



Neutral Citation Number: [2020] EWHC 2676 (Fam)

Case No: FD20P00221

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Queen's Building
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 July 2020

Page Count: 6
Word Count: 3204
Number of Folios: 45

Before:

MR. JUSTICE FRANCIS

Between:

F

Applicant

- and -

M

Respondent

MS HANNAH MARKHAM QC (instructed by Expatriate Law) for the Applicant Father
MS ANNA McKENNA QC (instructed by Irwin Mitchell) for the Respondent Mother

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE FRANCIS:

1. On Wednesday and Thursday last week, and today, Monday afternoon, I have been concerned with an application by the father in relation to the parties' three children. He wants my permission to relocate from the UAE to England. Everybody agrees that this is an interim decision that I am making, a matter now listed to come back before me in January next year.
2. The parties have lived in the UAE for many years and they have three children: P (who will be 18 in November this year), L (who is 13) and N (who is 10). The children have lived in the UAE with their parents now for many years.
3. The father has unfortunately lost his job. He was engaged in the oil industry, contracted to a well known company.
4. There is some complaint by the mother that the father has in some way engineered the situation so that he has lost his job or that he has not made proper efforts to find a new job. That is an allegation which I may be asked to consider at the hearing in January but, so far as today is concerned, the parties must understand that this is not a fact-finding hearing. It is quite impossible for me, on the basis of an assertion, to suggest that the father has engineered the situation. It seems to me that, in the light of the global pandemic and collapse in the price of oil, it is entirely likely that the father lost his job through no fault of his own, and I can well understand that in the current climate it is going to be difficult for him to get another job. In the papers at the weekend we heard that there was a record number of people in this country who lost their jobs in May; I think it was something like 650,000 in this country in one month. For the present time at least I am going to accept what the father has said about his employment.
5. The situation is critical, and I described in argument last week there being a series of frankly catastrophic outcomes in this case. The situation in the UAE is that the father, having lost his job, will soon lose his right to live in the UAE. I am not going to recite in this interim judgment all of the reasons for this, but Mr James' letter from Expatriate Law of 20 July (today) sets out a large number of reasons why he says the parties cannot remain in the UAE.
6. I adjourned this case on Thursday in the hope that the parties would be able to find a route to enable them to stay in the UAE during the rest of July and the whole of August, during which time the mother could apply for a visa to allow her to enter into England in time for the school term to start in September. Whether it is through lack of goodwill, lack of effort or it is simply impossible, it is not really possible for me to determine at this stage, but I am prepared to accept that the parties have tried to navigate a route to keep them in the UAE. So far as I can see, that has not been possible.
7. I am not prepared, and I do not think any British judge would be prepared, to put a British family in breach of the law of the United Arab Emirates. It would not be good for this family, certainly not for these children, to find either of their parents being prosecuted, or perhaps even incarcerated, for breaking the law, and I am not prepared to take that risk.
8. If somebody could show me a clear way through to keep the family in the UAE during the period of the mother's visa application, then I would have adopted it, but I cannot do so because nobody has been able to provide me with that clear route.

9. This case has a really unfortunate background. It had, in my judgment, a disastrous beginning when the father made an *ex parte* application for draconian measures. I cannot conceive that any English judge would have made the orders that the father was seeking on an *ex parte* basis. At the very least some notice should have been given to the mother that the application was being made. Mrs. Justice Lieven did what I am sure I would have done, which is that she rejected the application.
10. In another context, in a money case, Mr. Justice Mostyn once referred to the “nuclear winter that ensues once parties take aggressive *ex parte* action”. I am critical of the father for that action that he took.
11. I am critical of the mother for action that she took as well because she sought a stay of the English proceedings, contending that this family should have its future determined by the courts of the United Arab Emirates. That case came before Mostyn J for a two-day hearing. That was at enormous expense, comprehensive skeleton arguments filed by both sides, trawling through the very well-known, and some less well-known, authorities. Eventually, the mother was forced to concede that the UAE was not the right forum to have the future of this family determined. Indeed, from her own evidence, it looks as if she would have been rather unsuccessful in the UAE courts in any event.
12. Rather than spending their precious resources on themselves, this couple have spent an enormous amount of money, many tens of thousands of pounds, on really getting nowhere. I encouraged them last week to enter into mediation, and I am very pleased to see that there have been some exchanges over the last few days recommending certain mediators. Two names have been put forward, both of whom I would regard as “excellent”, and there is also the Reunite mediation service, and I hope that the parties will draw breath and take a view that they really do need to resolve their differences for the sake of their children.
13. I am now forced today to make a decision and it is not an easy one. The mother says that it is her primary case that the family remains in the until next January when I will have the matter back in front of me for five days; I have already set out in my view that is not possible. In the alternative, the mother says that the parties should go to her native country, Brazil, and should remain there. She could then of course apply for a visa to enter England. The difficulty with that is, I am told and I accept, that P (who is nearly 18) would refuse to go. It is said that P has three times attempted to take his own life. He denies that and whether this is what sometimes referred to as “a cry for help”, a serious attempt or none of those, his mental health is crucial to my determination. He has been having a great deal of therapy, counselling and indeed there are suggestions that all three boys are in some way suffering from mental health issues.
14. The mother, astonishingly, took to Facebook to advertise that “all of the men” in her life, that is her husband and all three children, suffer from Bipolar. I certainly cannot say whether or not that is the case for I have no clear evidence of diagnosis. It seems to me to be a completely extraordinary thing to take to social media and to advertise, even if it is true.
15. I am told by the father that the mother “medicates” all three boys with unnecessary prescription drugs. Again, I cannot possibly make any findings about that today, but I am extremely concerned at the allegation. Either, if it is a false allegation, it is a monstrous allegation to make, or if it is a true allegation this is a family which desperately needs assistance. I do not have very much in front of me about what

assistance the boys could have in Brazil, but what I do know, just from looking at the Government website today, is that Brazil is at a different stage of the Coronavirus pandemic from the one that we are in with “the fastest growing numbers of cases of any country in the world”; horrific pictures on the website of mass graves and statements that the country has run out of coffins.

