Neutral Citation Number: [2015] EWHC 219 (Fam)

Case No: FD14 P00574

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2015

Before :

SIR PETER SINGER

- -

Between :

IS (A Ward by her next friend Nina Lind Hansen)	**Applicant**
- and -	
DBS	**First Respondent**
- and -	
JS	**Second Respondent**

- -

- -

David Williams QC (instructed by **Freemans**) for the Applicant Ward **IS**
Edward Devereux (instructed by **Dawson Cornwell**) for the **First Respondent Mother**
The Second Respondent Father, acting in person, did not attend

Hearing dates: 2 and 4 February 2015

- -

Judgment

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the child and the adult members of her family must be strictly preserved.

Sir Peter Singer:

1. This judgment is concerned with IS, the daughter of profoundly estranged parents to whom I shall refer as the father and the mother. IS will be 15 in July, that is to say in less than six months. For many years torn between her parents she is now at risk of being torn between the competing and conflicting jurisdictions of courts here where she lives, and Israel the country of her birth.

2. The hope of this judgment is that it may be possible to stave off such a thoroughly unsatisfactory situation in which IS would throughout the remainder of her minority (that is until she reaches the age of 18, so far as this jurisdiction is concerned) be at risk in her dealings with her parents and with the two courts of having no option but to live her life, whether sadly or defiantly, in breach of the orders of one court or the other. That is not a comfortable position in which a young person can be expected to grow and develop without strain.

3. Through this judgment I hope to speak out to and to be heard by the judge in Israel, Judge Shlomo Elbaz in the hope that together we may find some way through this seeming impasse. Judge Elbaz for some 13 years now, since IS was but two years old, has regulated this family's disputes in the Jerusalem Court for Family Matters. With that in view I shall direct that this judgment be swiftly translated into Hebrew, as should the other documents which I shall mention should be made available to Judge Elbaz. And I shall in the meantime transmit it in English to Judge Greenberger, the Israeli International Family Law Liaison Judge, with the request that he should as soon as practicable communicate its essence to Judge Elbaz.

4. The next step in Israel is that a hearing has been fixed to take place before Judge Elbaz later this month, on 22 February, and he has ordered that both IS and her mother must appear in Jerusalem on that date. What the mother decides to do in response to that is a matter for her, she is an adult and has access to her own lawyers both here and in Jerusalem.

5. But the position is different so far as IS is concerned. I have not met IS nor am I obliged by any requirement or practice of English family law to do so at this stage of these delicate proceedings. But I am quite satisfied from what I have read and what I have been told by experienced Queens Counsel, Mr David Williams, are her clear and direct instructions to him through her next friend and experienced specialist family solicitor Miss Hansen, that she will not travel to Jerusalem for that hearing. That is, I am completely satisfied, the reality of her situation, which no order of either court will in practice countermand.

6. Whether IS goes to Israel for that hearing or indeed leaves the jurisdiction of this Court which is England and Wales, is as things currently stand, in my respectful opinion a matter for the English court. This is because as a matter of English law I am quite satisfied that IS on 9 April 2014 became and has since remained a ward of this Court.

7. An automatic consequence of a ward's status as such is that, while the wardship continues, and so long as she remains under the age of 18 unless before then it is brought to an end, no person (neither her father nor her mother nor any third party) is entitled to remove her from England and Wales even if all parties with parental responsibility for her in English law (in IS's case, both her parents) consent, unless this court permits that removal in advance. The father (understandably, having regard to the stance he has adopted in relation to these proceedings, which is to take no part in them although he remains a party) has made no application for permission to remove IS. And even if he had there is no way in practice that he could have achieved that outcome, and no way in which this court could have coerced her to get on a plane in the face of her expressed opposition.

8. It seems to me however appropriate, for two reasons, that I should of my own motion remove the responsibility from both IS and her mother of acting in open defiance of Judge Elbaz' most recent order requiring their attendance in Jerusalem. I shall take the responsibility upon myself and upon this court in what at this stage I perceive as the ward's best interests to order that neither parent shall remove her from England and Wales, nor indeed from the day-to-day care of her mother, without this court's permission unless it be for the purpose of such visits to her by her father in this country, to be subject to such arrangements for the presence of a third party and any other reasonable safeguards, as she and her father between them agree.

