

Neutral Citation Number: [2013] EWHC 4403 (Fam)

Case Nos. LS13W08856, LS13P08623

IN THE LEEDS DISTRICT REGISTRY

The Courthouse
1 Oxford Row
Leeds

Date: Friday, 22nd November 2013

Before:

MR. JUSTICE BODEY

(In Private)

B E T W E E N :

EY

Applicant

- and -

RZ

Respondent

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MR. BOOTH (instructed by Graham Stowe Bateson solicitors) appeared on behalf of the Applicant.

MR. TYZACK (instructed by Dawson Cornwell) appeared on behalf of the Respondent.

J U D G M E N T (Approved)

MR. JUSTICE BODEY:

A: INTRODUCTION

- 1 This is the final hearing of private law proceedings between RZ ('the mother') and EY ('the father') concerning their son, S, who was born on [a date in] 2002. He is now therefore 11 years and 2 months. Each party seeks a residence order in respect of S, together, in the mother's case, with an order enabling her to take him back to the jurisdiction of his habitual residence of Qatar. He came from there with the father in November 2012 and has lived here with the father since that time. It has not been disputed that Qatar was then the jurisdiction of his habitual residence nor that his removal by the father to this country was without the knowledge or consent of the mother. The parties have one other child, a daughter, C, who was born on [a date in] 2000 and is therefore aged 13½. She lives in Qatar with the mother and has lived there at all material times. S is currently a ward of court pursuant to an order of Coleridge J. dated 16th October 2013 on application by the mother.
- 2 At this hearing the mother has been represented by Mr. Tyzack and the father by Mr. Booth. Both have put in written presentations supplemented by oral submissions at the conclusion of the evidence. Each has said everything that could be said on behalf of his respective client and I have been assisted by the collaborative way in which the case has proceeded at this hearing. I have read a large quantity of documentation to which counsel have referred me in the bundles and have heard oral evidence from the mother, the father and Mrs. Clare Brooks of the CAFCASS High Court team in London. Much ground has been traversed and many issues addressed. It is not necessary nor would it be proportionate to deal with them all. I shall therefore deal with those which seem to me to be the most important, although I have in mind everything which has been presented to me for consideration. As regards any matters of law, it does not need to be said that the party making an allegation has to establish it and has to do so on the balance of probabilities. Where lies are involved, it is to be borne in mind that a party may lie for a variety of reasons, such that lies are not necessarily indicative of culpability.
- 3 Various authorities are to be found in the bundles and particular reference has been made by Mr. Tyzack to *Re J (Child Returned Abroad: Convention Rights)* [2005] UKHL 40; 2 FLR 802. However, I cannot see any particular need to get bogged down with the legal principles here since a full hearing has now been conducted in this jurisdiction in circumstances where, as will be seen below, the Qatari court has itself already ruled that custody should rest with the mother. Obviously, I pay full respect to that decision, being a decision of the court of S's habitual residence, and I attach weight to it.

However, the essential question for me remains the issue of S's welfare, which is paramount. If I am satisfied that his welfare favours his returning to Qatar to live with the mother and C, then that should be the outcome. If, on the other hand, his best interests would now be served by his remaining in this country to be brought up by the father, then that should be the outcome.

B: CHRONOLOGICAL BACKGROUND

- 4 The father is 46, having been born on 25th October 1967 in Egypt. The mother is 34, having been born on 7th January 1979, also in Egypt. Both parties are of Egyptian nationality. They are both educated, articulate and, if I may so, intelligent individuals. They were married in Egypt in an Orthodox Coptic marriage ceremony (being Coptic Christians) on 27th July 1999 and thereafter continued to live there. C and S came along in 2000 and 2002, respectively. In 2007 the family moved from Egypt to Qatar. C was then aged 7 and S was 5. For the next five years, as will appear, the family made its home in Qatar and might have continued to do so but for the events to which I am about to come.
- 5 There is a dispute of fact between the parties as to how the marriage fared. The mother says that the father was controlling and violent throughout. He denies that and says that the marriage was very happy. For good reasons of time and proportionality, that dispute of historical fact has not been investigated in any detail and I do not consider it necessary, even if it were possible, to make positive findings about it. On 14th October 2012, a substantial argument occurred between the parties. They agree that the father was pressing the mother to resign from her work so as to devote more time to the children and home. The father asserts, but the mother denies, that he had also been pressing for her to give up her (disputed) link with Islam. At all events, the argument became, to some extent, violent, and I shall have more to say about this later. The upshot was that the mother was seen in hospital where various injuries were recorded. From there, she went via the police to a hotel with the children. The parties' cohabitation effectively came to an end. At the time of the argument the father accepts that he took the mother's passport, driving licence and mobile phone and also the children's passports. After the mother and the children had stayed at the hotel for a few days, she says that her brother came over from Egypt to help her and they obtained a serviced apartment where she went to live with the children.
- 6 There is a significant dispute as to what was actually happening over this period of time. The mother says that she was seeking refuge from the father's serious violence of 14th October 2012. The father says that the mother and children were spirited away by 'Muslim fanatics', called variously 'the

Muslim brethren' or 'the Muslim brotherhood', and were held in captivity by them. On 21st October 2012, the father issued an application in the Qatari court for an 'obedience' order seeking a requirement that the mother do return to the marital home and do obey him as her husband. His application referred to her having left the house on 14th October 2012 '... with my [the father's] children to an unknown place and did not return till now. This is without any reasonable cause'. The court referred the matter to a mediation centre but without success.

