

Neutral Citation Number: [2015] EWHC 2968 (Fam)

Case No. FD15P00413

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice
Strand, London WC2A 2LL

Date: Thursday, 15th October 2015

Before:

MR JUSTICE HOLMAN

(Sitting throughout in public)

B E T W E E N :

AF

Applicant/father

- and -

HS

Respondent/mother

*(Transcribed by **BEVERLEY F. NUNNERY & CO.**
(a trading name of Opus 2 International Limited)
Official Court Reporters and Audio Transcribers
5 Chancery Lane, London EC4A 1BL
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

MRS M-C SPARROW appeared on behalf of the Applicant/father, attended also by Maitre Marie-Anne Levitan.

MR E. DEVEREUX appeared on behalf of the Respondent/mother.

J U D G M E N T

MR JUSTICE HOLMAN:

- 1 I am faced today with an unusual situation within the overall context of the Hague Convention on the Civil Aspects of International Child Abduction. The father is French. The mother is Danish. Although now divorced, they have three children from their marriage, now aged six, four and two. For some years until recently, the whole family was living in France, albeit that the parents were separated. There has indeed already been very considerable and rather intense litigation between the parents concerning their children before a number of courts in France.
- 2 During 2014, in the course of his employment, the father was posted to work for three years in London, England. He has established a home in which he currently lives to the west of Central London.
- 3 Earlier this year there were renewed proceedings before the Tribunal de Grande Instance in Paris, which has been translated in the translated documents before me as the “Paris Regional Court, Family Affairs”. On 15th June 2015 there was a fully contested hearing before that court and a judge named Judge Anne Bron, described as “the Judge of Family Affairs”. The preamble to the resulting order describes the mother as the applicant and the father as the respondent. It gives as the address of the mother an address in the south of France at which she and the children were indeed living up to and on 15th June

2015. It gives as the address of the father the place at which he was then, and still is, living to the west of London to which I have already referred. Both parents were present at the hearing and both were represented by lawyers. In the case of the father, the lawyer was Maître Marie-Anne Levitan who was, and remains his lawyer in Paris and, indeed, it is a privilege to have her present in the court room here today.

- 4 At the conclusion of the oral hearing the judge, as we would say, “reserved” her judgment. Her judgment was issued and her order made on 2nd July 2015. The judgment and reasons are recorded within the order and run to about eight pages which any person or court with a proper interest in this matter could read. The real essence of the case was that the mother had expressed a range of concerns to the effect that the father had, or may have, behaved with sexual impropriety towards one or more of the children, evidenced, the mother said, by the children displaying sexualised behaviour. It is clear that Judge Anne Bron rejected that the father had behaved in any way improperly towards any of his children. She continued, “On the other hand, it is now obvious that [the mother], despite all the reassuring evidence submitted to the proceedings, remains convinced of the dangerousness of the father and of the reality of the abuse ...” The judge clearly considered that the father had made proper arrangements for the children to live with him in London and attend schools here. She said, “He has planned the accommodation of his children in London and pre-registered them in schools. His work schedule includes standard office

hours which allow him to look after the children and his parents have confirmed that they will be available to give help. Although he is conscious that the change of residence of the children may require some difficult adjustment on the part of the children, he is ready to face this responsibility and provide the necessary support to his children.” The judge continued, “In these conditions ... it is in the best interests of the children that the habitual residence of the children be set at the father’s home [viz. the stated address in London], as this decision is the only one suitable to maintain the relationship of the children with their father. [The mother] will be granted a standard right to visit and accommodation as specified in the details of this decision ...” The actual decision and order of the judge, now at bundle page C55, was to recall that parental authority is to be exercised jointly by the parents, and to grant “the habitual custody of the children to the father in the United Kingdom”, and make provision for the children to have contact with their mother to be “freely determined” by the parents but, failing agreement, to be on alternate weekends “within London territory” and also half the school holidays.

