



Neutral Citation Number: [2023] EWHC 984 (Fam)

Case No: FD22P00357

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

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Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/04/2023

Before :

MRS JUSTICE JUDD

Between :

S

Applicant

-and-

D

1st Respondent

-and-

B

2nd Respondent

The Applicant and 1st Respondent appeared in person

Michael Edwards (instructed by Goodman Ray LLP) for the 2nd Respondent

Hearing dates: 18th-19th April 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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 :

Introduction

1. In this case I am dealing with a series of applications in relation to a fourteen year old boy who I shall call B. First I am asked to discharge the return orders made on 6th, 18th, and 29th July 2023. Second the mother has applied for Domestic Abuse Protection Orders for herself and B. Third, she applies for enforcement of a financial order made in November 2014.
2. B has been the subject of proceedings between his parents which have lasted for most of his life.

Background

3. In May 2021 I heard an application by the mother for permission to relocate to a country in Africa. I refused the application for a number of reasons, chief amongst them the importance to B of his relationship with his father. I made a child arrangements order which provided for B to share his time between his parents. In the term time he was to live primarily with his mother, spending a long weekend with his father every other weekend, and the holidays were to be divided equally. In the course of my judgment I made some observations that the mother had a dismissive attitude towards the father which, I considered had the potential to affect B's views about spending time with him as he grew older. I said that if B spent a lot of time away from him the father might diminish in his eyes. In saying this I very much had in mind the mother's attitude to the father and that it would influence B. I also noted that the mother had not (at least at that point) alienated B from his father, as there had always been ongoing contact. My decision to refuse the application was not appealed.
4. In April 2022, less than a year after my decision the mother took B to another country in Africa (which I shall call Country X). Her case is that this was simply for a holiday, but that whilst she was there she fell ill. In her written evidence she complains that the father made 'persistent allegations of "abduction", court applications and threats', although she did in fact decide during the course of the holiday and after she recovered that she would not return to the UK. Her view as expressed to me is that this does not amount to an abduction because she gave B the choice to go back to the UK without her but that he did not want to do this.
5. The father said he at first accepted the mother's explanation that she had fallen ill and would still be coming back but once it became apparent to him that this was not going to happen he issued proceedings for a summary return. Proceedings were then issued in Country X by B himself (although as he was 13 at the time, it seems likely that the mother was behind this). Several return orders were made in this country. The mother made an application for permission to appeal the first order, and for a stay. I note that the stay was refused by Moylan LJ who stated 'there is no justification for staying the return order. The mother's application for permission to appeal and if granted, her appeal, can be determined after [B's] return to England. The apparent merits of the proposed appeal and the balance of prejudice point firmly in favour of refusing a stay'.

6. B was not returned to England, and on 11th October he applied to be joined as a party to the proceedings and for the return orders to be discharged. He was granted party status by Peel J on 18th October with Ms Thompson to be his solicitor-guardian. On 9th November the return orders were stayed by Cobb J pending the full hearing of the application to discharge the return orders. Cobb J made a number of directions for the filing of evidence, including a requirement that the mother set out her proposals for contact between B and the father in the event that he did not return.
7. I alluded earlier to the proceedings in Country X. The courts of that country accepted jurisdiction and have held several hearings. The father has given evidence and B has seen a court appointed expert and a social worker. The parties have made submissions although as I understand it the mother has not given any evidence. The court is expected to reconvene on 10th May and to let the parties know when to expect judgment.