- 7 On 5th November 2012, the mother issued an application to the Qatari court, acting in person, for a divorce; for custody of the two children; for maintenance; and for a restraint order against disturbance by the father. On the father's case, this appears to have been issued whilst the mother was still 'in captivity' or being otherwise restrained by 'Muslim extremists'. Two days later, on 7th November 2012, the father went to the children's school in Qatar and invited the children to join him in fleeing the country to Egypt. It is his case that he had been advised to flee by the Egyptian embassy. C did not want to do so, but S agreed. So the father removed him from the school unilaterally and without the mother's knowledge, taking him to Egypt. It is right to say that he maintains he tried to contact the mother and maintains he asked C to tell her what was going to happen, but she (the mother) never consented to it. He took with him the mother's and C's passports. There is a dispute thereafter about the extent to which there was or was not communication between the parties, whether direct or indirect through the Coptic Church. I am reasonably confident that there was indirect communication by the church, but I am clear that the mother did not know exactly where the father and S were.
- 8 Once in Egypt, the father and S began to live in accommodation which seems to have belonged to a relative. The father obtained a good job and was intending to remake his life there with S. However, on 13th November 2012, the father was stabbed in the street in Cairo. That is borne out by a medical report dated 13th November 2012 referring to a stab wound 4cm long and 3cm deep in his back requiring stitches. The father told the immigration authorities in this country (see below) that it all happened very fast but that he had the impression of some remark by the men involving Qatar and his wife. As a consequence of this incident, the father says that he felt too unsafe to remain in Egypt.
- 9 On 22nd November 2012, again without the mother's knowledge or consent, the father brought S to this country and has lived here with S ever since, a period of one year now. S has made friends and is doing well here. On 4th December 2012, the father sought asylum here on the grounds of religious persecution. On 26th December 2012, on the father's application, the Qatari

court imposed a travel ban on the mother and C. On 18th January 2013, the Qatari court ordered the father to return S to Qatar. He has not done so. On 20th January 2013, the UK home department refused the father asylum in this country. He appealed that decision (see below).

- 10 On 22nd January 2013, a criminal trial of the father took place in Qatar arising out of the events of 14th October 2012 above. The father was not in attendance and says that he was not on notice. He was found guilty of an assault on the mother, based largely on the medical report about her injuries mentioned above. He was sentenced *in absentia* to a sentence of one month in prison with a bail of what I understand to be about £800 ‘for the temporary stay of execution’ and he was ordered to pay what I am told is £3,000 to the mother as compensation for her injuries. There is no sufficient evidence to show that the father knew of these proceedings, and I will accept that he did not. I shall therefore attach no weight to the fact of the conviction.
- 11 On 23rd January 2013, the father applied to the court in Qatar for an order for the mother and C to return home in Cairo[sic] where it was implied that he was then living. In fact, he was living in the UK. He blames this on out-of-date instructions to his Qatari solicitor, which I will accept is a real possibility. On 24th January 2013, the father was notified by the UK Border Agency that his application for asylum was refused and that he would be deported. The ‘Reasons’, dated 20th January 2013, run to 60 paragraphs. He appealed this decision and was represented by his solicitor. Evidence was heard. On 22nd March 2013, the First-tier Tribunal (Tribunal Judge Jones) rejected that appeal. Judge Jones rejected that the father was, as he was claiming, at risk of persecution on the account of his religious faith if he and S were returned to Egypt (the burden of proving a real risk of this being on the father). He did not accept the father’s account that the father had been targeted by Muslims, describing it as ‘... a concoction to support a false asylum claim’. Obviously, I am not bound by these findings, but I shall attach such weight to them as I consider they merit in the light of all the evidence which I have now heard. The father appealed this decision to the Upper Tribunal (see below).
- 12 On 9th May 2013, the court in Qatar heard the mother’s case for divorce and custody of the children. The judgment covered 18 pages and set everything out clearly. It noted that at a hearing on 27th March 2013 the father’s attorney had requested the Qatari court in a Memorandum that the mother be ordered to return with C ‘... to their home in Cairo, the father’s permanent place of residence ...’. On the same theme, the Judgment recorded that the father’s attorney had lodged a further Memorandum shortly after, 17th April 2013, in which an order was sought on behalf of the father that the Qatari court lacked jurisdiction as jurisdiction was vested in the Egyptian court. Challenged about

