

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
2012 EWHC 3954 (Fam)

Royal Courts of Justice
Friday, 21st December 2012

Before:

MRS. JUSTICE HOGG

B E T W E E N :

A Applicant

- and -

N Respondent

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Miss Mehvish. Chaudhry (instructed by **Dawson Cornwell**) appeared on behalf of the **Applicant**.
Miss L. Cote-Wilson (instructed by **Asghar & Co. Solicitors**) appeared on behalf of the **Respondent**.

J U D G M E N T

(As approved by the Judge)

MRS. JUSTICE HOGG:

1. This is an application for the summary return to Pakistan of a little girl, born on 7th July 2009. The application is made by her mother who lives in Pakistan and is a Pakistani national. The father is a British citizen and the carrier of a Pakistan ID card and is entitled to enter Pakistan as and when he wishes.
2. The parents were married by Nikah on 10th November 2000. The father, who is now 31, was about 19. The mother, who is now 29, was 17. It was an arranged marriage between the family. They are, in fact, first cousins sharing a set of grandparents. The father's own father is the brother to the mother's mother. There is also another link, but perhaps I do not have to go into that, and it relates to the father's own parents who are also first cousins from the same line in the family, if I can put it that way.
3. When the parents were married in November 2000, the father returned to this country. The mother remained living in Pakistan. The father, in his evidence, somewhat indicated that at the time he did not know about the marriage plans nor did his parents, and I will deal with that later. He came back to Pakistan to consummate the marriage in 2002 and between then and 2007 he used to visit Pakistan on a regular basis, spending several months each year in Pakistan with his wife and the balance of the year over here with his own family. In September 2005 the parents made an

application for a visa for the mother to come to this country. That was not successful as the father was unable to show sufficient income to support his wife. There was an appeal, which again was unsuccessful. As a result, the father decided to go to live for a period in October 2007 with his wife in Pakistan. According to the father the family in Pakistan were not so keen that he should live there, as they rather wanted the mother to live here with the father, but were aware of the visa difficulties.

4. She was born in July 2009 in Pakistan, and she and her parents went to live in what we have called the "*ancestral home*" near Multan in Pakistan. We have called it the "*ancestral home*" because that is where the mutual grandparents lived and where many of the family members lived as well. She had lived until earlier this year all her life in Pakistan and, other than, perhaps, two or three nights away, all her life with her mother. The mother says that she was the primary carer of her, although the father was obviously around and played a role in that care while they were in Pakistan. She is an Urdu speaker, as is her mother, as is the family in Pakistan, as is the father, but he speaks very good English, as does the father's own father who gave his evidence in English. The father's own mother chose to give her evidence in Urdu. While she has some English, she is an Urdu speaker and was much more comfortable in that language.

5. In 2010 the father decided to open a fabric shop in Multan and lived at times away from the family. It was a significant drive each way and, for a time, he visited the family two or three times a week spending the other nights in Multan. During this time, in November 2010, he entered a second marriage. He told me he did this because he says that he found some messages on his wife's mobile that he understood indicated that she was having an affair. He raised the issue with his wife and their mutual uncle, Uncle S, but received no satisfaction. He felt that, as a result, while in Multan, he could marry again without informing his family or his wife, and that he did. In April 2011 it emerged that he had married a second wife. The father's own father was in Pakistan at the time and there was considerable upset within the family. One can understand why there was considerable upset. Firstly, the father had made allegations of adultery against the mother, which in Pakistan is a very serious matter and, secondly, without informing anyone, had entered a second marriage. The family were deeply worried and upset. The mother was devastated by the news of the second marriage. However, there were negotiations between the family and, as a result, the parents were reconciled in September 2011, when the father entered into a written agreement acknowledging that his allegations against the mother were false and that he would not repeat or make similar allegations against her in the future.