The mother's application for a Domestic Abuse Protection Order

8. The mother has applied within these proceedings for an order under the Domestic Abuse Protection Act 2021. I have not seen the application form for this, but her application is supported by statements dated 9th and 25th November 2021.
9. Her case in relation to this is that the father has been abusive to her since before B was born. She states that he was physically abusive to her when she was pregnant and that he has behaved in a coercive and controlling way by repeatedly bringing court proceedings with respect to child arrangements, accusing her of abduction and making unwarranted applications for prohibited steps orders. She says he also perpetrated economic abuse. She points out that in the past he was required by the court to attend a Domestic Violence Perpetrators Programme but that he did not do so.
10. This family have been before the courts on many occasions. A decision was made long ago that there should not be a fact finding hearing. I accept that the father has not been on a DAPP but this was all a long time ago and the father continued to have contact thereafter and at the hearing before me it was not suggested that the father should not have contact with B. At the last hearing I considered the litigation history between these parents as well as their behaviour to each other. At paragraph 47 of my judgment I specifically found that the father had not abused his position or used his time with B to undermine the mother. I heard evidence about some matters the mother complains about in her statements – for example the father's conduct in taking the phone from B outside a railway station on the way back to the mother and my findings did not accord with the mother's allegation. Despite the many hearings before the courts, no court has concluded that the father's behaviour in bringing proceedings has been motivated by a desire to abuse the mother or child. There was a s91(14) order made at one point but this was to give B some respite, not because the father was being singled out as causing harm to B. Some of the proceedings were brought about by the father looking to increase his time with B which was granted by the courts, and the proceedings that led to the hearing before me in May 2021 arose because the mother wished to relocate. It is somewhat difficult for the mother to complain that the father's behaviour in making applications for prohibited steps orders to prevent her removing B from the jurisdiction in the light of what has happened now.

11. It therefore seems to me that the allegations made by the mother have already been before the court when making earlier decisions. The mother argues that there has been no previous occasion where a court has stood back and considered the father's behaviour overall as is required by the case of Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings) [2021] EWCA Civ 448 but I do not accept that this is so.
12. In the circumstances I did not permit the mother to reopen all the matters she has set out in her application and statements and to pursue her application. In addition to the matters I have set out I note that her case is that she is not coming back to the UK and that B should stay in Country X too. Further, the order that she seeks on her own and B's behalf, namely that the father be prohibited from exhibiting any of the abusive behaviour described in the 2021 Act is fraught with problems and would simply lead to further litigation. The same would apply if I made a non-molestation order in conventional terms. This means that I do not consider that the making of such orders is necessary or proportionate or that it would secure the well-being of either the mother or B.

The application for enforcement of the financial order of November 2014

13. This application was also listed before me but time has not permitted me to deal with it at this hearing, and it must therefore be adjourned to a later date.
14. I therefore turn to the application by B for the discharge of the orders requiring him to be returned to this jurisdiction.

The evidence

15. Both the mother and the father are acting in person. They have each prepared witness and position statements for the court with considerable care, although it is perhaps unsurprising that their statements have not covered the full range of topics as ordered by Cobb J. Nor do I have all the documents in the proceedings in Country X although I do have the social worker's report and a note of B's evidence to the court there. I also have a report from a therapist to whom the mother took B.
16. In addition to all the statements I also have a Cafcass report prepared for these proceedings by Kathleen Cull-Fitzpatrick and statements by B himself. There is an earlier Cafcass report from the 2020 proceedings which I have read and taken into account as well.
17. The mother and father both gave oral evidence to me. In accordance with my order the father had prepared a number of questions that he wished the mother to be asked. Given the history of this case I considered that the mother should not be cross examined by the father and so I asked questions of the mother myself. Many of the questions put by the father related to the history of the case which is contained in the documents, of which I am very aware and so I did not feel that such questions would assist me in making my decision. I asked a few questions about the circumstances of the decision to stay in Country X and what should happen about contact. The mother attended from Country X by video link and the courtroom was arranged so that she did not have to see the father and he was not able to see her.