this in cross-examination, the father appeared to accept that he had talked about this application (that the Qatari court should defer to the Egyptian court) with his attorney, although he had not seen the paperwork. It is difficult, if not impossible, to resist the conclusion that the father was giving an impression that he was resident in Egypt (when, in fact, he had been resident in the UK since November 2012) so as to try to persuade the Qatari court not to deal with the issues between the mother and himself. Be that as it may, the decision of the Qatari court was to reject that suggestion that it had no jurisdiction. This was partly on the basis that the father had himself made an application to the Qatari court for the 'obedience' order (see above) and partly because the objection to the jurisdiction had been made too late. The court went on to grant a divorce to the mother on the basis of 'injury and discord' and to award her custody of the two children. Financial matters were not dealt with as the father was not there for his income to be assessed. The order of 26th December 2012, banning the mother and C from leaving Qatar (above), was discharged and the father was ordered to pay the legal expenses. In particular, he was also ordered 'to hand over the child S to the mother'.

- 13 The father appealed that decision. On 9th July 2013, the Qatari Court of Appeal dismissed his appeal. One of the father's grounds of appeal was that the mother was not fit to have custody. Specifically, on that issue, the court made the point that a mother is more entitled to custody '... unless the judge rules otherwise for the benefit of the child. The right of the child takes precedence and the judge must take that into consideration'. The court noted that the children '... are still young, where they need their mother'. In addition, the judgment continued, '... the case papers are void of any proof of the mother's unfitness to have custody of the children, whose interest is in being with their mother'. Throughout the extensive Qatari legal proceedings, the father was represented by his attorney and the mother represented herself. The rejection of the appeal meant that the order for the father to hand S over to the mother remained valid, but as I say it has not been complied with.
- 14 On 23rd July 2013 in the UK, the Upper Tribunal (Upper Tribunal Judge Lane) heard the father's appeal against the refusal of asylum. The case was again argued for him by his solicitor. The decision issued on 31st August 2013 was that the appeal be dismissed. This means that the father is now at risk of deportation save only that he has issued an application, acting in person, to the Court of Appeal for permission to appeal.
- 15 In late July 2013 the mother came to this country hoping to be able to collect S, pursuant to the Qatari court order of 9th May 2013. Although she did not and does not know where the father and S are living in this country, she located him through the Coptic Church. She went with her uncle to his local

church, where the father and S were preparing the church for a service. A serious scene occurred, which is the subject of heavy dispute. The father says that the mother and her uncle burst into the church behaving wildly, shouting, swearing and screaming at him. The mother was screaming that she would attack him and was encouraging her uncle to do so. He says that the uncle physically pushed him strongly into the wall, yelling swear words, insulting and threatening him. He says that the uncle shone a torch right up into his face. He, the father, says he was terrified for his safety. He says S did not want to have anything to do with the mother and was very upset. The father says he managed to get away and locked the doors to the church to prevent the mother fleeing with S whilst he called the police.

- 16 The mother's version is completely different. She says that all she wanted to do was calmly to speak with S, who, she says, was delighted to see her and C; but that the father forcibly prevented her from speaking with him. Suddenly, she says, she realised that the father had disappeared and the next thing they knew was that they (her uncle, C, S and herself) were locked inside the church. She, too, telephoned the police. When the police came after a considerable delay, they did their best to sort things out. They said that C should remain with the mother and that, since the Qatari order was not mirrored by any English order, S should remain with the father. They advised the parties to go to solicitors. That is exactly what the father did, and on 7th August 2013 an *ex parte* application was made on his behalf to District Judge Jordan, who made a non-molestation order injunction against the mother.
- 17 Since that time, there have been various appearances before the English court, which I do not need to go into, culminating in the case being set down before me at Leeds for three days, commencing this Monday, 18th November 2013, with a reading day. Evidence and submissions took until late afternoon on Wednesday, the 20th, and this judgment is delivered on Friday, the 22nd.

C: IMPRESSIONS OF THE PARTIES

- 18 It is always tempting to think that the impressions gained of the parties in the witness box are a reliable pointer to how they are in the real world. Of course, this is not necessarily the case. Individuals may behave quite differently at court through nerves or by being 'on best behaviour' or because of the importance to them of getting their case across or for any other reason. Impressions, therefore, have to be formed with caution and seen in the context of the overall evidence in the case. In this case particularly it is necessary to bear in mind the language and cultural differences between the parties and the English court. In different cultures and with the use of a different language it

may well be that a person adds emphasis or appears more forceful or dominant than may really be the case.