9. It is a matter of very considerable regret to me personally as a judge (albeit no longer full-time) of the Family Division in England that I see no alternative but to impose these restraints which directly contradict the express intention and the order of my Israeli judicial counterpart. Such a situation is not lightly to be countenanced nor brought about, and so I shall now explain why I take this exceptional course and how I hope further similar cross-jurisdiction collisions may be avoidable in this case.

10. But first I shall trace as briefly as I can the most salient posts along the path of this family's tragic forensic odyssey.

11. By 1995 both her parents had immigrated from their countries of origin to Israel where they married in 1999 and IS was born in 2000. But in August 2001 her mother without the father's consent brought their child to England. She returned with her to Israel only after in July 2002 the London Court of Appeal dismissed her appeal against a return order made pursuant to the 1980 Hague Child Abduction Convention. It was upon that return that the parents commenced proceedings in the Jerusalem Court for Family Matters and that Judge Elbaz was allocated as the family's judge.

12. Between 2002 and 2010 (but not without difficulty nor without court intervention) frequent overnight unsupervised contact including staying contact were maintained between father and daughter. In 2004 the mother failed in her application to relocate with the child to England. In 2005 the parents divorced and the mother made a second application for permission to move with the child England which, in April 2009, Judge Elbaz granted. It was not however until May 2010 that the appeal by the father against that decision was compromised by agreement between the parties to a number of conditions upon that move, including an obligation upon the mother to obtain a mirror order in London before moving here with IS. One condition required the mother to lodge a bond of NIS300,000 equivalent to about £50,000 with the Israeli court. The permission given by the Jerusalem court was however interim, provisional, and subject to review by the court which the parties agreed should retain jurisdiction for welfare issues on the basis that IS would be regarded as continuing to have her habitual residence in Israel throughout that five-year period, until 2015.

13. On 16 July 2010 Parker J made an order in London on the mother's application which mirrors and which 'entrenches the arrangements set out in the District Court of Jerusalem dated 13 May 2010 and establishes the jurisdiction of the Israeli family Court.' As well as detailed provision for paternal contact the order recited that 'the State of Israel shall be considered the habitual place of residence of the child for five years.' It is my view, which I express firmly although provisionally, that the requirements and the terms of that order no longer have effect as they have been superseded (as will be seen) by the subsequent October 2012 order of the Israeli court which covers the same ground but makes different provision. And in any event the institution of wardship proceedings is a compelling supervening juridical event.

14. As noted however by Judge Elbaz at paragraph 14 of a judgment he gave on 3 July 2014 'the controversies between the parties did not cease even after the child's immigration to England. In sum, over 20 files were conducted between the parties, including in them tens of petitions. Most of these proceedings were concerned with the conditions regarding the contact arrangements between the [father] and the child, the visits to Israel, appointment of a parental coordinator, etc.'

15. At a review hearing on 28 October 2012 the court in Jerusalem recognised that the child's relocation to London was no longer temporary, but permanent, and ordered in accordance with the parties' agreement that the Israeli court should retain jurisdiction for a year longer than previously directed, until May 2016. The mother was directed to obtain a further mirror order to reflect these changes, but did not do so.

16. IS has therefore as a matter of fact been living in London with her mother at the home of her maternal grandparents since a date in or about July 2010. On a number of occasions until the end of 2013 applications were made to and orders made by the Jerusalem court.

17. Towards the end of that year, however, contact was interrupted while between December 2013 and February 2014 the local authority in London responsible for child protection and welfare services, the London Borough of Redbridge, undertook investigations prompted by a referral to them from IS's school. The local authority in terms told the mother that pending their investigations any attempt to remove IS to Israel would result in police protection measures being taken to ensure that she remained 'safe and protected.'