18. It is plain to me from all the evidence filed by the mother and her response to questions that she is very fixed in her view that she and B are the victims of years of abusive behaviour on the part of the father. Her stance is essentially that he is responsible for all the years of litigation that have taken place although she did concede that the proceedings in 2021 arose as a result of her wish to move to Africa with B. She also accepted that her decision to stay in Country X had also led to proceedings although she said she was 100% convinced that there would have been further proceedings here in any event. She said that she had had no intention to stay in Country X beyond a holiday and only did so because the father had issued proceedings for a return order.
19. The mother's case, at its essence is that B does not want to return to the UK and wishes to stay in Country X. She accuses the father of being abusive and says that he does not respect B's wishes. She says that B is old enough to make up his own mind. She said that she intends to remain in Country X for several years. So far as contact is concerned, she believes that this is a matter for B to agree with his father. She did not seem overly concerned at the effect on B of not having contact with the wider paternal family.
20. The father gave oral evidence after the mother. He answered a number of questions from me as to B's expressed wishes. Essentially the father felt that B was not able to speak his own mind. I noticed that when asked more detailed questions by Mr. Edwards for B, the father conceded that B might like the lifestyle in Country X, his school and the sports that were available. He was able to appreciate that B would not wish to see his mother upset.
21. The father gave an account of his conversation with B at one point last July (2022), which is extremely poignant. B was crying for the entire conversation, saying to his father 'how could you put my mum in prison' and 'I am tired of seeing my mother crying', and 'I am ok with my mum'. The father said that he had told B that all that needed to happen was for him to come back. He agreed that he had had to raise his voice because B was crying so much but that he was not angry. I accept that even if the father was frustrated at what was happening he was not angry with B and he only raised his voice so that B could hear him. It is not difficult to see how B could have interpreted this as his father not listening to him, and that the mother would have easily jumped to the conclusion that the father was angry.
22. In answer to questions from Mr. Edwards about visiting Country X for contact the father relied on further points which were not in his statement for these proceedings. After some reflection he decided he did not wish to pursue this. I will not set out the details here save to record that this did form part of his evidence.
23. The father's case is clear and compelling, namely that the mother has broken the order of this court, which was made less than a year before the removal to Country X, and which was made on the basis that it was in B's best interests to live here. He points to the history and my finding in May 2021. He says that the mother acted deceitfully and has influenced and placed pressure on B. He submits that B was doing well in London, and that his removal to Country X has led to a cessation of contact with all of his family in Europe. The father believes that, if B was to return, he would accept this if it was properly explained to him. The life here is one he knows and has been

content with. The father is concerned about the mother's behaviour and how it will continue to impact B.

24. On behalf of B himself, Mr Edwards argues that he is of an age and level of understanding that the court should place great weight upon his expressed views. B needs some respite from the years of litigation and rancour between his parents. Moreover he has settled in Country X and is very happy living there.
25. I have a wealth of evidence about B's wishes and feelings before me. This is contained in the Cafcass report from last year, the evidence before the court in Country X, and the statement filed by B himself in these proceedings. There is a report from a therapist – but whilst I have read this I place very limited weight on it. I do not know the circumstances in which B was taken to see the therapist or how the evidence was adduced.
26. In June 2022 the Cafcass officer noted that B was a mature and polite teenager. He explained to her that he wanted to stay in Country X because his mother was there. He said he would not be sad to come back to England because his father would be there but it would be hard for him not to live with his mother. B told the Cafcass officer that he felt caught in the middle of his parents' relationship and that he didn't feel able to express his own wishes and feelings because either way it would affect his parents. B was keen to portray Country X in a positive light.
27. B was also interviewed in June in Country X by an advocate of the High Court of that country. B told the advocate that he was happy in Country X and wanted to stay. He said he enjoyed kite surfing and had made a group of friends doing that.
28. In October 2022 B was interviewed again, this time by a children's officer in Country A. He told her that he had decided to stay in Country X with his mother and to protect her. He said that he had a good relationship with his father and enjoyed spending time with his cousins in France. In a section marked 'observations' the writer stated that 'it is unbelievable that a teenage boy would suddenly decide to resettle in a foreign country without undue influence of an adult and in this case the mother'. The recommendation was that the court should consider issuing a repatriation order for the child.
29. On 8th February 2023, B was spoken to by the judge at court. He gave a lot of details about his life to date. He is clearly intelligent and articulate. Amongst other things he said he liked his school, and found living in Country X comfortable and that he felt more connected to it than he did the UK because he is African. He also said that he found it painful to talk to people about his life. At the end of the interview he said a number of things about his father which reflected the views of his mother. He did say that following a conversation with his father his eyes had been opened as to who his father was and that 'he has no good intentions for me'.
30. Further to this there are two statements, one from B and one from his solicitor-guardian. In those statements B says he felt very disempowered during the proceedings in England and that his view did not matter. He said he was always worried about hurting his parents. He said that, being in Country X he now feels he has had time to reflect and that in the months since he arrived he has found that he has

integrated into the community and very much identifies with the lifestyle and culture. It is (from his perspective) a long time since he spoke to the Cafcass officer.

31. B says that he really does want to stay in Country X, albeit he appreciates his father finds that very hard to accept. He says that he loves his father very much and has always kept up a good relationship with him, but that the conversation he had with him in July made him realise his relationship with his father was empty and that his father did not understand him but controlled him. He says he feels his father is dismissing him and his views.