- 19 As for the mother, she is, as I have said, an articulate and intelligent woman. She is an administrator with a multinational company in Doha called P Systems, a subsidiary of a United States company. It has offices in many countries. The mother has continued to work there since the latter part of the marriage. Indeed, as already stated, her working seems to have been a major underlying cause of the breakdown of the parties' relationship. She gave her evidence calmly and thoughtfully in what came over as a child-focused way. She must have been sorely hurt by the loss of S through the father's unilateral actions in November 2012, yet she did not come over as being full of anger and recrimination towards the father. She showed obvious anxiety at the suggestion that he should have direct contact until she came to understand that there would be strict safeguards, such as the safe retention of passports, during the material time. She gave her evidence in English and, by and large, coped perfectly well.
- 20 As for the father, he elected to give his evidence in Arabic through an interpreter. I was not absolutely convinced how necessary this was since he describes himself in one of his statements as having been '... a highly educated finance manager with national and international qualifications, having 22 years' multinational work experience and having worked in Gulf states with a large salary and financial package'. There were some occasions when he corrected the interpreter's interpretation of something which he had just said in Arabic. Be that as it may, he was anxious to use Arabic and that is what happened. I am certainly not counting it against him in any way whatsoever. It has the effect of making it more difficult to get a flavour of his reactions, but there it is. He, too, like the mother, is, as I have said, a very articulate and intelligent individual. He is clearly resourceful, as the chronology shows, given his removal with S from Qatar and their continued presence here, some 10 months after he became vulnerable to deportation in January 2013. He has litigated extensively through his attorney in the court in Qatar and has achieved public funding in this country to obtain non-molestation relief in August 2013 and to pursue a residence application. He came over as a strong-willed individual, more so than the mother. Making all allowances for the matters set out at the beginning of this section, he gave his evidence forcefully, quite volubly and, as it seemed, rather dogmatically. There was a sense that he was right, regardless of other possibilities or other points of view. There were times when he was interrupted reasonably by Mr. Tyzack, trying to bring him more to the point when he was insistent on continuing with what he wanted to say. I gained the clear impression overall that, as between the mother and the father, the father was probably the more

dominant partner by quite a long way. I got the sense that, if push came to shove, the mother would have had some difficulty in standing up to him.

D: FACTUAL ISSUES

14th October 2012

- 21 The most important factual issue is as to what really happened in the matrimonial home in Qatar on 14th October 2012. It determines whether when the mother left the father taking the children, and their whereabouts became unknown to him it was because she was afraid and needed refuge (as she says) or whether it was (as he says) because she was taken away by her colleagues at work, being 'Muslim fanatics' intent on continuing to brainwash her, and kept in 'captivity' with the children. There is a further question upon which it impacts, namely, whether or not the 'Muslim brotherhood' had targeted this family and set out to destroy it (as the father says in his statement of 4th October 2013) to the extent that he became so scared for his life that he became convinced that he must flee with the children (in fact only S) to Egypt. Alternatively, as the mother would have it, did he flee because he knew he had overdone it by assaulting her on 14th October 2012 and realised that he was likely to be charged with a criminal offence? He was, in fact, so charged on 14th November 2012, a week after he and S had left Qatar for Egypt. The question of whether the company for which he worked and the company for which the mother worked were (as he claims) largely run by members of the Muslim brotherhood impacts on the validity of the medical report on the mother by Dr. F dated 17th October 2012, which the father claims is a fake. He says it is part of a malicious case which 'they' (the Muslim brotherhood) have invented in order for the mother to put forward a case against him.
- 22 If the mother's case is right, the assault on 14th October 2012 was a serious one. She says (B102) that the father punched her in the face, grabbed her by the hair, banged her head on the wall, threw her to the floor and kicked her. He held her a knife to her throat and said that if she did not resign from the company then he would kill her. He took her mobiles (one of which the father says had been given to her by the 'Muslim brethren' and was security-coded for calls only to and from them) and the passports of herself and the children. She says that following the assault, the father took her to the Coptic Church in Doha to meet their priest. She maintains (B102) and she repeated in her oral evidence that the father admitted to the priest that he had assaulted her, at which she says the priest told him that 'whatever happens, you cannot just beat her like that'. At that, she says the father apologised. She was not cross-examined to the effect that this did not occur. Her statement made to the

Qatari police on 15th October 2012 is entirely consistent with her version of the assault as I have just recounted it.

- 23 The father's version of the events in question, however, has not been consistent. He gave a statement to the Qatari police on 17th October 2012, in which the reason for what he called 'a verbal argument' was that he wanted the mother to resign from her job. He wanted her to stay at home and look after the children and the household duties, which she was not willing to do. He says he 'only took' her passport, the children's passports, her driving licence and mobile phone and 'informed her that he would book travel tickets for her and the kids to Egypt'. He denied assaulting her by beating her and suggested that her complaint was being made so as to put pressure on him to enable her to stay working against his will.
- 24 Two points can be made: first, even on the father's own case, he was being significantly controlling; second, there is no mention there of what he now says was a major problem in their marriage, namely, the mother's increasing association with work colleagues who he describes as fanatical Muslims, nor to her having become imbued with Islamic ideologies. He says that he obviously could not tell the Qatari police this since 'Muslim fanatics' have a hold within the police too; but it seems to me that if had been such a bone of contention within the marriage, he could at least have touched upon it as being something creating marital problems without giving offence.
- 25 The father's denial of any violence on 14th October 2012 made to the Qatari police was carried through into these proceedings. In his statement of 31st October 2013 he said in terms that there had never been any violence in the marriage. However, in his oral evidence he did admit for the first time (and the mother would say only partially) that he pushed the mother quite hard and that she 'might have fallen on a chair and hit the side of her face'. Asked if he accepted that his actions had caused her injury, he accepted that that could be so, although he went on to say that the real reason was to do with the mother's contacts with all the people surrounding her (the 'Muslim fanatics') which was the cause of the marital problems. He said that the mother had made up her story, helped by these people, to show that he was in the wrong. The father's case in respect of this incident has therefore shifted dramatically in his oral evidence and has come some way towards the mother's. It necessarily follows that his previous denials of violence have been false. He also added in his oral evidence that 'as in any family life, it is normal that there will be disputes and a husband can sometimes lose his temper'.
- 26 When considering what probably occurred on 14th October 2012, I am assisted by the report of Dr. F referred to above. No evidence or reason is advanced as

