



Neutral Citation Number: [2023] EWHC 3494 (Fam)

Case No: FD23P00122

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/11/2023

Before:

MS JUSTICE HENKE

Between:

The Mother

Applicant

- and -

(1) The Father

Respondents

(2) U

(by their Children's Guardian)

(Re U: Recognition and Enforcement of Orders under the 1996 Hague Convention)

Sarah Hayward (instructed by **Anthony Louca Solicitors Limited**) for the **Applicant**

The First Respondent was Unrepresented

Christopher Osborne (instructed by **CAFCASS Legal**) for the **Second Respondent**

Hearing date: 31 October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 1 November 2023 by circulation to the parties or their representatives by e-mail.

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MS JUSTICE HENKE

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.

Henke J:

1. At the heart of this case is a child, U. U was born on 24 March 2019. I shall refer to U's parents as his mother and father in the judgment which follows.

The Applications

2. There are a number of applications currently pending before this court in relation to U. They are: -
 - i. the father's applications for:
 - a) the recognition and enforcement of the French orders;
 - b) a non-molestation order;
 - c) a Prohibited Steps order; and
 - d) a s.91(14) Children Act 1989 order.
 - ii. the mother's application for access to U under Art. 21 of the 1980 Hague Convention.
3. The welfare applications have already been timetabled through to 26 January 2024. By that date, the children's Guardian is to send to the court and the parties a final report setting out her welfare analysis and her recommendations in respect of the child arrangements order, the father's application for protective orders, and the request for a s.91(14) order.
4. This judgment deals solely with the recognition and enforcement of the French orders.

This Hearing

5. At this hearing, the mother was represented by Counsel and the child through his Guardian by his solicitor. The father appeared in person.
6. In order to determine the issues of recognition and enforcement, I read the skeleton arguments on behalf of the mother, a statement on behalf of the father and a position statement on behalf of the child through his Guardian. I read each of the authorities to which I was referred by the parties. I heard oral submissions from all parties and read a bundle which contained 411 pages. Having done so, I was able to construct the relevant chronology.

The Relevant Chronology

7. U's parents separated in the summer of 2020. At the time, both parents and U were living in London.
8. As long ago as October 2020, the father made an application for a Child Arrangements order in relation to U in the Family Court sitting in London.

Unfortunately, the court did not list the application upon receipt and the CACASS safeguarding checks were not carried out. U was subsequently taken in August 2021 by his mother to France; a move which his father did not oppose on the basis that it had been agreed between U's parents that the father would have regular contact with U. That contact did not take place and the father made an application through ICACU for access to U under the Hague convention. As a result of that application, the father became aware that U had been removed from his mother and taken into care by the French authorities.

9. On 21 December 2021, having received an application from the Public Prosecutor and after considering welfare reports in relation to U, and in the presence of the mother and father who were both legally represented, the Juvenile Court in France placed U in social care until 31 July 2022 and granted both parents rights of access. That order became definitive after the French Court of Appeal dismissed the mother's appeal on 21 June 2022.
10. In the context of child protection concerns which had caused U to be placed in social care, there was a hearing before the Childrens Court in France on 18 July 2022 at which both the mother and father were legally represented. At the conclusion of the hearing, the child placement measures were discharged, and it was ordered that '*U shall be entrusted to [his father] as of August 16th 2022, in order to gradually prepare the father and the child's return to London.*' Supervised rights of access were granted to the mother.
11. The wording of the order actually made on 18 July 2022 is as follows:

"Having regard to article 8 of the Hague Convention dated October 19th 1996;

***Discharges** the Child welfare services of the European Collectivity of Alsace from the placement measure regarding [L] as of August 16th 2022,*

***Entrusts [U]** to his father as of August 16th 2022,*

***Grants** a supervised right of access to [mother] at least twice a month;*

***Orders** that [mother] hand over [U's] passport to the Child Welfare Services;*

***Requests** the British judicial authority to accept its competence on the grounds of children at risk and in order to continue its intervention with the ... family."*

12. Under the July 2022 order, U travelled with his father to live in London.
13. On 7 and 8 September 2022 the Judicial Court of France heard applications made by the mother in relation to U. The mother's applications before the court at that hearing were as follows: -
 - i. joint exercise of parental responsibility;
 - ii. to establish the child's habitual residence with her;

- iii. to set weekly or alternative contact for U with his father;
- iv. to set monthly alimony for U from the father.

