



Neutral Citation Number: [2024] EWHC 2643(Fam)

Case No: FD24P00365

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/10/2024

Before:

Mr Justice Trowell

Between:

A MOTHER

Applicant

and

A FATHER

First Respondent

and

A CHILD

Second Respondent

Ms Mehvish Chaudhry (instructed by **Hanne & Co.**) for the **Applicant**
Mr Christopher Hames KC (directly instructed) for the **First Respondent**
Ms Lina Khanom (of **Cafcass Legal**) for the **Second Respondent**

Hearing dates: 9th and 10th October 2024

Judgment Approved by the court

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Mr Justice Trowell:

Introduction

1. These proceedings concern G, a 12-year-old boy, who will turn 13 in December. A final hearing took place over 2 days, the 9th and 10th October 2024.
2. This judgment is delivered in draft by email on the 14th October 2024. It had been my intention to deliver the judgment orally on the 10th, but the case overran. It is acknowledged that this judgment does not deal with all the matters raised by the parties. Instead, it focusses on the issues which need to be considered to enable the court to reach a decision and explain why that decision has been reached.
3. These proceedings were brought on the 15th August 2024 pursuant to Article 12 of the Hague Convention, incorporated by the Child Abduction and Custody Act 1985. The applicant seeks G's summary return from this country to Singapore.
4. The applicant is the child's mother. She is represented by Ms Chaudhry. The respondent is the child's father. He is represented by Mr Hames KC. He is instructed on a direct professional access basis. The child appears through his Guardian, Kay Demery of Cafcass. She is represented by Ms Khanom.
5. The only oral evidence I have heard has been from Ms Demery, G's Guardian. I have heard submissions from each counsel. I have received and read an agreed legal summary of the principles which I should apply. I note that runs to over 13 pages. I have read statements from the parents (including a late statement from the father that was admitted without contest) and a report from Kay Demery.
6. The father's position is that he opposes G's return. He says G wants to live in this country and that if G were to return, he would be harmed because he, would be fearful of returning and so G would lose his relationship with him. During the course of the hearing that evolved into the position that the father would only return if a full range of protective measures (that were advanced by him after the first day in court) were put in place. Nonetheless his primary position remained that he opposed a return.

7. I note that the father tells me, and has produced some evidence to substantiate the assertion, that though intelligent he suffers from learning difficulties associated with dyslexia and has suffered from anxiety. I take that into account.
8. The guardian takes the same position as the mother, namely that G should be returned, and she submits that is 'overwhelmingly in his best interest'.

Summary Background

9. G has dual nationality: British and Singaporean. G suffers from epilepsy, and he has been treated in Singapore and at Great Ormond Street Hospital in relation to that. G underwent intrusive investigations of his brain last month at Great Ormond Street. That was the subject of an out of hours application to Henke J. The details do not need to be set out here. He also has developmental delay, dyspraxia, features of dyslexia and possibly ADHD.
10. G is, I am told by the Guardian, a delightful and charming boy. He is a credit, she tells me, to both of his parents.
11. The mother is a Singaporean national, with indefinite leave to remain in the UK.
12. The father is a British national.
13. The mother and father married in this country but moved to Singapore in 2012 when G was less than 1. Thereafter, until these proceedings, they have lived in Singapore.
14. The mother applied for a divorce in Singapore in February 2020, which was finalised in 2023. The mother has subsequently remarried.
15. The parents fought over the care of G and the financial impact of their divorce, in particular the maintenance of G. The courts in Singapore ordered joint custody of G and have made orders as to child maintenance. The father tells me that the financial orders are too onerous. His complaint appears to be that he is paying too much in circumstances where the mother is well paid through her employment in re-insurance and has remarried a man of some means, while he is out of work. He has appealed the orders unsuccessfully. He is in arrears in relation to the maintenance.