to why it should be seen as a false or malicious document. It clearly sets out the mother's injuries: bluish bruising to the nose; a lesion on her upper lip; a lesion on the left side of her upper neck; and a bluish bruise on her left shoulder, all indicative of the use of a contusive object. The mother claimed at the time to have been beaten by the father (although it is not recorded that she mentioned a knife) and Dr. F concluded that her injuries were 'not inconsistent with her claim'.

- 27 No-one will ever really know what happened between the parties on 14th October 2012 except themselves (the children were at school). There is a consistency in everything the mother says and an absence of it in the father's case. It seems inherently likely that she is right in saying, as she does, that when her colleagues at work could not contact her (because the father had taken her mobiles) they came round to check whether she was all right and that, finding her bruised and distressed, they took her off to the hospital, insisting, too, that she went to the police. She says that they helped get her and the children into the hotel. Taking everything into account, together with my findings in other respects which involve credibility, I consider that I can and should make the finding that the mother's version of the events of 14th October 2012 is more likely to be right in its essential features than the father's. So I find that the father did assault the mother broadly as she maintains.

3rd August 2013

- 28 Similar profound disputes of fact exist between the parties regarding the church incident on 3rd August 2013. I have set out the competing versions above. It is basically one word against the other. However, there is a modest clue to be found in the police incident report dated 29th October 2013, which describes the incident as 'a verbal dispute only'. A second undated police memo simply reports that 'an argument ensued' when the mother thought that she would have been within her rights to take S pursuant to the Qatari court order. The report concludes 'no offences disclosed'. If the father's version of the events in the church is correct, then he had been subjected to a violent assault. He says in a statement of 7th August 2013 that he was terrified for his safety, as one could well imagine if the mother's uncle had 'brought a bright torch to my eyes twice, pressing it against my face so that I could not see and pushing me to the ground [whilst] I could hear S screaming and crying, begging him to stop'. Having seen the father's firmness of mind in the witness box and knowing his willingness to assert his rights (for example, to have the mother ordered home to obey him and to retain her passport as her sponsor) I consider it quite unlikely that the father would not have reported to the police what he says he and S were subjected to by the mother and her uncle. There seems to have been no love lost here and I cannot see why he would have held

back when officers asked him questions like ‘What happened?’ and ‘Why have these people been locked in the church?’. I can quite understand that the situation may well have been emotional and heated, with S torn between his parents, and it may be that there is some truth in what each party says. By and large, however, I consider that I can and should find that the events were substantially as maintained by the mother rather than as maintained by the father.

Brainwashing by ‘Islamic fanatics’

- 29 As to the issue about whether the mother became allied to colleagues at her work and thus came to absorb and espouse the Islamic faith, there is a range of considerations. Again, the dispute of fact between the parties is profound. First, the above finding that the father assaulted the mother on 14th October 2012 tends implicitly to support the mother’s case that when she went to the hotel she was seeking refuge from the father and being supported by those work colleagues who were worried about her. She would be an unlucky individual if, on the same day as being assaulted, she were then to be spirited away from her home and held captive, as the father maintains, by ‘Muslim extremists’.
- 30 Second, I bear in mind in this context the father’s statement in support of his ‘obedience’ application to the Qatari court dated 21st October 2012, in which he stated that the mother’s leaving the house was ‘without any reasonable cause’. That does not accord with his case that she was taken and held captive by fanatics. If that had been so, she would have had good cause for not being at the matrimonial home. It may be assumed that that statement to the Qatari court, being contemporaneous, is likely to have been accurate. Certainly, those two statements of the father’s case (the mother’s staying away from home with no reasonable cause, as compared with being held in captivity) are mutually inconsistent.
- 31 Third, there is an issue about two named female colleagues of the mother’s, L and V. The father says that L is one of a hard core of ‘Muslim fanatics’ and that V is willing to go along with L. He explains in his statement of 31st October 2013 how they took the mother and children away on 14th October 2012 and kept watching and spying on them at the hotel, not permitting them to go out unless accompanied. S, himself, made a statement in the immigration proceedings referring to being ‘always watched by L and V’ at the hotel, with the result that he and his mother could not leave. However, there is before me an exchange of emails dated 31st October 2012 in which Q, associate sales engineer of P Systems Doha, sent an email to a number of the mother’s work colleagues, including L. She also sent it to the father. It was