6. In his oral evidence, rather than any of his statements, he said that between April and September Uncle S had taken control of the situation and had seized the father's British passport and would not return it until he had entered this agreement. He also said that he was forced to enter into a transaction whereby some land, an acre and a half, in his name was transferred to the mother, and those two transactions enabled him to repossess his passport and to be allowed to reconcile with the mother. In the meanwhile, before the reconciliation, the father told me he stopped visiting the second wife and, during the course of the summer, divorced her. I have not seen any document confirming this. He also closed the shop in Multan and from September 2011 was living full time in the ancestral home with the mother and F, in that they had their own accommodation within either the compound or next door.

7. In January 2012 the parents went to the High Commission in Islamabad to apply for a British passport for her; that, by birth, she was entitled to. The parents agreed that this was to happen. It was a joint application. The father says, which is denied by the mother, the application was made because there was a mutual plan that the family would in fact relocate to this country as soon as practicable, that he and F, when she had obtained her passport, would come to this country and the

mother would follow once she had obtained the necessary visa. As I say, the mother denies this plan. However, it seems from the evidence that I have heard that over the years there had been general family discussions in which there were thoughts that mother and father would relocate here, hence the application in 2005, and that in due course maybe, if the mother could obtain a visa, the whole family would relocate after she was born. The wider family told me in their respective evidence that they did not know of any plan for her to come to this country in June of this year and were very shocked that it had occurred.

8. The events in June of this year was that a few days before 26th June (it may have been a week, it may have been a bit shorter or a couple of days longer) the High Commission telephoned the father to say that her passport was available and needed to be collected. The father, told me, that on 25th June he had a discussion with the mother, during which she said that Uncle S had told her that when the passport was obtained he, Uncle S, would remove it so that she could not leave the country and that ultimately she would be marrying, by arrangement, his own son, who is some 10 or 12 years older than F. The interesting point about this is that in his written statement he declined to give any dates of this discussion. In evidence he said it took place initially on the 25th and then he expanded that there had been a number of conversations between the parents from the date he received the telephone call from the High Commission until the 25th June.

9. In any event, on 26th June in the evening, the father and F left the family home. It is said by two friends of the father, who did not give evidence but wrote letters to the court, that they witnessed the farewell, that the mother was tearful, father said, *"It won't be long until you join us"*, and that the father had a suitcase which was put into the taxi with F. The father said he went with the suitcase, which had been packed by the mother, plus two shoulder bags to Islamabad. The mother, not taxed upon this in evidence, gave a list of items she had packed in the suitcase subsequently to her counsel who put the list of contents to the father. It was a very short list: a suit, a shirt, three nappies and some cream soap. The father said, *"Oh, no, there was much more. We were going to England. She knew that. We took clothes and toys and a whole bag of nappies"*. This, the mother, through counsel, indicated was not correct.

10. The passport was due to be collected on 27th June, and the father apparently had indicated that he would return that evening. In due course on that date, by telephone, he informed the mother that he was unable to obtain a bus ticket to return home and would return the following morning. The following morning being 28th June, the mother telephoned him again, and he said, *"I'm a couple of hours drive away, but I'll be back"*. This was at about 8am in the morning. She was becoming worried at this point but left it at that, expecting him to return. He did not return. During the course of the day, Mr. O, a friend of the father, telephoned the family to inform them that the father and F had in fact gone to Lahore and taken a flight to this country. The family, according to them and the mother, were devastated that this should have happened. The family was in uproar with the mother deeply distressed and upset. Uncle S rose to the occasion and telephoned various airports in Pakistan and eventually discovered that the story was true, that the father had travelled to Lahore and taken a flight out. He also telephoned the father's own father in England who indicated that if they did come back he would telephone, which he did later that evening.

11. Thereafter, Uncle S instructed solicitors to institute proceedings in the local district court, some hours away from the family home, for the recovery of F. The district judge on 19th July said that, as F had already left the country, as established by the police enquiries, the matter could not proceed further. However it is important to note that there was an application for the recovery of F. It is also important to note that the solicitor acting on behalf of the mother never met her, and the mother says she never gave direct instructions and discovered to her dismay, that some serious allegations had been made against the father in those proceedings of domestic violence by the father against

her and of kidnap from the family home in difficult circumstances. In her evidence she said she had not given those instructions and these allegations were false. She says she made enquiries and caused Uncle S to make enquiries and it emerged that the solicitor is said to have replied that, because the father was a married father and had rights with the child, he had to bolster up the allegations against him. The father denies the allegations of domestic violence; the important point is that the mother also did so freely and willingly and made that clear to me. The other important matter is that she was seeking very early on, through Uncle S, to recover the child.