5 As I have said, that decision and order was actually made on 2nd July 2015. Meantime, however, about a week earlier on 27th June 2015 the mother had brought all three children to live at an address in another part of London without the prior knowledge or consent of the father nor, indeed, the knowledge or consent of the French court which was so actively seized of this

case at the time and was in the process of deliberating and preparing its judgment.

6 The mother was dissatisfied with that decision and order of the Paris Regional Court and exercised a right of appeal to the Court of Appeal of Paris. That appeal was heard by the Court of Appeal of Paris on 24th August 2015. The Court of Appeal gave its decision and formal order a few days later on 28th August 2015. Again, the preamble on the first page of the decision and order gives the same address in the south of France as previously as the address of the mother and the children, and the same address in London as previously as the address of the father. Both parties were represented before the court, and in the case of the father he was again represented by Maître Levitan. The father was personally present at the hearing. The mother was not. It is a remarkable fact that although the mother was represented at that hearing, neither she nor her lawyer informed the father or his lawyer or, indeed, the Court of Appeal of Paris itself, that in truth she and the children were not by then residing at the address in the south of France but, rather, at an address in London. So far as I can perceive, the whole of the decision and order of the Court of Appeal of Paris proceeds on an assumption that the mother and children are still in the south of France.

7 At all events, for reasons which they gave, the decision of the Court of Appeal of Paris was to “confirm the decision [of the court of first instance] purely and

simply in its entirety” and the formal order records that the court “confirms the decision referred in its entirety”. It was only a day or two after 28th August 2015, namely on either 29th or 30th August 2015, that the mother first informed the father that in truth she and the children were living here in London and had been doing so since 27th June, about two months earlier. Almost immediately after informing the father of that fact, the mother issued an application before this court invoking the inherent jurisdiction of the High Court on 2nd September 2015. There have been a couple of interlocutory hearings on that application, but meantime the father issued his application, also to the High Court, on 16th September 2015 for an order for the return of the three children to France forthwith, pursuant to the provisions of the Hague Convention.

8 Here is the unusual and curious aspect of this case. By then, of course, the father, who had already been living in London for about a year, had successfully obtained the decision and order of the Paris Regional Court that the three children should be in his “habitual custody” specifically “in the United Kingdom” and, further, the mother’s appeal from that decision had been rejected and the decision confirmed. One might have expected, therefore, that the father, instead of making an application for the return of the children to France under the Hague Convention, would have commenced the procedure under Chapter III of Council Regulation (EC) No. 2201/2003 for the recognition and enforcement here of the subsisting French orders, which were unquestionably made by courts of competent jurisdiction in France (the

children being habitually resident in France at the material times) and provided, in effect, that the children should live with him here in London. However, his formal application form to the English Central Authority for the purposes of the Hague Convention stated at paragraph 6(a) (bundle page C40) as follows: “I am not seeking to register and enforce the French orders at this time but require the return of my children to France as they have been wrongfully removed from their country of habitual residence ...” Further, solicitors whom he had consulted, namely Pritchard, Joyce & Hinds, in a letter to the English Central Authority dated 11th September 2015 wrote, “... my client does not seek to register and enforce that order, or presently to request the return of the children to him”. So a most unusual and curious position presented itself.

- 9 Both parents are currently present and resident in London. The three children are currently present and resident in London. There are subsisting recent French orders, made with abundant jurisdiction, which provide that the three children should be in the habitual custody or residence of their father in the United Kingdom, and patently, at least initially, at the address at which he was and still is living, which is the address clearly specified in the French court orders. Yet the father was not apparently seeking to enforce those orders, but, rather, that the children return forthwith in France, albeit that he remains posted here.

10 On those curious and unusual facts the mother has applied for the father's application for a return of the children to France forthwith, pursuant to the Hague Convention, to be struck out or otherwise summarily dismissed.

Mr Edward Devereux, who appears on behalf of the mother, submits that this is simply not the sort of situation at which the Hague Convention is directed at all. He accepts that when the mother brought the children here on 27th June, without the knowledge or consent of either the father or the French court, there was on the face of it a wrongful removal by her of the three children from the country of habitual residence, namely France. Clearly, these recent events begin with a blatant act of international child abduction by the mother.