16. There was an application for protection orders, filed by the father, and a cross application by the mother. These were dismissed.
17. The mother has successfully sued the father for defamation in relation to documents that he sent to G's headmaster. The father's appeal was dismissed, with costs on the 27 June 2024. The mother has secured a third-party debt order against a bank account of the father in part satisfaction of his liability to her under this order.
18. Pursuant to an agreement flowing from the shared custody order G was to spend the second half of this summer holiday with his father in California, returning to Singapore on the 9th August 2024, before the start of the school term. Instead of returning G to Singapore on the 9th, the father brought G to England. This was, the father says, because of a GP appointment he had obtained for G. That was not agreed.
19. I note at this stage that the father was keen for G to have further treatment at Great Ormond Street as an NHS patient rather than privately – and this appointment was part of that plan. The mother's case is that was not a plan that was going to work.
20. Further, on the 6th August 2024 the father failed to attend a hearing in Singapore in relation to enforcing a debt he owes to the mother. He had told the court he would be abroad, but the court had invited him to attend by Zoom and he did not. As a consequence of his non-attendance, it was thought a warrant was issued for his arrest, with bail set at S\$2000. (It had been pointed out to me by Ms Chaudhry that the evidence the father has produced does in fact suggest that no warrant has been issued. Since handing down this judgment in draft the father has clarified that there is a warrant.)
21. It is right that the father told the mother that he was in England by email on the 9th August. On the 12th August there was a face time conversation between G and the mother. The father has produced a transcript of the conversation. From that, though it is confusing, it appears that G was saying he was going to be going to school in England, that health care is free in England, and that the dad had told him that he (the dad) could not come back to Singapore because he would be sent to gaol. On the 14th August the father emailed the mother telling her that he had relocated with G to the

UK, and on the 15th August the mother was told by G over the telephone that he was not returning from England.

22. The mother's application for G's return was issued on the 15th August 2024. She travelled to this country on the 17th August 2024 and G was put in her care by the order of Morgan J of the 15th August 2024. By order of Henke J on the 20th August 2024 G remained in her care and control with supervised contact to the father. That was modified to unsupervised contact by the order of the 5th September.

Agreements and legal issues

23. It is agreed that:

- a. G was habitually resident in Singapore at all material times;
- b. G was wrongfully retained in England and Wales on the 9th August;
- c. The mother holds rights of custody for G;
- d. She was exercising those rights at the time of the child's wrongful retention.

24. The respondent's objections to a summary return as set out in his amended answer of the 19th September were:

- a. that the child objects (article 13);
- b. that a return to Singapore would expose the child to a grave risk of harm (article 13 (b));
- c. that a return breaches fundamental principles of human rights and freedoms (article 20). This argument has not been pursued and I will therefore not consider it further.

G's objection

25. As to G's objection I have been referred to the case of in *re M and other (Children) (Abduction: Child's Objections)* [2015] EWCA Civ 26 as summarised by Williams J at paragraph 50 of *Re Q and V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490.

26. Ms Demery reported, in a report directed to G's wishes and feelings, that in her view G does not object to a return to Singapore. She does however make clear that this is a matter for me to evaluate. It is her view that his predominant wish is for his parents to reconcile or failing this to live in the same country and for his shared care arrangement to continue. He expressed a wish to experience something new by living in England, but this was based on a fear that his father would not return to Singapore because his father feared the risk of imprisonment there.
27. In oral evidence she was able to express her position with more nuance, and my attention was drawn to different parts of the report. In particular it was drawn to the fact that she had had two meetings with G. There was a shift between the two. It was at the first meeting G had said that he wanted to live in England because of his dad, in particular because his dad had told him he (the dad) would go to gaol if he returned to Singapore. It was at the first meeting he said that he would be really upset if the judge said he had to return to Singapore. However, even at the first meeting he spoke positively about Singapore. At the second meeting, after his operation, he was keen to not be responsible for any decision about where he was going to live. In the words of her report he said, 'that after all that he has been through, it is too hard a decision for him'. What he wanted was for his parents still to be together.
28. Mr Hames says that G saying he would be really upset if the Judge said he had to return to Singapore amounts to an objection.
29. I find what G has said does not amount to an objection. I accept the phrase just set out, namely he would be really upset if the Judge said he had to return, would constitute an objection on its own but Ms Demery is right to see it in its context, namely the shifting message that G gives over the two meetings, and the fact that the reason he gives for wanting to stay in England at the first meeting is that his father will go to gaol if he goes back to Singapore. It is not properly an objection to going back to Singapore but a fear, given what he has been told by his father, that his father will be sent to prison if he were to return to Singapore.
30. Ms Demery also advises me that I must take into account in weighing up what G has said that he has been exposed to years of parental conflict. I do so. I see that reflected in the changing attitude expressed by G over the two meetings, in particular,

