for a removal or retention to be wrongful, it must be in breach of the custody rights of the left behind parent.
25. The Koseki only applies to Japanese nationals, although if the latter has married a non-national the name of that individual and any children are entered on the register too. The register is intended to be a reliable record of the family circumstances of a Japanese National, including the dates of marriage and divorce if any, the names and dates of birth of children, addresses and so forth. It also records who has the custody of children. An entry on the register can be used to obtain official documents such as a passport.
26. Under Japanese law, a Japanese National cannot hold dual nationality with another country. Having said this, unless the authorities are informed by the person concerned or particular members of their family, the person can continue to act as if nothing has changed, retaining a passport and being able to make entries on the Koseki. This is what happened with this mother. She acquired US nationality at some point before 2010 but did not inform anyone. The marriage of these parents after that date was registered in the Koseki and the mother obtained a Japanese passport for P.
27. According to the expert, the Koseki has no relevance because the mother is no longer a Japanese national, but the safest thing to do to ensure that the record in it that she holds sole parental responsibility is disregarded would be to obtain an order confirming the divorce document is invalid. Even if there is no such order it is open to the father to make the same arguments in Hague or other proceedings about P. A conciliation agreement, confirmed with the court would be expected to trump everything.

28. Ms Mizuuchi also stated that it is possible to prevent the mother from obtaining another passport for P in Japan.
29. Some of the expert evidence is difficult to understand and at times it appeared circular. Nonetheless, standing back and considering it overall, I take the following from it. If the parents make a conciliation agreement which reflects the English court order and also provides that the Japanese divorce notification is invalid, then the father is very likely to obtain a return order in proceedings in Japan. The mother is very unlikely to be able to argue successfully that the father does not have custody rights and that the order that P should be returned at the end of any Japanese holiday should not be enforced, whether this is achieved through proceedings under the Hague Convention or otherwise. Under the Convention defences would be available to be argued, just as they are in this country but the mother would not be able to rely on the divorce notification or Koseki to show that she has sole custody.
30. There can be no guarantee that the mother could not apply to set aside an order obtained through conciliation, or that she could not successfully argue one of the defences applies. Enforcement is much easier now than it was before 2020, but enforcement officers are unlikely to drag a child away against her will, nor is there any penalty in Japan for a mother who does not obey a return order. She could apply to obtain Japanese citizenship again if she renounced her US citizenship and then the Koseki itself would revive, albeit not to defeat an agreement achieved in conciliation.
31. There is no legal mechanism to prevent the mother from leaving Japan with P if she chose to do so.
32. From my understanding of the evidence proceedings to secure P's return are likely to take a minimum of six weeks up to several months if there were any appeals or a need to apply for enforcement. If P refused to be taken by court officials charged with executing the order, then this could be problematic. There would be significant costs, measured in some thousands of pounds.

#### The mother

33. The mother has filed numerous statements and gave oral evidence. She has a good relationship with P, and also with R who is doing her A levels here and intends to go to university in October. Her relationship with Q is currently strained and they do not see each other, something which is plainly causing the mother great distress.
34. The mother acknowledged that she caused the father's signature on the divorce notification document to be forged, and that it was submitted to the Japanese authorities on 28<sup>th</sup> March 2022, in the middle of the proceedings about P and her future residence that were taking place at the Central Family Court. In her written evidence she stated that she did this in order to undo the registration of their Singaporean marriage in the Koseki, which should never have taken place because neither she nor the father were Japanese citizens at that time (2014). She said that she did not tell the father because she believed that he had agreed they should be divorced anyway and that the document had no relevance to him. She said that her reasons for obtaining the document and altering the Koseki were also because of the threat to her Japanese nationality caused by the father's notification to the embassy that she had US as well as Japanese citizenship. She said she took the step of removing the

marriage from the family register ‘to protect me and [P]’. She said that she did not realise that it would have any impact on the English proceedings or the conciliation clause that they had agreed here because that would make it clear they had joint custody. She did not tell the father because she did not think it would have any effect on him. When challenged on some of these points by Ms Amirafabi for the father, the mother stated that she was being harassed by the Japanese embassy, and also made some accusations of her own, for example that the family nanny is in this country illegally.