copied to V. It notes that the mother had not been in a good mood and states that she, Q, and the father had thought about throwing a surprise dinner for her to cheer her up. She requested possible dates, suggestions for a venue and asked that husbands and wives should come along to make ‘spectacular, remarkable time out for RZ [the mother]’. The mother says that the reason she had been ‘down’ was the fact of the assault by the father the fortnight previously (14th October 2012) and that she was now living with the children in a serviced apartment, trying to keep her whereabouts unknown to the father. Later that same afternoon (31st October 2012), the father replied by email to all of the mother’s work colleagues involved to say:

‘... I’m so much happy to find such marvellous family members like you all, P Systems ... from my deep heart, it’s so much pleasure for me to arrange a brilliant event for my lovely wife RZ and I’m ready for this occasion at any time and wherever you like. Thanking you all for highly sentiments and this is in line with my expectations from this great company.

‘Kind regards,

‘EY, Financial Manager, T Company’

On the face of it, this email is wholly inconsistent with L and V and others at P Systems being part of what the father now describes as a ‘professional Muslim brotherhood team’ devoted to brainwashing the mother. However, he gave an explanation in cross-examination to the effect that his email was just, in fact, a device to string them all along in the hope that he would be able, as he put it ‘... to snatch her back from the claws of the lions of the Muslim brethren’. I have to say that this explanation did not come over very convincingly and I find it more likely that the father’s email was expressing genuine sentiments at that time. If that be right and accepting the mother’s evidence, as I do, that her work colleagues, including L, were just friends trying to help her after the assault on 14th October 2012, then it goes a long way to dismantling a major plank in the father’s case about the brainwashing of the mother by fanatical Muslims. It also means that S’s statement about ‘being constantly watched’ by L is putting a slant on what was happening, which probably originated from the father’s strong feelings rather than from the reality.

- 32 Fourth, in the context of the father’s case about the strength and fanaticism of the ‘Muslim brethren’, there is a curiosity about why he fled to Egypt, even recognising that it is his homeland. In his statement of 4th October 2013, when expressing his purported fears about S being tortured or killed in a country where Islam holds sway, he says that S could be killed in Qatar or Egypt. It is

difficult to see, if the father found Qatar to be unsafe, how he could have gone back to and settled in Egypt with any hope of improved security for himself and S. There is a further point that no harm seems to have become the family in the five years during which they were in Qatar between 2007 and 2012.

- 33 What did become apparent as the hearing proceeded was the weight apparently given by the father to the fact that when the mother applied for her divorce from the Qatari court she included in her 'petition' some Islamic verses and other Islamic materials. He considers that this supports his case about the mother having espoused Islam, especially when her divorce was on the grounds of what we would call 'conduct'; whereas in the Orthodox Coptic faith adultery is the only ground for divorce. The mother's answer to this point in cross-examination was simply that she left the documentation to her lawyer who was helping her behind the scenes. He put this material in (she said) and, as far as she is concerned, it has no bearing on her continued adherence to the Coptic faith. I accept the mother's evidence in that respect. However, I can see the father's reasoning and how it may have fuelled a belief that the mother has espoused Islam. It is not a belief in respect of which he has been consistent. He has asserted it in most of his statements, but in his immigration statement made between January and March 2013 he says in terms '... my wife did not actually convert to Islam, she was just being pressurized'.
- 34 Putting all this together and having seen both parties, I accept the mother's evidence that she has continued within the Coptic faith and has not espoused Islam. I am not persuaded by the father's case that she was being worked on and succumbed to 'Muslim extremists'. I am not completely convinced that he has quite simply fabricated this, as was the finding in the Immigration Tribunal by Judge Jones; but I do think it has become a construct for him, which he may have come to believe by way of a self-serving explanation for the breakdown of his marriage and for his having left Qatar with S hurriedly and without the mother's consent. Perhaps this is unduly generous to him; but the depth of his conviction, as demonstrated in the witness statement, appeared profound. In my judgment, however, there has been and is no objective justification for it.

Other more minor factual disputes

- 35 There remain three other factual matters which I should deal with shortly. The first of these concerns who was the primary carer of the children until the separation. In para.21 of her statement dated 15th October 2013 the mother asserted that S had been in her primary care since he was born. That was not, so far as I can see, contradicted by the father in his statement in response; although he contradicted it in his oral evidence and said that he had been the

primary carer. Little attention was paid to the point because it was raised so late, but my impression is that until she started work, when the children were old enough, the mother was their full-time mother and carer. Once she started work, I can well see that the father began to play a relatively greater role because he was working closer to hand and was able to get home on occasions when the mother was at work. I do not think, whether I am right or wrong, that this significantly influences the decisions which I have to take.