12. The family did not stop there. They have family member in this country, Aunt A, a mutual aunt, who, with her husband, probably at the beginning of July, went to the father's family home in High Wycombe, at some inconvenience to themselves because they have their own disabled adult child and they live in Lancashire, to discuss the matter with the father and the potential return of F to Pakistan. The exact nature of that conversation is in dispute. She believes that she had overheard the father agree that he had removed F without the mother's consent. She made it clear and the paternal family accepts that she came to discuss the return of F to Pakistan and to her mother. The father agrees that he did say that he "*would not return her, not in 100 years*". The impression that the aunt gained that he did say that she had been removed without the consent of the mother. She then went on to say that the conversation became heated, and the father agreed with that.

13. These proceedings were started on 17th September by way of wardship proceedings and, since then, there have been various directions. Indeed, it was due to be heard in November and then was deferred until this week. In the meanwhile, during the course of these proceedings, the mother has twice applied for a visa to come to this country in order to give evidence and to be fully engaged with the hearing. Regrettably, the authorities of this country have declined her application on both occasions. It meant that I have heard from the mother and her witnesses at great expense to the taxpayer by video-link. I am told that the cost of a five day of video-link, and we have had four and a half, is about £9,000. Some of that obviously had to be provided because there were a number of witnesses in Pakistan, the family witnesses and a neighbour, who had to give evidence by way of video-link. But the mother's own position was always more difficult if she could not meet properly with her legal team and could not fully engage by being present in these proceedings. Fortunately, and I am grateful, Ms. Chaudhry, on behalf of the mother, speaks Urdu, and that ability has assisted enormously in communication between counsel and the mother. There have been times when Ms. Chaudhry has spoken in the language in order to just tell the mother what was going on, and that, again, has been of some reassurance to the mother and I am very grateful Ms. Chaudhry took that on herself.

14. The mother's case is simply, that the child was removed to this country on 28th June without her consent and that the removal was a wrongful removal. Until that point, very clearly, the child had been living in Pakistan, where she was born, with both parents. Mr. Justice Bodey, in one of the earlier hearings, gave a provisional declaration, that the child was habitually resident and a provisional declaration, he had not heard all the evidence, that it was a wrongful removal. The mother wants those declarations finalised. She says this child was living habitually resident in Pakistan and was wrongfully removed from that jurisdiction and from her care and she is seeking an immediate summary return to Pakistan of F. The father has alleged that, far from it being a wrongful removal, it was a consensual removal, that the parents themselves, without telling the wider family, agreed that she should go, partly for fear of a forced or arranged marriage with Uncle S's older son, partly because they did not like the interference of the wider family. I have to decide which of the two are telling me the truth.

15. I have to say, having heard all the evidence, that I have grave doubts about the reliability of the father. He led me to believe that the marriage between the first cousins was somewhat forced upon

him and that his parents did not know anything about it. During the course of their evidence it became abundantly clear that his parents did know about the proposal of marriage between him and the mother. It had come from the mutual grandfather, and the father's own father had communicated the request to the mother's own mother, which had been accepted. What also emerged from the paternal grandfather was that he was content with the proposed marriage but was unable to go to the ceremony because he then owned a shop in this country and it was difficult to obtain cover for the business in his absence. The only thing he is sad about was that he did not know the date and he did not attend. I ask myself whether in fact the father knew about the proposed marriage. He says that the Nikah took place shortly before he left to return to this country after a six-month holiday. He had been in Pakistan since April/May 2000 and the marriage, the Nikah ceremony, took place in November. I have been shown correspondence, it has been translated to me, from their mutual grandfather to the father's own father, which is dated in May, indicating that a marriage was clearly considered, with discussion about gold and money to be sent to Pakistan in view of the fact that the father's parents were not travelling. I think the father did know more than he is prepared to say. He may not have known the actual date of the Nikah ceremony, but he has not told me the full truth about the story concerning the marriage arrangements and has sought to mislead me as to his own parents' knowledge and acceptance of it.