35. It was apparent to me during the mother’s evidence that she remains very angry with the father. She displayed no regret for forging his signature or even any insight into the effect of her behaviour upon his (or the court’s) ability to trust her. Her attitude remained one of resentment and hostility and it was clear that she regarded some requests from the father and/or his solicitor – for example in 2021 to undertake not to apply for a passport (something she actually did albeit she said she quickly withdrew), or more recently to stick to contact arrangements, as coercive and bullying. She sees herself as a victim.
36. I am also concerned about her behaviour with respect to P. Although she is plainly a loving mother and P very much enjoys the time she spends with her, there are times when she has involved her in the dispute with the father, and placed emotional pressure on her without seeming to understand how damaging that is. There are examples of this in the exchanges of messages between daughter and mother that are in the bundle. In one message the mother says; ‘seems that you like [F] and listen to him more’....’You don’t want to go to [X school] because [F] does not agree’; and ‘If that is the case you stay in [X school] and go to bad state school forever with [F]’. In a further exchanges the mother says to P ‘[older sister] hates [F]’ ‘yeah I know’ ‘Why you like him? We don’t get it’ ‘He is my father, not [older sister’s]’ ‘I’m your mother’, ‘I know and I lov u too’. There are other messages in which the mother tells P that ‘if you want to come and see mama earlier you should say. It is not papa’s decision. It is yours’. In the first Guardian’s report there is a reference to the mother sending text messages to P describing the father as mean and crazy.
37. In saying this I recognise that these messages are a snapshot only amongst what are no doubt a very large number of messages which are not remarkable as the father is likely to have produced them. But they are not isolated incidents. P told her Guardian in 2023 that her mother said bad things about her father and that she was not happy with this. There are many occasions in which the mother has changed the contact arrangements and failed to return P home on time after contact. In doing so she has prayed in aid P’s wishes to stay longer, and has relied on P to ring her father to make such requests. For the most part these amount to an hour or night here and there, but on occasion it has stretched to several days. In June 2023 the mother sent a postcard to P which said that ‘I try to work very hard so that mama and mama’s lawyers can make you come to Japan to be your home country’. In fairness to the mother she has taken on board advice more recently not to do this.
38. I do not accept the mother’s evidence that the reason that she obtained the divorce document in Japan was unconnected with her application to take P on holiday to Japan. Her suggestion that she did so in order to expunge the marriage to the father from the Koseki because it should never have been there in the first place, and in some way to protect her and P from the consequences of this or losing their



nationality was vague and difficult to follow. Nor did it appear to be at all logical. Her behaviour and timing drive me to the conclusion that she deliberately and dishonestly submitted the document, with the father's forged signature on it, in order to obtain sole custody of P in Japan without him knowing. She must have done it in the hope that it would obtain some advantage for her under Japanese law (in particular if she decided to keep P after any periods of holiday) whether or not that was correct. It is highly significant that she did not include the father's contact details on the document and she informed no-one involved in the proceedings here even though the expert report was produced only a few weeks later, and the hearing took place a week after that. At that hearing the parties came to an agreement about holidays in Japan.

39. As it happened the father found out about the forged document when his Japanese lawyer obtained a copy of the Koseki in order to get information about the mother and P's nationality. This led to the discovery of the divorce notification document.