The law

32. In this case there have already been several orders that B should be returned to the country where he was habitually resident before his removal to Country X by the mother. The application that I am determining is whether those return orders should be discharged.
33. Country X is not a Hague Convention country and therefore the return orders were made pursuant to the inherent jurisdiction. The test to be applied when coming to my decision is that of welfare, bearing in mind that it is generally in the interests of a child for decisions about his or her future to be made by the courts of the state in which the child is habitually resident. The child's welfare is paramount and the factors in the welfare checklist apply. In the Supreme Court case of *Re NY*, paragraphs 55 to 64, Lord Wilson set out a number of matters to which a court considering the making of a summary return order should give consideration. In that case the return order in question was an outgoing rather than an incoming one, but subject to that the same principles are applicable. I will not recite them here but record that I have the points firmly in mind. A summary application for return can be difficult in that the court will frequently be asked to make a decision on less than full information. That is the case here but I have come to the conclusion that what I have before me is sufficient to make a decision as to the orders for return.

Discussion

34. As I have set out earlier, in May 2021 I concluded that it was in B's best interests to live in London so that he could spend substantial periods of time with both his mother and his father. My decision was based in very large part upon the importance to B of his relationship with the father. I was concerned that, if relocation was permitted that B's relationship with his father might be diminished because of the mother's dismissive attitude and lack of respect for the role that the father plays.
35. The events of the last year would appear to have borne out the concerns that I expressed in my judgment. The mother's case is that the trip to Country X was for the purposes of a holiday only and she decided to remain where she was as a result of the father's actions in accusing her of abduction and bringing proceedings. She has certainly produced copies of return air tickets and hotel bookings.
36. I do not know whether the mother really made such a momentous decision in the way she suggests. What I can say is that the effect of her actions was to breach the order that was made in May 2021. The mother's submission to me that it was B's own decision not to go back – she having told him that she was going to stay but he could

go back without her if she wishes – is disingenuous. She made all the arrangements, and suggesting to B that she would not be coming if he returned would have placed him in a very difficult position. As a young man who is very conscious of his mother's feelings he told her he would stay too.

37. Having heard the mother give evidence in these proceedings and in 2021 it is clear to me that her feelings of animosity to the father remain very strong and that she has been unable to shield B from them. She remains consumed by the history of the relationship. B has seen her crying many times and his comment to the children's officer in the Country X court that he wished to protect her was revealing.
38. In behaving as she has the mother has disrupted the relationship between father and son, and also the wider family. She has brought about yet another round of litigation, litigation which has caused so much heartache, particularly to B. In her own mind she has turned this all around and considers that the father is to blame for all the litigation but this is really not so.
39. The mother's behaviour is a very important feature of this case, but the paramount consideration for me in making a decision about the return orders is B's welfare. I am dealing with a boy who will be 15 years old in October. This is very young to be making important decisions but B is mature (as described by Cafcass), intelligent, thoughtful and conscientious. The wishes and feelings of any young person of this age are powerful in a welfare analysis but this is especially so for someone like B. His views deserve to be given great respect by those who are charged with making decisions for him.
40. I am not surprised that B is happy living in Country X. As well as working hard at school, a boy of 14 ought to be able to enjoy his time with friends and engaging in hobbies – in B's case, kite surfing, without having to worry about adult issues. Being there has given him respite from the endless tension between his parents (albeit not the litigation). It has come at a considerable sacrifice of the relationship with his father, but from his perspective the price for that relationship at the moment is just too high. In June last year when he spoke to Ms Cull-Fitzpatrick he did not particularly mind the prospect of coming back to England but things have moved on since then. 10 months in the life of someone who is 14 is a long time.
41. Although I have a limited amount of information about B's care in Country X, the mother's physical care of B has always been very good and there is no reason for me to think that this will have changed. The same applies as to his education. Both these parents have high standards for their son's education and his school reports are very good. From an emotional perspective his needs are not being met because he has been caught up in adult issues and his relationship with his father has been disrupted. He also appears to be carrying some responsibility for his mother's emotional welfare. Nonetheless, he is happier in himself because his current circumstances give him space and respite from the pressure that he felt when he was living in the UK, and because he likes the life he is leading. He is of an age where he needs to be able to concentrate on his studies, to make friends, to enjoy activities and to learn about life. He feels very much at home in Country X, especially as his heritage is African.
42. B has suffered harm as a result of the endless litigation between his parents, and the never ending tension between them. He is very conscious of how they each feel and

has far too much responsibility on his young shoulders for that. The loss of the face to face relationship with his father and his paternal family is undoubtedly harmful and will continue to be so, but there is no easy solution to this.