18. Whether that was a proportionate response is a question upon which I pass no judgment, any more than do I comment upon the extent to which the mother may have stage-managed this situation. Nor have I formed any view about the truth or otherwise of what IS is recorded as having said in the course of her involvement with the local authority, contained within their assessment dated 7 February 2014. I do though note that the father was included in that assessment and in the course of it the father was said by his therapist in Israel, Dr G, to lack insight into his daughter's developmental needs. I deliberately avoid going into any greater detail on this topic at this stage, but am concerned that that assessment and the insight which it may be thought to allow into the state of mind of all three individuals concerned may not have been made available to Judge Elbaz. This is a document which I direct shall be translated into Hebrew and shall be sent to the Jerusalem court with my respectful request to Judge Elbaz that he should consider its contents. It concludes with a recommendation for reduced contact which should be subject to supervision. The local authority embargo upon travel to Israel was then discontinued.

19. I note in particular albeit in passing that IS is recorded as saying that she would like to maintain a relationship with her father, but with less frequent contact, and that her father has said that he loves IS and wishes the best for her, and wants to maintain a good relationship with her. Judge Elbaz and I no doubt share the aspiration that both their wishes may be accommodated.

20. Things thereafter went from bad to worse. The mother did not attend hearings in January 2014 convened by the Jerusalem court in response to complaints by the father that he was being denied contact. The mother for her part made a cross-application to restrict contact on the basis that it was harming IS.

21. But then both mother and child flew to Jerusalem to participate at a hearing on 16 February. IS was interviewed by a social worker AL. Whatever the position may previously have been, the mother in court before me this week agreed that, if possible, the notes of the social worker and any report she has made to the Jerusalem court may be made available (subject of course to Judge Elbaz authorising their release for this purpose) to the expert psychiatrist whom I propose should report on the topics I shall discuss below. I do respectfully so request so that there is reduced risk that material information does not reach that expert.

22. Since that February hearing further polarisation has occurred. It was at the mother's prompting that IS and Ms Hansen met. That meeting led to the conclusion reached by Ms Hansen that the level of IS's maturity is such as to make it appropriate to treat her as a young person with the capacity to participate

in proceedings vitally affecting her welfare and in which she wishes her own voice to be heard. On 9 April 2014 IS became a ward of this court automatically upon issue of the wardship proceedings currently pending before me, to which proceedings both her parents are parties who have an opportunity to participate. Although in correspondence it was contended on behalf of the father by his solicitors (now no longer instructed by him) that that wardship had lapsed so that IS is no longer a ward, I am satisfied that that contention is wrong as a matter of law, and thus that since 9 April 2014 IS is to be treated as this Court's ward.

23. In response to these developments in London, on 4 June 2014 the father instituted an application in the Jerusalem court for injunctions to be made against both mother and child prohibiting them from engagement in English court proceedings concerning IS. On 3 July 2014 Judge Elbaz concluded at [21] that 'there can be no doubt that the [mother] is behind the filing of the suit [in London]. Filing the suit constitutes a violation of the District Court's decision of 13 May 2010 and decisions of this Court which were given pursuant to it.' He made anti-suit injunctions against both mother and child as requested.

24. The London proceedings came before judges of the High Court on 9 July and 31 July 2014. At this stage all parties including the father were represented, his application being that the proceeding should be stayed or dismissed upon the basis that the only jurisdiction which should decide issues relating to IS's welfare is the Jerusalem Family Court.

25. My first involvement with the case took place between 3 and 5 September 2014 (the first of those days being made available to me to read into the case) when the first questions on the agenda were to decide upon the issues raised by the father as to jurisdiction. By then both father and mother had filed statements within these proceedings, as had Ms Hansen on behalf of IS.

26. In the event I did not determine those issues at that stage but adjourned them over until this week, in the hope however that a compromise arrangement brokered between the parties might lead to some less litigious and longer lasting beneficial outcome than the attrition of well-nigh continuous and interminable forensic confrontation.

27. At that hearing the parties were all represented by both solicitors and counsel well known to me over the years to enjoy high reputations for their skill and ability, and their knowledge and experience in complex cross-border family issues, and for their integrity. That integrity includes a willingness to descend from the engrossing conundrums of the legal abstractions which any case may present, and to keep firmly in view the human predicament of their respective clients and the overall objective of securing the best (or at least the least damaging) outcome for the child or children concerned.