#### The father

40. Given the application before me, it is inevitable that the focus of the evidence was on the expert and the mother rather than the father. Therefore his oral evidence was relatively short although I have read all of his witness statements. I note that his initial response to the idea of his daughter going to Japan was open minded, and also that he was prepared to come to an agreement about holidays in April 2022. He became concerned about travel to Japan when he conducted some research into the efficacy of the 1980 Hague Convention there, and then changed his mind after the agreement in April 2022 when he found out about the forged divorce document. His objections appear to me to be based upon a genuine concern that P will not be returned rather than upon any hostility to the mother, albeit he finds it very difficult to trust her.
41. Whilst he has been keen to stick to the detail of court orders with respect to contact and to confirm arrangements well in advance, I also note that he has been flexible about changes, recognising that it is in P's best interests to enjoy time with her mother. Like the mother he has shared some adult information with P, albeit it does not appear to be on the same scale. There are some concerns about his drinking and smoking, and I note that P told the Guardian that he spent a lot of time working and did not really play with her. Nonetheless P has a good relationship with him and he provides her with stability and security.

#### The Guardian's evidence

42. The Guardian has provided two detailed reports for the court. In those she has recorded that P has a good relationship with her mother, and very much enjoys her time with her. The mother interacts with her well, and provides her with interesting and stimulating activities. P also has a good relationship with her father who has been her primary carer for some years. He provides her with security and stability. There have been some concerns about the father's alcohol consumption but not to the extent that it has compromised his care of P. She misses her father when she is not with him. In the first report P told the Guardian that her mother said bad things about her father and she wished that it would stop. Notably when the Guardian spoke to the mother about it she was not able to recognise the impact of her behaviour on P. Nor does she

understand the father's concerns and believes that this is a form of control and 'torturing' for P to prevent her travelling.

43. P would very much like to go to Japan although she knows her father fears that she might not be returned. The Guardian states that she is a resilient child.

### Decision

44. I have not found the decision in this case at all easy. Although the issue relates to holidays in Japan, it is a very important one for P and her mother too. I start from the premise that it is very much in P's interests to be able to spend regular time in Japan with her mother and her older sister too. As Mr Jarman reminded me, this is an international family. P has spent time travelling abroad growing up, and her older sisters still do. Her Japanese heritage is a very important part of her identity and she should be able to experience being in that country as she grows up. There is also the simple fact of being able to enjoy her time with her mother in her mother's own home and environment. That matters for the development of their own relationship. Importantly and unsurprisingly, P really wants to spend holidays in Japan.
45. These are all very powerful factors in favour of the prohibited steps order being discharged, and the proposed holidays being sanctioned.
46. On the other hand, I must consider the risks to P if she is permitted to go. First, I turn to the magnitude of the risk of wrongful retention or breach of court orders. Taking into account the mother's behaviour in forging the divorce document to give her sole custody, her feelings of anger and victimisation towards the father and the fact that she has found it difficult to appreciate the harm she can cause P by her actions, I have come to the conclusion that the risk of a wrongful retention is high.
47. I consider the risk high despite the fact that orders could be made in this court, with a penal notice, requiring the mother to return P at the end of every holiday. Breach of such would make her liable to serious sanctions including imprisonment. If P was returned to England by the Japanese court the mother could find herself in a situation where she either had to go to prison here, or decide not to come back at all and risk having no contact with P.
48. Mr Jarman understandably submits that this is not a risk that the mother would be prepared to take (and indeed would be deterred from taking in the face of the likelihood of a return order). Nonetheless, having read all the documents in this case, and seen and heard this mother in evidence, I still consider that she would be prepared to take such a risk, and may convince herself that she could defeat proceedings in Japan and keep P there. In that situation, she has no property here, no business or work, and no family apart from her older daughters who are able to visit her abroad.
49. I then turn to the magnitude of the consequences of a breach of the order. On behalf of the mother, Mr Jarman submits that the rate of successful returns under the Hague Convention is still as high as might be expected (as there will always be cases where it is not appropriate to order or enforce a return), that Japan rightly remains a signatory to the Convention and should be respected as such. In this case there would

be clear orders preventing the mother from trying to apply to make last minute changes to orders here and in Japan. The mother is prepared to renounce her Japanese citizenship which would make it clear beyond doubt that the Koseki is invalid, or otherwise for the Koseki to be amended. Mr Jarman also invites me to make a range of orders, backed by a penal notice in the event that the mother disobeys any of them, which would send a strong signal to the Japanese court as well as a deterrent to the mother.