by the references to what his father had told him at the first meeting, which was closer in time to the time he had spent with his father.

31. I note in this context a passage towards the end of Ms Demery's report in which she said that 'G's father placed too great an emotional burden ...upon him to ask him to decide with whom he wished to live, and then encourage him to tell his mother'. This refers to the facetimes between G and the mother in which he said he would be staying in this country referred to above.
32. Further, Ms Demery advises me that despite G's age, given his health, and his learning difficulties her opinion is that his maturity is not commensurate with his age and so his views should not be determinative. She did agree in cross examination that though not determinative I should take them into account.
33. I have no good reason to reject that opinion and adopt it. I do take the views into account. The weight they have in my view is in making clear that G wants his parents to both care for him, and he does not want his father to go to prison.
34. In the light of these conclusions, it is not necessary to me consider the discretionary exercise to which the authorities refer on the far side of the 'gateway' of objection. Were I to consider that exercise it is inevitable that I would point out, given what I have been told by Ms Chaudhry, that neither the mother's job nor her husband's job could be performed from this jurisdiction so she will need to return to Singapore, that discretion would weigh in favour of returning G.

Article 13 (b)

35. As to the grave risk that G's return would expose him to physical or psychological harm or otherwise place G in an intolerable situation, the father's case is that grave risk arises because of separation between him and G. That he says will occur either:
 - a. because the father would be imprisoned in Singapore in relation to enforcement proceedings of money orders; or
 - b. because the father, fearing that risk, will not return to Singapore.

36. The father's position has shifted as I have related from one where he would not return to Singapore if I made an order for G's return to one where, subject to the granting of a series of protective measures, he would return.
37. Complaint is made by Ms Chaudhry that it was on the 20th August 2024 that the father was directed to provide a schedule of protective measures which would be appropriate were he to return to Singapore. He did not do so until, in loose form, some appeared in the note prepared by Mr Hames for this hearing. That note was supplied only on the morning of the hearing (Mr Hames having been late instructed). The schedule itself was provided only in the evening after the first day.
38. Nonetheless, after a short delay on the second day the mother was able to respond to the schedule.
39. It is appropriate that I consider these provisions alongside the 13 (b) argument notwithstanding the fact that they are produced late.
40. I have attached the document that came to me setting out the measure and the response at the end of this judgment.
41. Before I turn to it there are two points that I need to start with:
- a. Whether, if the father were to take a view that I consider to be irrational or inappropriate in relation to the protective measures and not return to Singapore, that would that give rise to a grave risk of exposing G to physical or psychological harm or otherwise place him in an intolerable situation, and
 - b. The more mundane issue as to how the protective measures are put in place.
42. Taking the mundane issue first, I expressly raised this with the parties because I was concerned that what they envisaged were undertakings to this court. I was told by Ms Chaudhry that they would be effective and told by Mr Hames that he had no expert evidence to suggest the contrary so the presumption was that they would be effective. It is on that basis that I take the protective measures by way of undertakings to this court.