14. Both parents appeared at that hearing and were legally represented. The court gave their decision on 22 September 2022 and that decision was registered the next day. The judgment of the court has been translated and is before me. It is clear from that judgment that the court considered it had jurisdiction to hear all aspects of the mother's claim and made, amongst others, the following orders: -

“States that [the father] has exclusive right to exercise parental authority over U;

Recalls that the parent with parental authority is still obliged to inform the other parent of important decisions taken in particular in school, religious and health matters, to enable control and to ensure that relations with this parent are maintained;

Establishes U's habitual residence as with [father];

Recalls that any change in the residence of one of the parents when it modifies the terms of exercise of parental authority must be passed on to the other parent and that in the event of disagreement, the parent who takes the first action shall refer the matter to the family court which shall rule in accordance with the interests of the children;

States that [mother] has an amicable right to have a relationship with U and that, in the absence of an agreement, this right will be exercised, subject to the decisions taken or to be taken by the Juvenile Court Judge by a bi-monthly supervised visit right in a neutral place.”

The order then proceeds to describe how supervised visits are to be organized and how they may be progressed between mother and child before stating:

“States that it will be up to the party who takes first action to refer the matter to the judge again before the expiry of a period of one year from the service of the present decision and that in the absence of referral to the judge within this period, the present provisions and all other previous provisions will be null and void unless they are renewed by mutual agreement.”

The decision recalls towards the end that *“the decision is enforceable even in the event of an appeal for any measure concerning the children”*.

- 15. In November 2022, the father's application originally issued in October 2020 came before the Family Court in London. At that hearing, he asked for a child arrangement order in relation to U and orders mirroring the French orders.
- 16. On 6 March 2023, Mr. Justice Macdonald considered a request pursuant to Art 8 of the 1996 Hague Convention from the French Republic that this court should accept jurisdiction over this matter pursuant to Art 8 of the 1996 Hague Convention. Having accepted the transfer in, on the same day Mr. Justice Macdonald went on to direct that

this matter will be allocated as if the application had been made in England and Wales and duly listed it for further directions before a judge of the Division.

17. It was in the above context that the matter came before Mrs. Justice Knowles on 16 March 2023. On that occasion the father appeared in person, but the mother was absent. Mrs. Justice Knowles made a direction for the court file in relation to the previous child arrangement proceedings issued in October 2020 to be obtained, and made orders designed to ascertain the progress of the local authority's enquiries into U's welfare.
18. This matter returned before Mrs. Justice Knowles on 30 March 2023. Both of U's parents were present on that occasion and the local authority was legally represented. At this hearing, U was joined as a party, and it was directed that he should be represented by a rule 16.4 Children's Guardian. It is apparent from the recital to the order of 30 March 2023 that Mrs. Justice Knowles was made aware at that hearing that the mother had appealed the decision of the French court made in September 2022 and that the appeal was expected to take place in April 2023. Accordingly, both the mother and the father had permission to disclose the orders of 6 March, 16 March and 30 March 2023 to the French Appellate court.
19. On 20 April 2023, the matter came before Mrs. Justice Knowles again. On that occasion the mother and father appeared in person and the local authority was represented by counsel. It is recorded on the face of that order that "*the father seeks recognition and registration for the purposes of enforcement in this jurisdiction under the 1996 Hague Convention of the French Judgment/Orders dated 22 July 2022 and 22 September 2022*" and that the mother "*disputes the father's application for recognition and registration for the purposes of enforcement and seeks the return of U to her care with arrangements for U to spend time with the father*". In that context, the court requested a copy of the appeal judgment which was anticipated by the parties to be delivered in May.
20. The case was next listed on 15 May 2023 to obtain an update from the local authority and in relation to supervised spending time with arrangements for U with his mother. At that hearing the parents again appeared in person but the child was represented as was the local authority. Further short hearings were heard by Mrs. Justice Knowles on 7 June and 3 July 2023 when it was confirmed that arrangements for the mother to visit U would remain exactly as they were until the next hearing on 20 September 2023.
21. Despite the outcome of the hearing on 3 July, on 7 July 2023 the mother made an application for U to be returned to her care for the summer holidays before the hearing in September. That application was heard remotely by Mrs. Justice Knowles on 1 August 2023. Both of U's parents were present. Mrs. Justice Knowles dismissed the application and made a prohibited steps order prohibiting the mother from removing U from his father's care and control, a spends time with order limited to a card or letter once a week which the mother could send to U, and a non-molestation order.