50. Japan has responded to some of the international concerns as to the efficacy of the 1980 Convention by making changes to the process of enforcement in legislation passed in 2020. Contained within the bundle is a document from the European Commission which sets out a number of issues that have been raised about child abduction in Japan in the past, firstly because Japan does not have a system of joint care after divorce, and secondly because of problems of enforcement. In 2022 the Commission observed that notwithstanding the 2020 reform, progress was still slow and the success rate of enforcement was still stagnant.
51. Taking into account all the evidence before me, and on the balance of probabilities I am satisfied that the legal system in Japan is such that a court there (whether under the Hague Convention or by direct application of an order for habeas corpus following the conciliation agreement or otherwise) is more likely than not to make a return order if the mother retains P at the end of a holiday, albeit I am not certain of this.
52. That is not the end of it, however. Despite all the safeguards in place, if she retains P the mother is likely to challenge any application for a return order forcefully through the court. This is likely to be time consuming, stressful and costly. It would be extremely disruptive and distressing for P, something that I am not at all sure the mother would be able to recognise. The likelihood is that it could take several months for matters to be resolved. There is also a risk, which I cannot ignore, that the mother will bring emotional pressure to bear on P to say she does not wish to return, or even to refuse to return. In those circumstances there is an obvious risk that enforcement of a return order would not be successful. P has shown herself able to resist her mother in the course of the messages I have seen and the Guardian has noted that she is a resilient child, but she has never been so far away from her father, or for so long. It is difficult to say how she would respond to emotional pressure placed on her if she was in Japan.
53. Further, there is an outside risk that the mother could remove P to a third country, such as Dubai, from where it would be very difficult to do anything. I think that is unlikely, but not impossible.
54. Therefore in assessing the magnitude of the consequences of a breach, at the very least P is likely to suffer from disruption by being kept in Japan for a number of months and being subjected to legal proceedings and all the stress that surrounds it. She would miss out on her schooling in England and from seeing her father and other relatives, although not one of her sisters. It would be a difficult episode for her although likely (but not definitely) resulting in a return.
55. If the proceedings in Japan were ultimately not successful and P did not return at all the consequences for her of losing the primary care of her father and all the stability that he provides her would be very harmful indeed.

56. Balancing all the relevant factors in this case, I have come to the conclusion that it is not in P's best interests to allow her to go to Japan for holidays for the time being. The benefits are outweighed by the risks. There is a limit to the level of security which can be achieved by building into the arrangements all available safeguards.
57. I come to this conclusion with considerable regret as I know that it will upset P, and the mother too. Whilst I know that finances are tight, P has been able to have good quality contact with her mother in this country and I believe that there is no reason why this cannot continue. P can see her sisters here as well. There are relatives in Japan who she will not be able to see for some years, but her maternal grandparents are no longer alive and the mother has no siblings. In his evidence the father suggested that there should come a time when P would be sufficiently mature for the risks to lessen, and placed this at around the age of 14. I would agree with this, although this is difficult to gauge at the moment. Subject to any further submissions I would propose to extend the Prohibited Steps order until 31<sup>st</sup> March 2028. Discharging it on that date would leave time to organise a summer holiday in Japan that year, although that does not prevent any earlier application to discharge the order, or an application (although I hope it will not be necessary) for it to be further extended. Any holiday dates should be agreed well in advance, with details of the itinerary.

#### Child arrangements

58. Aside from the issue of travel abroad, the parties are broadly in agreement about the time that the mother should spend with P in the UK. As the effect of my order is there will be no summer holiday in Japan, my suggestion is (if the mother is willing and able to spend time in England) that P spends five weeks of the seven week holiday with the mother, and two with the father. P should always be returned two nights before the start of any school term following periods of holiday contact. If there are any other issues between the parties, I invite them to be brought to my attention and I will determine them on the papers.