16. He says that the mother agreed with him that F should come here without her pending her visa being granted because they were fearful of this marriage of F to Uncle S's son. This is a family who believes in marriage of cousins. There is no doubt about that. The mother says that there has been no such discussion, that the son in question is about 15, F is 3 and that when F grows up she will be given some choice in the matter.

17. The father, in his evidence, sought to persuade me that Pakistan was not a good environment generally for F to grow up in. He referred to one or two very, very unfortunate and serious incidents in Pakistan that the media have detailed, the shooting of a young woman and other such circumstances, and sought to persuade me that the position of a young woman in Pakistan is difficult, restrictive and limited. That goes more as to the issue of welfare rather than the decision I have to make about consent, but he relies on it partly because he says the mother was aware of these difficulties.

18. The father said that Uncle S was a local politician with significant influence not just only in the family but in the surrounding area and that he was potentially a violent, malicious and manipulative man. However, the father was unable to explain a number of things, namely, why the family through Uncle S, instructed solicitors to recover the child in Pakistan; why Aunt A and her husband travelled all the way from Lancashire to High Wycombe to discuss the return of the child; and the heated discussion, with the words "*I won't return her, not in 100 years*" being said and agreed upon. He has not been able to explain the elderly neighbour's evidence, Mr. Muhammad Yusuf, who described the devastation within the family on 28th June as "*chaos*".

19. Mr Yusuf described the family in the following terms in his statement, and also gave evidence to me having travelled, I am told, nine hours in order to do so:
"Around 27th June [he accepts he may not have been precise about that date] we discovered there was some crisis in the mother's home. My wife and I went to enquire what had happened. When we got there, we saw the whole family seem very shocked, upset and angry. We discovered that the father had taken F to Islamabad to collect her British passport some two days ago. He had told the mother that he would be returning home that morning but had instead taken F to England. We saw the mother was in great distress. We tried to offer some comfort to her and later went home."
Then he added, and this is accepted, that "*a few days later*", it may have been a bit more than a few days, the mother went to stay with her own mother in that home in Jhelum, which is some way

away.

20. The extended family also described their sense of distress and loss at learning that F had been removed. They said that they knew of no plan and there had been no discussion of an immediate removal of F to this country in the absence of her mother, and they were all deeply worried that F should have been removed from her mother in the way that she had.

21. The father's evidence was somewhat revealing. He is rather self-centred. He seeks to justify his own actions often by blaming others or by raising red herrings. He tried to justify, for example, his second marriage. He felt that he had been betrayed by the extended family rather than, the possibility, he might have betrayed his wife by the second marriage. He failed to see until pointed out, or failed to acknowledge until pointed out, the serious nature of the allegations he raised against his wife and the shock and upset that the second marriage would have caused his own family. He justified everything he did and would not easily or readily accept that he, himself, could be of blame or that he, himself should be criticised for his own poor behaviour. Towards the end of his evidence, he said that after the reconciliation the extended family treated him badly, that it was "horrible for me and horrible for F". He did not raise the issue about what it was like for his wife. He said that at the time he was not in employment, was waiting for the plan to return to England to reach fruition and that there had been a breakdown in the relationship between him and the extended family.