16. It seems to me that in circumstances where (a) the family will be separated, ie P not in Brazil (b) the difficulty I have just referred to about the pandemic and (c) no evidence that the children can have their mental health properly attended to in Brazil, I cannot possibly take the risk of this family going to Brazil.
17. If it were a normal summer I may very well suggest that the family go there for a holiday because I am quite sure that the mother would like to see her family, and I, of course, have very much in mind that these boys share dual heritage and that they ought to visit their Brazilian family, but it seems to me this is not a time for them to be doing that.
18. I also have some evidence to suggest that the two younger boys do not want to go and live in Brazil. I also have the difficulty that the evidence about schools that the mother has put forward shows that there are no English children at these schools; that they would need to speak Portuguese for about 60 per cent of the time and I am told they have very limited Portuguese. It seems to me that the fractured family will not benefit by taking the boys to Brazil at the moment and in these circumstances.
19. The difficulty with coming to England is that the mother, being Brazilian, does not, at the moment, have a right to reside in England, although she can come here on a visitor’s visa. The difficulty is that if she is applying as a returning resident, I am told that she needs to be out of the UK during part of that application process.
20. I referred on Thursday to what I regarded as “the least worst option”. It is a rather inelegant and not a very judicial term but it seems to me that what I have to do is to decide which is the least worst, having regard of course to what is in the best interests of these three children. The paramountcy principle governs what it is I have to decide.
21. I have had the evidence of Ms Eleanor Sandrini, who I thought was an excellent witness, obviously a highly qualified independent social worker, and it was her clear view that if the boys had to leave the UAE it should be to England that they come.
22. I am satisfied that that is the only option that I can take at the moment, and therefore I am going to give permission to the father to bring the children to England. I am certain that the children need both of their parents, but the application F wants made is that the mother only have hours of supervised contact a week. There are allegations made by him that the mother is a chronic alcoholic. There are suggestions by him that she has hit one or more of the boys whilst drunk. I cannot possibly establish the truth or otherwise of that allegation, and I may need to next January.
23. The mother has offered to undergo alcohol hair strand testing and to have the other relevant tests, and I agree with Ms McKenna that it is probably not enough just to have the hair strand testing, but there need to be blood tests and so forth as well. I will ask, please, that agreement to co-operate with such testing is incorporated in the order. I do not think I need to go to the formality of an undertaking; I think it is sufficient for it to be recorded that she has made those agreements.

24. I have to decide where the parties are going to live. There is a property, in Surrey , which is owned by the father. I do not know much about the property but I am told there are tenants there who are about to vacate.
25. I next have the invidious task of deciding who should live where. This is a really difficult point as well. One possibility is that the boys live at the Surrey property full-time and the parents move alternatively one week on, one week off. Another possibility is that a rental property is secured for whoever is not going to live in the main house and has to be funded from the father's capital because there is, at the moment, no income.
26. Doing the best that I can, and recognising that the mother is the one who is being put out far more than the father is in this, it is my judgment that the mother should move into that home with the boys, and the boys will spend effectively a week on and a week off with one parent or the other. I very much hope that the parents can actually come to some arrangement and agreement about where the boys should go. Certainly P, I would have thought, is going to vote with his feet and do exactly what he wants.
27. It really does not make a great deal of difference who lives in which property because a rental property is going to have to be secured for one or other of the parties. Obviously if they want to come to some arrangement, which is different from the one that I am suggesting at the moment, then they may do so. If they cannot come to an agreement, then my order will be that the mother shall live in the owned property and the father will rent.
28. There will come a time when the mother is going to have to leave the UK for visa purposes and it seems to me that at that point the proper course is for the father to move back into the property. They are going to have to co-operate and I want both parties to agree to do all that they can to promote the mother's chances of securing permanent leave to remain in the United Kingdom. The view of everybody is that she will obtain that permanent leave.
29. The difficulty at the moment is that these applications are taking longer to be processed than normal because a lot of Government departments are not fully operational yet since lockdown. All of this is going to take time.
30. I think that the parties have been able to resolve the question of Legal Services' funding but I make the point that as long as they litigate, they should litigate on a level playing field. There is a very limited amount of money left in this case, and if they take this case all the way to a final hearing next January there will not be any money left, there will just be the house. At the moment parties are going to have to live on capital and I have already recognised the difficulty of the father securing employment. So far as the mother is concerned, plainly she cannot look for employment in England when she has all the outstanding visa issues to which I have referred.
31. This is a family which needs to get together to negotiate and sort it out. I really hope that they will arrange mediation sessions to start almost as soon as they come to England in which I think is going to be the first or second week of August. The date I have been asked to pinpoint for return is 7 August, which I do. If the parties can agree a later date, then of course I am not going to stand in the way of that.
32. The father has agreed that he will co-operate with the children securing Brazilian passports. It seems to me that this is probably the right thing to do at the moment, again

to level the playing field. As the family is in England, the children's passports are lodged somewhere. The father's solicitor is in the UAE, the mother's solicitor is in England, so I should have thought, subject to all the usual secure undertakings, that the proper thing is for the children's passports to be held by the mother's solicitor until further agreement or order of the court.

33. I do not think the father needs to be concerned in any way about the fact that it is the mother's solicitor holding the passports. Firms of solicitors are entirely used to holding passports in these sorts of situations and will do so, I am completely confident, properly to the order of this court.

This Judgment has been approved by Francis J.

Web: www.martenwalshcherer.com