22. On 13 August 2023, mother made an application for rights of access in respect of U pursuant to Art 21 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. That application remains pending before this court.
23. The next substantive hearing was before Mrs. Justice Knowles on 20 September 2023. At this hearing, Mrs. Justice Knowles gave directions which included that the hearing now before me was to determine the recognition and enforcement of the French orders. In the schedule of the recitals to the order it is recorded that there was an application by the father for the recognition and enforcement of the French orders. Later in the schedule to the order there is reference to the solicitor for the Guardian having confirmed that the French orders of 22 September 2022 and that of May 2023 have been translated.
24. The reference to the French order of May 2023 is a reference to the French appeal court which heard the mother's appeal against the order of September 2022 and gave a decision on 23 May 2023. The French Appellate court refused the mother's appeal and confirmed the order of 22 September 2022. In doing so the Court of Appeal gave additional reasons which they said justified the lower court's decision.

The Issues before me and the Parties' Positions

25. In essence there are two linked issues before me: -
 - i. the father's application for the French orders to be recognized and enforced in this jurisdiction; and
 - ii. whether recognition and enforcement of the French orders should be refused under Article 23 of the 1996 Hague Convention.
26. On behalf of the mother the following arguments were made: -
 - i. The procedural requirements of FPR rule 31 and FPR Practice Direction 31A have not been complied with by the father. Whilst Counsel on behalf of the mother acknowledged that requiring adherence to the procedural requirements would cause further delay in an already protracted case and whilst she could see benefit of treating the application as a deemed application from along given the order of Mrs. Justice Knowles in April 2023, she did not go so far in writing or orally as to withdraw her objection.
 - ii. The order of 22 September 2022 gives the father exclusive right to exercise parental authority over U. It is argued that that is a removal of the mother's parental responsibility rather than a curtailment of its exercise and as such "*would be at variance to an unacceptable degree with the legal order of the State in which recognition is sought, in that it would infringe a fundamental principle – P v Q (c-455/15PPU) [2016] Fam Law 165*". In this jurisdiction, "*neither mothers nor married fathers can have their parental responsibility removed – Re D (Withdrawal of Parental responsibility) [2015] 1 FLR 166*". Although it was accepted on behalf of the mother that parents can have their parental responsibility restricted if the facts require that in the best interests of the child, it was argued that that would be in an extreme case such as *Re F*

(Children: contact name; parental responsibility) [2015] 1 FLR 166 and that this was not one such case. It was argued that recognizing and enforcing the French order of September 2022 and the appeal court order of May 2023 would terminate the mother's parental responsibility, and that that would be contrary to public policy. Consequently, it was submitted that Article 23(2)(d) of the 1996 Hague Convention is made out. It was further argued, that given that under the law in England and Wales a mother cannot lose her parental responsibility, I should not exercise my discretion to recognize and enforce the September 2022 and May 2023 orders of the French courts.