43. Turning to the grave risk issue, I am told by the mother and the Guardian that the separation of G from his father caused by them being in different countries is not a grave risk. This requires some consideration because it is a strong part of the Guardian's position that G benefits from both parents.
44. I am referred by the parties to para 63 ff of *X (Children) (Abduction: Grave Risk: Child's Objections)* [2024] EWHC 1296 (Fam), a decision of Mr Harrison KC, as a succinct analysis of the law. That draws to my attention the strength of words such as 'grave' and 'intolerable'. It draws to my attention the assistance that may be derived from adopting a two-stage approach: (1) is there a potential grave risk and (2) do the protective measures sufficiently ameliorate the risk.
45. On the first stage here the Guardian's view is that the risk is not grave to G if he were to return in the care of his mother, even if the father does not return. He will be returning to a known home, to his school, to medical care, and to friends. If his father chooses not to come, then it will harm G but that does not amount to a grave risk. Her view, as I take it from answers to the questions that I put to her, is that the risk of harm to G is higher if he became aware that on the father's return he was imprisoned.
46. Ms Chaudhry draws my attention to *AT v SS* [2015] EWHC 2703 where McDonald J made an order for return where a primary carer refused to return, the father was unable to care for the child, and so the child was returned to foster care. The judge noted that the child would have to put up with some discomfort and distress, but the local authorities were equipped to address the discomfort and distress.
47. Mr Hames draws my attention to *Re GP (A child)* [2017] EWCA Civ 1677 in which a child was returned to Italy by the first instance judge notwithstanding that her mother was facing prison, but the Court of Appeal overturned the decision because the judge did not consider in concrete terms the situation the child would face on her return. Here, I note, the Guardian has considered in concrete terms the situation to which G will return. He also draws my attention to *Re W* [2018] EWCA 664 in which a first instance decision, which would have had the effect of returning children to their father if the mother were unable to obtain a visa to accompany them, was overturned by the Court of Appeal. I do note that in that case the mother was the primary carer and the

father a secondary carer. That of course make the case different from this case where the care is shared between the parties.

48. Taking into account these authorities I do conclude that the Guardian and the mother are right to say the risk arising from the father not returning is not grave in the sense that grave has been interpreted in the Hague Convention. It will not be good for G, but given the return with his mother is to the life he knows it is not a grave risk.

49. I do think however that the harm to G will be greater were his father to be sent to prison on his return. The risk I consider low, but I will bear the need to reduce that risk when I consider the protective measures proposed.

50. I turn now to those measures and refer to them herein using the numbers in the schedule.

1. I need not comment on. It is happily agreed.

2. The mother's proposal is acceptable to me. I will discuss this below with reference to debts generally.

3. As 2.

4. As 2.

5. Mother's proposal is acceptable. It is entirely reasonable on her part to leave open to her the possibility of pursuing enforcement in relation to unknown future breaches.

6. As 2.

7. I do not require and will set out my reasons below.

8. As 7.

9. Agreed as to Hague Conventions proceedings (following submissions). Not agreed as to the future. Again, I agree with the mother's position. The father cannot be free to defame the mother in unknown terms.

10. The arrest warrant I do consider should be the subject of a protective measure. I wish to guard against the harm that might arise if the father is arrested on his return to Singapore just as a matter of procedure in that country. It does however appear that the first step here is for the father to check the warrant exists and if it does take the steps set out in the letter provided by the mother's lawyer to discharge the warrant. If that is unsuccessful and he can demonstrate that by such measure as a transcript of the relevant phone call, then I would want the mother to either procure the warrants discharge or to provide the S\$2000 to meet the bail, on the strict basis this money is returned to her once the bail is discharged. I will leave the drafting of this to counsel.
11. As 1.
12. As 7.
13. I consider the mother's amendment appropriate. There may be need to change the arrangements for G but that is a matter for the court to determine rather than the parties unilaterally (if they cannot agree the change in mediation).
14. I do not require the mother to agree to this. Given the father has wrongfully retained G in this country it is appropriate for the mother to consider restricting his further international movement with G.
15. This is agreed save for the costs of the mediation. I see no reason why the father should necessarily be excused all costs of any mediation, and I accept mother's partial agreement as appropriate.
51. The protective measures that remain to be considered are all financial, so before considering them further I need to set out what I have been told about the father's finances.
52. The father set out in general terms in his statement that he did have some £1.2m to £1.3m in 2020. He set out there that he had two properties, a flat in London and a flat in Berlin. He tells me there that he is out of liquid assets but gives no account of the value of the illiquid assets. He does say that the flats would be slow to liquidate, but I am given no idea in the statement as to the rental return on them, or any facility that