28. With their assistance, over 2 days, the parties reached agreement on a number of important issues, all recorded in the order but the most salient of which I repeat here for convenience and clarity. [The order has already been translated into Hebrew, and to avoid any inconsistency the relevant portions of that translation should he be incorporated when this judgment is itself translated.]

A. AND UPON the father confirming that he accepts that as a matter of fact IS is habitually resident in England.

B. …

C. AND UPON the father confirming to the court that he:

(i) does not seek to change IS's established home with her mother in England and that he will not seek her removal either from her mother or to live in Israel.
(ii) accepts that, as and when IS visits Israel to see him and to consolidate her Israeli heritage, he will neither take nor support any steps which might prevent her from then returning to England.
(iii) will not institute contempt proceedings against IS.

D. AND UPON all parties having accepted, subject to the father confirming such by 19 September, that they are expected by each other, and by this court, to meet and to cooperate with the independent assessors/therapists, and to do so on a continuing basis.

E. AND UPON the mother confirming that she agrees to, and supports, IS having such contact with her father as IS wishes and undertakes not to denigrate the father to IS, or allow any other person to denigrate the father in the presence of IS.

F. AND UPON all parties agreeing, without prejudice to their respective positions in respect of jurisdiction, that there should be a moratorium on all proceedings concerning IS whether in Israel or England and no further proceedings shall be issued in either jurisdiction save in respect of the orders that are necessary in England to enable the agreement in respect of contact set out below to be implemented using the powers conferred by Article 20 BIIR.

G. AND UPON the parties agreeing that:

(i) IS will have contact with her father for 2 hours on Sunday 7 September 2014 supported by LB, unless IS wants longer and LB can facilitate it,
(ii) If IS so wishes she will have contact with her father after school on 9 September supported by LB for such period as IS wishes.
(iii) Subject to IS's wishes as to the frequency and duration, she will have contact on up to 4 occasions (2 x Sunday & 2 x weekdays) in the period around the time of IS's autumn half term holiday (which commences on 19 November 2014); and during the school winter holiday in December 2014/January 2015; such contact will be supported by LB to the extent requested by IS. The father's solicitor will book LB for such period as he chooses and he will be responsible for the costs (such costs to be invoiced by IS's solicitor to the father's solicitor).

(iv) A child and adolescent psychiatrist will be instructed to conduct a family assessment of the parents and IS which shall include speaking to any significant extended family members; and to make recommendations as to any programme of work or therapy that would promote the relationship between IS and her father.

H. AND UPON the basis that nothing is this order should be taken to prejudice the father's position that the only jurisdiction which should decide issues relating to IS's welfare is the Jerusalem Family Court.

I. AND UPON the father's agreement to the measures set out in this order for family assessment being subject to Judge Elbaz's views on this Court's proposed way forward and being subject to him having the opportunity to discuss the proposal with his Israeli lawyer on his return to Israel

It was (inter alia) ordered that

1. The parties shall have permission to jointly instruct a child and adolescent psychiatrist to carry out a family assessment which shall include any recommendations as to any programme of work or therapy that would promote the relationship between IS and her father.

2. The solicitor for the Applicant shall be the lead solicitor for the purposes of the instruction. The letter of instruction agreed at court today shall be sent by 22 September 2014. The costs of the report shall be met equally by the three parties, the court considering that such a report is necessary for the disposal of these proceedings and considering the publicly funded party's share of it to be a reasonable and necessary disbursement on her public funding certificate. The report shall be provided by 19 December 2014.

29. A ray of light thus briefly shone. Two occasions of supervised contact took place before those arrangements fell apart. The supervisor's notes are to be made available, with translations, to Judge Elbaz' court.

30. The parties had agreed at the hearing that I should write direct to Judge Elbaz. The content of that letter was approved by them before I sent it. For reasons which I entirely understand and which in no way would I criticise, Judge Elbaz did not respond substantively to the suggestion I made that there should be a moratorium in proceedings to allow time for the proposed child and adolescent psychiatrist to report.