27. In oral submissions on behalf of mother, Counsel further submitted that the order of September 2022 was of specific duration and that it had expired as an application had not been made by either party within the life of the order.
28. The father's arguments were shortly stated and heartfelt. He wanted an end to these proceedings. He wanted the French orders of July 2022, September 2022 and May 2023 recognized and enforced. He stated that the Appeal Court in May 2023 had gone further than the court in September 2022 and effectively argued that I should recognize and endorse their reasons for upholding the lower court's decision to give him exclusive right to exercise parental authority. He did not understand why after such protracted proceedings dating back to at least December 2021 and numerous assessments, this court was in any event timetabled through to a welfare hearing sometime next year.
29. The solicitor on behalf of the child through his Guardian made the following observations and arguments: -
 - i. On 20 April 2023, Mrs. Justice Knowles deemed the father, a litigant in person, to have made an application for the recognition and enforcement of the French orders made in July and September 2022 and made case management directions on that basis which cumulate in the application before me. The procedural formalities set out in FPR Rule 31.4(2) and Practice Direction 31A para 2.2 include providing a statement and a copy of the judgment translated into English. The court had the father's statement on 24 March 2023 and translated copies of the orders on 20 April 2023. If the court were to take the view that the application was procedurally irregular because no formal application had been received or the father's statement was unworn then what would happen is that there would be further delay whilst those matters were rectified. Such delay would not be in U's best interests neither would it be in the interest of either adult party.
 - ii. There are two French orders before the court for the court's consideration - the July 2022 order and that of September 2022. The French appeal court simply refused the application to appeal the September 2022 order which therefore stands.
 - iii. Applying Moylan J (as he was) in *Re P (Recognition and Registration of Orders under the 1996 Hague Child Protection Convention)* [2014] EWHC 2845 (Fam), paragraphs 11 and 12 in particular, he submitted that: -

- a) Recognition of the July 2022 order occurred by operation of law and there is no scope for challenge under Art 23 (2)(a)-(f) of the 1996 Hague Child Protection Convention. Accordingly, under Art. 26 it is enforceable in this Jurisdiction.
 - b) The order of September 2022 should be recognized unless refusal is justified on ground Art 23(2)(d) as argued on behalf of the mother. It is accepted on behalf of the child that there is no power in English and Welsh law to extinguish/terminate a mother's parental responsibility and therefore Art 23(d) would apply if the order of September 2022 terminated the mothers' parental responsibility. However, if the order simply restricted the exercise of her parental responsibility, then the order should be recognized and enforced. There is jurisdiction in this court to make a series of Prohibited Steps and Specific Issue orders which can restrict its exercise to the extent it is held if name only - *H v A (No 1)* [2015] EWFC 58.
30. In oral argument on behalf of the child an argument was developed which was based on the plain reading of the order of September 2022. The order was time-limited and would have expired unless either party had made an application to a court within its duration. At the time the order was made, the only judge in contemplation was the French judge but in March 2023 the courts of England and Wales had accepted jurisdiction. Within this jurisdiction the father had made his application for future welfare orders which are amongst the applications timetabled to be heard next year.

Discussion and Decisions

Procedural Irregularities

31. I have reminded myself of paragraphs 17-38 of the decision of Moylan J in *Re P* (above). Accordingly, I apply the procedural requirements of FPR Rule 31 and Practice Direction 31A with a light touch. I have asked myself whether the court had sufficient information for the “*essentially administrative*” purposes of recognizing the orders. I conclude that by 20 April 2023 the court did have sufficient information. By that date, the court had the statement of the father and the translated judgments/orders. Consequently the court recited on the face of its order of that date that “*the father seeks recognition and registration for the purposes of enforcement in this jurisdiction under the 1996 Hague Convention of the French Judgment/Orders dated 22 July 2022 and 22 September 2022*” and that “*the mother disputes the father's application for recognition and registration for the purposes of enforcement and seeks the return of U to her care with arrangements for U to spend time with the father*”. The court had clearly deemed the father to have made an application, determined it had sufficient information for the purpose of recognizing the orders and had proceeded to case manage the issue given the mother wished the court to refuse recognition and enforcement.

Which French Orders Should I Consider?

32. I consider that the issue now before me is the recognition and enforcement of the July 2022 and September 2022 orders made in the French courts. The French Appellate

Court in May 2023 simply refused the mother's appeal against the September 2022 order which as consequence remained standing. Whilst I understand the father's wish to adopt the appeal court's reasoning, Art. 23 of the 1996 Convention applies to measures. In this context, measures mean orders – see for instance *Re P* (above) at paragraph 10. In my judgment, the orders which apply for consideration by me are therefore the French orders made in July 2022 and that made in September 2022. The order of the Appeal Court in May 2023 merely refused an appeal against the September 2022 order. There is no May 2023 order of substance to recognize or enforce.