he might have to borrow using them as security. I have since heard from Mr Hames in his submissions, to much the same effect. Save I am told that the father has encashed an ISA and borrowed from his father to fund his substantial legal fees, and that the properties are mortgage free. As to the German property the managing agent has disappeared, and no rent is being paid. The father believes squatters are in the property. As to the London property he has given notice to the tenant with a view to sell the property. It is not known how long it will take to raise borrowing against the property and the father had not yet made any enquires in relation to such borrowing.

53. Ms Chaudhry in her submissions pointed out that the mother had paid to the husband as part of the divorce settlement in November 2022 some £363,289 (in S\$) and she asked where that had gone. She said she had been told over the lunch adjournment by Mr Hames that there was a modest rental income from the London property.
54. Mr Hames at the end of all of the submissions did say that he was prepared to answer further questions on the father's finance. I declined that offer. It was too late after the close of the case to attempt to remedy deficiencies in his client's evidence. I had already effectively allowed the father to give evidence through counsel in Mr Hames submissions.
55. Dealing with 2, 3, 4, and 6. In short, these all relate to debts (or potential debts in relation to 3 and 6 – in slightly different ways) which the father owes to the mother by the operation of the Singapore child maintenance orders.
56. The mother says that where the father has not provided proper financial disclosure in these proceedings and where he had at the time of the financial proceedings between the parties in 2022 and 2023 some S\$ 2.3 m, and where the appropriate financial orders have been considered by the Singapore court and unsuccessfully appealed then she should not have to write off these items.
57. The father's case is that he does not want to return to Singapore because he fears that if he is there he will be chased for his debts to the mother. There is something obviously short sighted in this: given he has property here then the obvious thing for the mother to do is to chase him here. Beyond that however given that (a) in any event I cannot control his return, and (b) I have not considered his refusal to return as presenting a grave risk to G, and (c) these debts arise (or may arise) by operation of

law in Singapore and are designed (save for any residual debt from his defamation of the mother) to be for G's maintenance I accept that it is appropriate to adopt the mother's suggestion, namely, that she does not take any steps to pursue him before the first on-notice hearing in Singapore. That enables him to explain his position to the Singapore court before any enforcement measures are considered.

58. The father further asks me to consider that he is not properly able to engage in the legal proceedings because of his dyslexia and that he runs the risk that his failure to engage may cause him to go to prison. I have no reason to find that the legal system in Singapore is such that a litigant with dyslexia is likely to end up in prison. Further, if the father does not return it is likely that he will face more complicated double proceedings with an English (or German) enforcement of a debt arising under the law of Singapore.
59. Turning to 7, 8, and 12. The father's case is that he does not have any money and so he needs support from the mother to return to and live in Singapore.
60. The situation in this case clearly differs from those in which the act of separation between the parents occurs at the very moment when one parent abducts the child because these parents have already separated and the courts in Singapore have already considered what the appropriate financial orders between the two of them should be.
61. It is not for me on a summary return to re-visit those decisions.
62. I do remind myself that the burden of proof in relation to proving article 13(b) is on the father.
63. I consider that with a mortgage free property in London, worth I was told some £700,000 at the time of the parties' separation, there must be an ability, even if the father has no liquid cash, to raise money by borrowing relatively quickly. That may in the circumstances of this case, where the father's father can lend him money, be almost instant. The father can pledge the property, or part thereof to his father.
64. I remind myself that I have not considered the father's refusal to return as presenting a grave risk to G. Combining that with the observations on the financial situation above I see no need to require more of the mother in terms of meeting the father's expenses.