31. The parties agreed upon the identity of the expert whose assistance would be sought, and a letter of instruction to Dr CR was prepared with the participation of the father's lawyers. A copy of her CV should be provided to and translated into Hebrew for the Jerusalem court. The whole thrust of the instruction was to explore IS's current circumstances with a view to providing information which would assist in evaluating how IS and the father's relationship was to go forward. The scope of the inquiry and the specific questions were set out as follows:

1. The court and the parties have agreed that the family would be assisted in

making progress with contact by a family assessment being conducted with a view to you making recommendations as to how best to promote contact between IS and [the father]. The costs of the assessment will be met three ways between IS's legal aid certificate, and the parents, who are funded privately. The costs of any programme you recommend would be met by the parents.

2. In carrying out the family assessment the court would like you to meet with both parents and IS but also meet with or speak to other significant adults such as the mother's partner, IS's maternal grandparents (with whom she lives) and any member of the father's family who he considers significant. You may wish to speak to the independent social workers Ms B [and Ms D …] her contact details are….and to Dr G, family therapist in Israel.

3. The court would like you to address the following issues (but without in any way limiting you to such questions)

(a) do the mother, father or IS have (or may they have) any identifiable psychological or other conditions which are relevant to contact between IS and the father. If so, is any further assessment of any of them required in this regard?
(b) What is the mother's capacity to promote and support contact? Is there any specific work you would recommend which might assist?
(c) What is the father's parenting capacity in respect of contact (visiting, staying, indirect)? Is there any specific work you would recommend which might assist?
(d) What are IS's views of contact and are there any issues in relation to IS's health and development which are relevant to contact between her and her father? Is there any specific work you would recommend which might assist?
(e) Are there any other matters of relevance in relation to the extended family which affect contact and if so are there are recommendations you have which might improve contact?
(f) If you feel able to do so, please would you indicate whether you have a recommendation as to the progress of contact between IS and the father?
(g) In respect of any work you recommend can you identify who should carry it out and over what timescale and what would indicate it had been successful or not?
(h) Would you need to see the parents and IS again to provide a final recommendation as to contact?

32. Most of that work is still relevant to IS and her future and to any determination by either court. Although the father has withdrawn from participation in these English proceedings it is to be hoped that he will reflect that his future relationship with his daughter may well be advanced and improved for the future if he reverts to his previous (albeit conditional) willingness to cooperate with such an assessment.

33. As is apparent, the father has disinstructed his English lawyers who are no longer on the record for him in these proceedings, to which however he remains a party and from which he is in no way prevented from returning, should he so wish

34. There have been further hearings in Jerusalem in response to applications made by the father. I do not have sufficient information (nor perhaps is it necessary for present purposes) to incorporate any detailed account of them here. From letters written while they were still instructed by the solicitors representing the father it would seem that the parties were each invited to put in writing their position in relation to the proposals contained in my letter to Judge Elbaz (and I am told on behalf of the mother that she did so). Those are documents I have not seen but which might be instructive for Dr CR.

35. It would seem that applications filed by the father included one for a finding of contempt to be made against the mother (which I assume would open up the possibility of penalties, including perhaps potentially her imprisonment); and to consider the forfeiture of the £50,000 bond.

36. I have seen in translation a note or transcript of the hearing to which both mother and child were summoned which took place on 30 December 2014. From that it appears that an application by the mother to participate via a video link from London had been opposed by the father and refused by the court. Neither she nor IS attended. Cost orders were made against her and the hearing adjourned until later this month, as already indicated. The note or transcript suggests that the purpose of the attendance of mother and child is to facilitate 'a debate', the solicitor for the father contending that IS 'should appear and explain to the Court what she wants and then it will be possible to proceed.'

37. It will no doubt appear to the parties that there is much which they each would regard as indispensable to an understanding of the saga which the foregoing account omits. So be it. I present it however not to score any points one way or the other along this depressingly long line of litigation, but simply to set the scene for what if anything constructively can be done for the future. It is on that future, their own and most importantly IS's, that I urge them to concentrate.