43. Both of these parents have very good qualities. They have provided their son with the highest standards of physical care and are devoted to him. They are each highly qualified, intelligent and hard working. Their relationship is, however, unchangingly toxic. I have set out how the mother is unable to contain her feelings about the father and avoid transmitting this to B. She blames the father for things she has done herself. As to the father, it may well be that he has been unwilling to listen to B or to take his views seriously, or to find ways to work with the mother. He has, however, been put in a very difficult position, one which many parents would struggle to manage.
44. Although I do not have evidence about some matters, for example B's living arrangements, or expert evidence about the legal system in Country X, I do consider that I am in a position to make a decision about the return orders and indeed that I should do so for B's sake despite the fact that the decision in Country X remains outstanding.
45. Taking into account all the evidence I have heard and read, I have come to the clear conclusion that the return orders should be discharged. The main factor is B's wishes and feelings, which for the reasons I have set out above, demand the greatest of respect. Whilst he is undoubtedly influenced by the mother in matters pertaining to his living arrangements and his father I do not doubt his genuine wish to remain living in Country X. The views he has expressed to various professionals are nuanced in the sense they do not merely mirror those of his mother. I understand that the father does not believe that some of what B says is really him but in my judgment the voice of B is there and it is authentic. He is enjoying life in Country X for good reason and I think it would do him a lot of harm to force him back to England. It would tear him away from his new life when he has settled down and enjoyed the respite that he has experienced. A move back would be likely to affect his happiness and his mental health. That harm would outweigh the advantages to him of resuming his relationship with his father – indeed I think it would damage it. I also acknowledge that the lack of a relationship with the wider family is harmful too, but the same point applies.
46. The decision does come at a very high price for the father, and I am very conscious of the interference with his rights for respect for his private and family life, and that which is most precious to him – the day to day relationship he has had with B. Such an interference is, however, necessary. I know he will be very distressed by this decision. That it should be brought about in this way makes it worse. What can be said is that B and his father do have an established relationship which can be built upon as time passes, even if after a significant gap and the father should not view this as a rejection by his son, or his last word on their relationship. I know that B will be exposed to the mother's unfiltered views about the father in the meantime but as he grows older he will become more independent and able to rely better on his own observations and experiences of his parents. They would each do well to remember this. In no time at all, B will be an adult.
47. Decisions remain to be made in Country X. I note that just as here, their jurisdiction is one which places the welfare of the child at the centre of decision making. B has been seen and spoken to by professionals and the court. I understand the father has given

evidence there too. The mother appears not to be a party and has not given evidence although she has attended at the request of the court. I am not fully aware of the factors which will be taken into account in those proceedings, but that judgment is awaited.

48. I have not dealt with the issue of contact between B and his father in this hearing or judgment, save to say that B's own views as expressed are that he would like to make arrangements with his father on his own terms. I do not know whether the court in Country X intends to address this. The jurisdictional route for this court to consider issues of contact is somewhat complex in advance of at least one case which is currently being considered by the Court of Appeal. During the course of exchanges with Mr. Edwards he suggested that one possible route for me to take would be to deem that the father had made an application for child arrangements and to adjourn the proceedings for another six weeks or so until after judgment is given in Country X. Subject to this court having jurisdiction it would at least ensure there was a forum for contact arrangements to be considered. Mr Edwards was clear that B would prefer to bring proceedings to an end, but he did not argue strongly against this course of action.
49. In all the circumstances I do propose to deem that the father has made an application for child arrangements and to adjourn that part of the case to be listed for a short hearing on that point later to see if it is possible to make some arrangements. I make it clear that I do not intend that these proceedings should drag on because of the effect of this on B. It is difficult to make progress on this point at the moment because of the involvement of the courts of Country X and because B will need some time to process the outcome of this decision and any decision there. It will also enable me to consider the mother's application for financial enforcement which was listed to be heard alongside these proceedings.
50. I propose that this judgment and the 2021 judgment are disclosed within the court proceedings in Country X.