- 36 The second factual matter relates to whether the parties were in communication once the marriage had broken down. The mother says they were not. The father has said there were a large number of emails from him, added to which there was communication by the Coptic Church. He also said in his oral evidence that there were regular, very long Skype calls between the four family members, although this was never put to the mother in cross-examination, quite simply because the father has never said it before. He does accept that he at no stage told the mother where he was living with S, other than that they were first in Cairo and later somewhere in England. He told me that the address in England would not have meant anything to the mother anyway, so he did not tell her it. The mother has relied on some emails sent by C to the father, suggesting that he was not responding to her (C) and complaining that he was not letting her (C) communicate with S ('... I miss him and you are killing me each passing day': 1st March 2013). It is right to say that in one of her emails, 16th February 2013, C thanked the father for his email, so there must have been some communication between them; but she was clearly angry with him, telling him to respect her intelligence and referring to the fact that she and the mother had been in church that day, like every Saturday, taking communion '... which means we are still Christians, not Muslims, like you lied to my brother and Father B [the Coptic priest in the church in England]'.
- 37 In re-examination the father produced an email to the mother dated 2nd December 2012, asking her to come to London to start a new life with him and declaring his love for her. He also in re-examination introduced a document listing 25 other emails by their Arabic titles, but they are not dated nor produced with their text nor with any translations.
- 38 I have concluded that this issue about whether or not there was direct communication between the parties has been raised so late as to be incapable of just determination. It is impossible to say whether these asserted emails were actually sent to the mother and/or whether they were actually received by her. Such issues would be capable of proper determination; but not without much further and better evidence. That would be disproportionate to embark

on since the issue only goes to credibility and it is virtually inconceivable that it would have any impact on the outcome either way.

- 39 The third remaining point is as to whether the father was frank when he sought the *ex parte* injunction, referred to above, in August 2013. Mr. Tyzack points out that the father relied in his Form C100 dated 8th August 2013 on the fact that he fled from Qatar to Egypt, having been told that his safety was at risk due to religious persecution; but that he (the father) failed to mention (a) that this had been rejected and described as ‘a fabrication’ by the First-tier Immigration Tribunal (b) and that his appeal to the Upper Tribunal was rejected. It is also the case that there is no mention in the father’s statement in support of the *ex parte* application to the fact that the mother had been granted a custody order in respect of the children in Qatar, which would have put a different emphasis on her turning up at the church on 3rd August 2013; nor was there any mention of there having been any scene on 14th October 2012, still less a scene in which the mother was the one who had been subjected (even on the father’s own case in his oral evidence) to a physical assault. It was further stated in Form C100 that the mother had ‘agreed to accept Islam and renounce Christianity’, which is, as I have said, inconsistent with the father’s statement in the immigration proceedings to the effect that the mother had not converted to Islam but had just been pressured to do so. I consider that these are valid points and that there was an absence of full and frank disclosure when the father made his *ex parte* application, leading to non-molestation orders being made in his favour against the mother. This is, to an extent, indicative of a self-serving approach to issues in respect of which there should be openness.

E: THE WELFARE CHECKLIST AND THE CAFCASS EVIDENCE

- 40 I have to have regard to all the circumstances but in particular to a number of specified matters set out in s.1(3) of the Children Act 1989. I also have to pay regard to and respect the Article 8 rights of all involved, only interfering with them where necessary and proportionate.
- 41 As to the ascertainable wishes and feelings of S, he was seen by Mrs. Brooks on 23rd October 2013. He told her that there were ‘bad’ people who had ‘changed’ the mother and had ‘brainwashed her’. He said that after meeting these people she had started shouting and was angry. Asked by Mrs. Brooks how he knew this, S said that the father had told him, but that he had seen these people when ‘they’ (seemingly L and V) came to the house and took them (seemingly the mother, C and S) away. He said that when his father had realised what was happening to the mother (pressure from Islam) he (the father) had told him (S) about it. S said that he would be sad if he had to

return to Qatar, but he did not say he would be frightened. Mrs. Brooks described him as an intelligent, confident and thoughtful young person, although she did not think that he had the maturity to question things which the father had told him. She considers that he believes what he is told by the father and accepts his father's view, being loyal to him and having 'total faith' in what the father has said. She doubted that S understands what the risks referred to by his father are supposed to be nor what they were really fleeing from. S's own statement in the immigration proceedings refers to the father having come to the school on 5th, 6th and 7th November 2012 and continues:

'... he [the father] would tell me that he missed me and that I should come back home. He asked me if I wanted to go to Egypt and I said yes ... I agreed because I wanted to get rid of these people [seemingly L and V] that were bothering us.'

Having seen the father and his bearing in court, I consider that S would have found it difficult to do otherwise than go along with his father's wishes.