However, submits Mr Devereux, that act of abduction has in effect been overtaken by the subsequent events that the subsisting French orders themselves provide that the children should live here in England, and, to put it colloquially, it simply makes no sense now to contemplate their return forthwith to France when both parents are living here in London. He said that he could not understand the position of the father in pursuing an application under the Hague Convention rather than, if he wishes, seeking to register and enforce the French orders here. He speculated (making it plain that he was purely speculating) that the father might be adopting tactics influenced by the availability of free, non-means tested legal aid for applicants under the Hague Convention, whereas, in relation to any other application that the father might

make, legal aid is either not available at all or, at any rate, means tested and the father would be likely to be financially ineligible.

- 11 I asked Mrs. Marie-Claire Sparrow, who appears on behalf of the father, whether or not he does actually desire that the children should live with him here in London as the French orders provide. She told me that he does. I asked her why, therefore, had he not commenced the procedure for recognition and enforcement of the French orders under Chapter III of the Council Regulation? She said that the reason was that since her arrival in England the mother had renewed allegations against the father, both to the local authority for the area in which she and the children are living and also to the police, and that there was apparently some police investigation. It has to be noted that there has simply been no contact whatsoever between the father and the children since they arrived here in England, so there can be no possibility of any police investigation here into some alleged criminal activity here in England. However, as I understood it, the explanation given by Mrs. Sparrow is that for so long as he was the subject of a police investigation, the father considered that it was either not possible, or at any rate not appropriate, to seek that the children actually live with him here. So he sought, alternatively, that they be returned to France by the mother, where further litigation might take place before a court in the south of France to try to get to the truth once and for all of whether there has or has not been any inappropriate behaviour by the father towards the children. Mrs. Sparrow said that literally this morning the

father had been informed by representatives of the local authority who are present that any police investigation has been completely discontinued.

Therefore she said that the father does now desire, and intends to seek, the recognition and enforcement of the French orders so that the children move to start living with him here in London pursuant to those orders. Mr Devereux has made plain that the mother will seek to resist recognition and enforcement on one or more of the grounds contained within Article 23 of the Council Regulation. That, of course, is for another day.

- 12 It seems to me that in this unusual situation it is patently not appropriate that proceedings currently continue under the Hague Convention for the return of the children forthwith to France. The mother is living here and does not wish to return to France. The father is living here. The father wishes the children to live with him here, pursuant to, and by way of enforcement of, the French orders.
- 13 It is no doubt possible to wrap this case up in an immense amount of legal learning and elaborate reference to a number of international instruments, as, indeed, appears from the learned and sophisticated skeleton arguments of both counsel today. I prefer to stand back from that detail and adopt the shorter route. Although patently there was an historical wrongful removal and abduction of these children, the situation that now obtains simply is not the sort of situation at which the Hague Convention is directed. Neither parent

currently actually desires that these children move back to France. For those reasons I consider that it is inappropriate that the proceedings continue at the moment pursuant to the Hague Convention, whilst the father desires and intends expeditiously to take proceedings for recognition and enforcement of the French orders here. I am not, however, willing to go so far as Mr Devereux seeks and today strike out or dismiss altogether the father's application under the Hague Convention. My reason is that what makes this currently so inappropriate for application of the Hague Convention is the existence of the subsisting French orders and the father's desire, if he can, to enforce them here. The mother intends to submit and argue that those orders should not be recognised here. I have no idea how that dispute will play out, but if, in due course, the English court is persuaded that it should not even recognise those French orders, then it seems to me that a very different legal and factual scenario will exist than that with which I am faced today. It may be (I stress, *may*) that if these French orders are refused recognition altogether, the father may be able justifiably to say that the children should return to France.

- 14 For those reasons I am not willing today to strike out or summarily dismiss the father's application under the Hague Convention. But I will completely stay those proceedings until the conclusion of the proposed proceedings by the father for recognition and enforcement of the French orders. A detailed order has already been drafted to give effect to that conclusion and outcome. Those are my reasons for making it.