The July 2022 Order

33. Art. 23(1) of the 1996 Convention states that “*the measures taken by a Contracting State shall be recognized by operation of law in all other Contracting States*”. However, recognition can be refused if one of the factors in Art. 23 (2)(a)-(f) applies.
34. In oral argument, Counsel on behalf of the mother very properly conceded that none of the grounds in Art. 23(2) are made out in relation to the order of July 2022. Accordingly, the order made by the French courts in July 2022 should be recognized and can be enforced. I agree.

The September 2022 Order

35. The French order of 22 September 2022 had a duration of 12 months unless an application was made to a judge during its lifetime. I remind myself that the relevant part of the order reads: -

“States that it will be up to the party who takes first action to refer the matter to the judge again before the expiry of a period of one year from the service of the present decision and that in the absence of referral to the judge within this period, the present provisions and all other previous provisions will be null and void unless they are renewed by mutual agreement.”

36. At the time that the September 2022 order was made, the only judge then able to extend or vary it would have been the French judge. However, the order was made at a time when proceedings in England were already before a court and when the court in France would have known that the order of July 2022 had been acted upon and U was now living with his father in London.
37. In November 2022, the father's application for a Child Arrangements order was heard in the Family Court in London. It has been argued that that application was the first action contemplated within the September 2022 order.
38. I have also considered the effect of the order of Mr. Justice Macdonald on 6 March 2023. On 6 March 2023 Mr. Justice Macdonald considered a request pursuant to Art. 8 of the 1996 Hague Convention from the French Republic that this court should accept jurisdiction pursuant to Art. 8 of the 1996 Hague Convention. Having accepted the transfer in, on the same day Mr. Justice Macdonald went on to direct that this matter will be allocated as if the application had been made in England and Wales and duly listed it for further directions before a judge of the Division. Since then, it has

been case managed by Mrs. Justice Knowles who has made directions to enable welfare decisions to be taken in the future in relation to U. On 1 August 2023, Mrs. Justice Knowles dismissed the mother's application dated 7 July 2023 to vary the arrangements under the July and September 2022 orders to enable the mother to care for U in France over the summer holidays. She also made: a prohibited steps order prohibiting the mother from removing U from his father's care and control; a spends time with order limited to a card or letter once a week which the mother could send to U; and a non-molestation order to protect U and the father from the mother's behaviours.

39. Given the factual context set out in the previous paragraph, I have asked myself whether the mother's own application of 7 July 2023 could have triggered the extension of the September 2022 order given the transfer of proceedings to this jurisdiction.
40. In the end, however, I have decided that the duration of the order of September 2022 is determined by the wording of the order itself. The order is extended according to its own terms by a party taking first action "*to refer the matter to the judge*". The only judge in contemplation at the time that order was drafted was the judge of the French court. On a plain reading, the judge referred to within the order must be the judge of the court which made the order. Had the French court in September 2022 intended the order to be extended by application to any court whether in France or England, it would have been drafted to enable the extension of the order to be a judge.
41. Accordingly, I find that the order of September 2022 has expired. There is thus no need for me to consider whether it should be recognized within this jurisdiction.

Where Does that Leave U?

42. It appears to me that it may assist the parties and be beneficial to U if I set out in brief and plain language what this all means for U. Putting it simply, it means that U has been entrusted to his father and lives with him by reason of the order of July 2022. The contact provision of that order has now been varied by this court. The interim contact order in force as I type this judgment is that of Mrs. Justice Knowles which she made on 1 August 2023, namely a spends time with order limited to a card or letter once a week which the mother can send to U. In addition, the prohibited steps order made by Mrs. Justice Knowles prohibiting the mother from removing U from his father's care and control remains in force. On 1 August 2023, Mrs. Justice Knowles made a non-molestation order to protect U and the father from the mother's behaviours. That has been replaced by undertakings given by the mother on 20 September 2023 and which this court understands the mother will renew at the conclusion of this hearing.
43. That is my judgment.