- 42 Mrs. Brooks witnessed contact between both children and the father the day before this case started, namely, on the reading day, Monday, 18th November 2013. She told me that S and the mother were pleased to see each other. They said how much they had missed each other and it was all very emotional. S said that he felt it had been his 'chance' to leave Qatar, but he could not say what that meant. He spoke of 'bad people', at which the mother was trying to reassure him that there were no bad people; just friends trying to keep her safe. Mrs. Brooks told me that her view first formed at her interview with S about his having picked up and absorbed his father's views was increased by seeing him on the 18th. She said that he again seemed to be repeating things which he did not understand. She spoke of S telling his mother '... we've spoken to you and we've tried to get you to do what we wanted you to do', an understandable alignment with the father's approach. When the father saw C that afternoon, Mrs. Brooks told me that he told her that he loved her very much and that he had not hurt her mother. C disagreed with him on that, asking him, 'If we were together again, would you hit me?', to which the father said 'No'. Even on the father's own evidence, as amended in the witness box, his telling C that he had not hurt her mother was deeply untrue. Mrs. Brooks thought that the father and S had a good relationship. She told me that S was not saying to her that he did not want to go back to his mother; he does want to do so but wants his father to go too. When Mrs. Brooks saw the two children together on their own and had to pop out for a minute, she came back to find them 'chatting away, giggling and laughing'. She felt they had a good relationship together in spite of not having seen each other for a year.

- 43 I conclude that superficially S has expressed his wishes and feelings to remain with the father; but that (understandably) he is under strong intentional or unintentional influence from the fixed mindset of the father and that, in reality, he is very conflicted. He would like to be with his mother and C; but he would like the father to be part of the family too, which is not possible.
- 44 I next have to consider S's physical, emotional and educational needs. His physical needs would be met by either parent. As for his emotional needs, I agree with Mrs. Brooks that it is not a healthy thing for S to be of a belief that he is 'on the run' from some sinister and violent force when (as found above) this is not factually the case. That situation would be perpetuated if he remained with his father. There is also a real concern over the father's insight in involving S in matters which adults should deal with: expecting S to give a view about fleeing Qatar; having him make a statement in the immigration proceedings aged 10½; and consulting him as to whether the mother should be told the address of his school (Grahame Stowe's letter of 18th October 2013). As to S's educational needs, there is no doubt he is doing well at his school in England. However, the mother tells me he would probably be able to rejoin his school in Doha, where he left behind friends and familiar things, because C is still a pupil there.
- 45 As to the likely effect on S of any change in his circumstances, obviously a return to Doha would be a big change and a disruption, but it would give S the great pleasure and comfort of being with the mother and C in an environment where he lived between the ages of 5 and 10 (2007-2012). He would doubtless be very sad to leave his father, but then, unhappily, he cannot have both his parents caring for him in one unit. With Skype and the possibility of contact with provisions about passports, *et cetera*, there is no insuperable reason why he should not be able to see the father. That decision is largely in the father's hands as to where he is and is not willing to go. After a settling in period, it is likely that S would remake his life with the mother and C where it so suddenly left off.
- 46 As to S's age, sex, background and characteristics, there is nothing in particular to add. As a boy, he is coming towards the age where paternal influence and closeness may be a good thing, but, equally, he would benefit greatly from being brought up in a society of his mother; also of his sister, with whom one would hope he will have a fulfilling relationship for the rest of his life.
- 47 As to any harm which S has suffered or is at risk of suffering, it is likely that an immediate withdrawal from school in Qatar on 7th November 2012, with no family goodbyes, a flight first to Egypt (where he knows his father was

stabbed) and then to England, and a lack of close contact with the mother and C for a year will have caused S some emotional harm. He would be harmed in the future if he continues to believe that he is running away from an evil force. He is also at risk of suffering disruption and uncertainty if, as seems, on balance, more likely than not, the father were to fail in the Court of Appeal. They would have to face the reality of deportation.

- 48 As to the capability of each of his parents, I consider that each parent is capable of caring for S's physical needs. I would be concerned about the father's deeply held conviction about the mother's espousal of Islam and about the risk which he believes, or says he believes, is presented to himself and S by Islamic fanatics. That would inevitably influence S detrimentally. There is a worry, too, about the father's insight into how S's expressed wishes come about. He, the father, put in his statement of 4th October 2013 that 'S does not want any contact with his mother'. Predictably, however, when S met his mother four days ago, he was thrilled to see her and it is likely that his stated view (if correctly reported by the father) was in deference to, or largely in deference to, his sense of his father's feelings. I am not sure if the father is able to stand back and see this.

F: CONCLUSION

- 49 Pulling all the threads together and regarding S's welfare as paramount, I have come to the conclusion, with little doubt, that he should be restored to the mother in Qatar. A review of the welfare checklist points in this direction and it was the conclusion of the Court of Appeal in Doha too. As I have said, I do not think S should go immediately because, on this occasion, he needs time to say his goodbyes and sort out his bits and pieces. But I think he should go in the immediate future so that the process is not drawn out as I am sure it will be painful for the father. A paragraph should go into my order to deal with the question of contact, which I hope the parties will be able to cooperate to arrange. I suggest they should exchange email addresses for this purpose.
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