Conclusion

65. Drawing these threads together I record that I reject the two defences to the summary return order sought, and so will make an order for a summary return conditional upon the mother providing the undertakings I have specified. I will consider the precise terms of that order on receipt of a draft order from counsel. If details cannot be agreed, I will try and deal with the differences on paper.
66. I wish to communicate to the parents that despite having found that the fact that the father may choose not to return does not present a 'grave' risk to G I am confident that Ms Demery is right when she says that the father is important to G and that maintaining that relationship on a week by week, shared care basis, is something G wants.
67. I would urge the father to return as soon as he can after G returns and to engage with the mother, with mediation as agreed, and with the court system as is necessary. G will benefit from his relationship with him. If, as the father says, he cannot pay what is required of him then he needs to make that clear to the Singapore court and G's mother. I also urge the mother to remember that G would benefit from a relationship with his father. I do not thereby suggest that she has forgotten that, but there will be difficult times ahead and she may need to hold that thought in her mind if she is to make decisions which navigate the best path for G.

Mr Justice Trowell

14 October 2024

Schedule of protective measures

Nothing in the undertakings referred to below shall constitute any admission by either party as to any allegation made by the other, or shall be intended to bind or otherwise influence the courts of Singapore in any future determination of matters of welfare concerning the child, or child maintenance:

1. Not to institute or voluntarily support any proceedings whether criminal or civil for the respondent to be fined imprisoned or otherwise sanctioned arising out of G's wrongful retention in England and Wales. **Agreed.**

2. Not to pursue the respondent for any arrears of child maintenance, to withdraw forthwith her enforcement application in respect of child maintenance and to provide evidence of the same prior G's return.

Not to take any further steps to pursue the respondent for any arrears of child maintenance pending the first on-notice hearing in respect of child maintenance before the Family Court in Singapore.

3. Not to pursue the respondent for any part of the sums (including the sum of £47,200 paid in summer of 2024 she has paid to GOSH) for G's medical treatment during 2024 **until the first on notice hearing in respect of child maintenance before the Family Court in Singapore.**

4. To consent to the respondent's proposed application to discharge his child maintenance obligations contained in the order dated 30 January 2024. **Not agreed.**

5. Not to pursue enforcement of any **historic** alleged breaches of video contact by the respondent.

6. Not to pursue the respondent for further private school fees or medical costs incurred by G in Singapore **until the first on notice hearing in respect of child maintenance before the Family Court in Singapore.**

7. To provide 6 months' rent to the respondent in advance at \$4,000 per month for a rental property for him and G, first payment to be 48 hours prior to his return to Singapore. **Not agreed.**
8. To provide 6 months' maintenance to the respondent in advance at \$4,000 per month for the respondent, first payment to be 48 hours prior to his return to Singapore. **Not agreed.**
9. Not to issue any defamation proceedings in respect of any of the allegations the respondent has made in these Hague Convention proceedings or allegations he may make in any further child welfare proceedings in Singapore. **Not agreed.**
10. To take all necessary steps within her power prior to the respondent's return to discharge the arrest warrant issued against the respondent and to provide evidence of the same. **Not agreed. Information set out by M's lawyers as to the steps F has to take.**
11. To accompany G on a flight to Singapore and to fund her and G's flight. **Agreed.**
12. To pay for one flight for the respondent to return to Singapore not more than 28 days after G's return. **Not agreed.**
13. To comply with the order dated 18 November 2022 in respect of the arrangements for G's care **until the first on notice hearing in Singapore about child arrangements.**
14. Not to seek to restrict the father's ability to take G abroad from Singapore. **Not agreed.**
15. To refer any future issue relating to the arrangements for G's care to mediation in the first instance and to pay the costs of mediation. **Agree to mediation, not to costs.**

Cross undertakings

1. **F to confirm whether he has applied for a British passport for G and not to do so without the mother's written consent or a court order.**