38. The jurisdiction issue remains live, notwithstanding the fact that the parties expressly agreed last September that IS is now as a matter of fact habitually resident in this jurisdiction. Whatever the position may be in Israeli law, it is now well established in English and indeed in European Union jurisprudence that an issue of habitual residence involves factual questions centred (in this case, and put very shortly) round the degree of integration of IS into life in this country, where she has now lived since 2010. It would follow that mutual parental agreement that jurisdiction should be maintained elsewhere (irrespective of the factual position on the ground), just because they agree (and that elsewhere court may record and endorse their agreement) that the child shall be treated as retaining habitual residence elsewhere, would not as a matter of English law trump an investigation here and a contrary determination based on reality.

39. For the next hearing before me 15 and 16 June have now been reserved, to allow time for consideration after the anticipated receipt in May of Dr CR's report. If the father between now and then wishes to pursue his application to strike out or dismiss the wardship and any other proceedings in this jurisdiction, then I will hear him then if he reconsiders and decides he wishes to participate. But it would be idle for me not to advertise my present albeit provisional view that this court

has jurisdiction (whether or not concurrently with the Israeli court is a matter for the Israeli court) in relation to issues of parental responsibility concerning IS and therefore is in a position to ensure, and should exercise constructive control over, her contact with her father, taking into account and balancing both her views and preferences and his in the light of the evidence thus far filed and any information or recommendation which emerges from Dr CR's report.

40. In paragraphs 76 to 78 at page 14 of submissions made by the father's Israeli lawyers in support of his anti-suit injunction application they provide comment upon the proposition that where 'a minor seeks to deviate from the agreement [that the Jerusalem court should retain jurisdiction until 2016] there must be an examination focused on that particular case relating to whether there really is a justification for deviating from the agreement between the parents or whether the attempt to turn to another court is nothing more than an attempt made by the guardian parent to evade his undertakings. … The claim in England is an act of exploitation on the part of the [mother] of her status as dominant parent in order to avoid her subjection to the jurisdiction' of the Jerusalem court.

41. I do not for a moment exclude the possibility, indeed even the likelihood, that the views expressed by IS may have been formed directly or indirectly over these years in response to the hostility and suspicion evident in her mother's (reciprocated) attitude to the father. But even if it were to be the case (as to which I at this stage express no view) that the English proceedings flow from tactical manoeuvring on the part of the mother, a serious underlying issue remains upon which, I respectfully suggest, both courts' attention could now be concentrated. That issue is not so much to investigate **why** IS expresses the views she does and behaves as she does in relation to her father and her contact with him: but what views she genuinely holds and what it would take to ameliorate their negative impact on her perception of her father and on that contact. In parallel with that it would obviously, I suggest, be instructive to ascertain, in relation to each of her parents, not **why** they think and behave as they do but rather what could be done to help them to react better to each other and more insightfully in relation to their daughter. That would involve recognising that she is no longer the one-year-old she was when this litigation commenced, nor even the ten-year-old she was when she moved to live in England, but that she is an almost 15-year-old adolescent emerging into increasing maturity and individual independence whose views if (as they seem at least at the moment to be) strongly held should be catered for and so far as possible accommodated, rather than subjected to unrelenting bombardment most likely to accentuate if not indeed to rigidify her resistance.

42. Rather than decide on the jurisdiction issue at this stage, therefore, I have determined that the better course is to repeat my request for cooperation in a judicial moratorium to allow the assessment to proceed. I am told that a report is likely to take until May to complete. I will hear submissions as to a suitable adjournment date which will be included in the order which will reflect this judgment, and of course of which a copy and translation shall be made available to Judge Elbaz. These translations must be rapidly completed so that they are transmitted to him in time before the hearing he has fixed for 22 February.

43. I end with a quotation taken from an email the father sent to Ms Hansen on Monday 2 February:

> 'I will not try to force anything on IS. Please tell IS that I love her very much but I couldn't take any more of what was happening in London. If she ever wants to see me, she knows where I am. Please tell her that I am very sorry that she has missed out on so many family occasions since the London case began. If she wants me to, I can send photos but I am worried that they will make her sad. She can write to me if she wants and I will reply but I want nothing to do with the London courts.'

44. That is just one of any number of illustrations which could be given of the tragically poignant position to which these parents and their child have descended. I hope that it may be possible to find some better solution than the feeling from which they must each of them suffer, that they are under constant siege from each other and both courts.