22. There may well have been difficulties after the discovery of a second marriage because not only had he raised some very serious allegations against the mother but he had also caused the offence relating to the second marriage. However, the family were prepared to move on and encourage the reconciliation. It may be that it was difficult for both sides, for the extended family and for the father, and that may have encouraged him to think of how to return to England. He clearly loves his daughter and he would not want to leave without her. It was well known that there would be difficulties with obtaining a visa for the mother. He would have to remain here obtain employment here and be able to satisfy the British authorities that he had a sufficient income to look after his wife and child. He knew that he had failed to do that in the past and he may have thought that it was going to be difficult in the future. As it is, he has not been able to obtain full-time employment. He started part-time work in September. It is 24 hours a week. He wants to extend his hours in the near future, but it is still not sufficient to obtain a visa for his wife. It is correct that there was an agreement for a passport to be obtained. That was F's right. Through her father, she was entitled to British citizenship, and maybe he saw this as an opportunity to take F to England without the mother. He told me it was a hurried exit because of what he said the mother had said to him about Uncle S wanting F's passport, retaining it and keeping it until F could marry his son. It was a hurried exit. He left clothes and other possessions, both of his own and of F's.

23. I have come to a very clear view. The view is that he has lied to me about what happened. I do not accept that the mother gave her consent in any form at all for him to take F to this country. Had she done so, she would not have been seen to be so distressed. Had she done so, Mr. Muhammad Yusuf would not have visited the family, learnt of the chaos and the crisis that was going on in the family and seen the mother so distressed. The father has painted an abysmal picture of Uncle S because it suits his convenience to do so. Uncle S went to the Pakistani courts to recover F very quickly. We know the date of the hearing, which was 19th July. The proceedings would have started before then. These proceedings here started on 17th September when the mother would have somehow, I am not quite sure how, obtained the name of her solicitors and given instructions herself and spoken, herself, to her solicitors and counsel. In the meanwhile, Aunt A had been to the home to discuss the return of F. I think he has lied to me. It is simple as that. I think he took this child to England because he wanted to. He wanted to come back here and did not want to be parted

from his child. It is as simple as that. I am going to make the declaration that the child was removed without the consent of the mother, that the child is habitually resident in Pakistan.

24. I now move to the next stage. Should this child be returned to her mother's care in Pakistan? The mother is an intelligent, educated young woman. She has told me her story consistently and coherently. The extended family are supportive of her, and of F being returned. F was happy, well cared for in the family home and although the father played a role in her care and tried to tell me he was a primary carer the reality was that shortly after her birth he was in employment or running his shop until September 2011. He clearly had a role in F's life, but the primary carer being the everyday carer was the mother, and no-one has criticised her as a mother.

25. I was told that when F arrived here and for the first few days she was distressed. She was not yet 3; she was just short of 3. Of course, a child of that age who had lived all her life in Pakistan, either in Jhelum with her maternal grandmother and mother or the ancestral home. She had been removed from her mother and brought here, a completely alien environment. To begin with, it might have been cold and wet, but certainly it is not Pakistan. The language in the outside world is English. I am sure in the home it was Urdu, but it was an alien environment. She did not know the grandparents. She had met the grandfather in April 2011 and shortly after her birth. I do not know whether she had met her aunt who lives in the home. She came with her father and for a few days was distressed. The local authority carried out a welfare check in September and it was just that. How was the child? How did she present? At that stage the social worker said she seemed content and content within the family circle and she and the father played well, that there seemed to be no risk to the child. Of course, the mother was not involved. There was no comparison. This was a welfare check to ensure that she was safe. It was not a best interests check.

26. I asked the father what he thought the impact was on F in losing the everyday care of the mother. He could not give me an answer. The paternal grandmother, likewise, could not give me an answer but said that "sometimes one has to sacrifice one's self for the benefit of a child's education". The paternal grandfather could not give me an answer. It is either because they know the truth, that this child has been torn away from her mother and her extended family and it is likely to have caused her great upset, or they have no insight into the damage they have the potential of doing and what their son has done. It causes me great concern.

27. The current situation is that there is no foreseeable visa in the pipeline for the mother. She has recently been refused her visa to this country. I do not know whether she wishes to be reconciled in the fullest sense of the word with the father, who says he wishes to have her living with him and that was the plan, but I have discounted the plan, that he wants her to come to this country. His parents say they will be happy to have her here. I do not know if she wants to do that. She may choose not. She needs to be sponsored to this country. A husband can sponsor a wife, providing it is a subsisting, genuine marriage. If she does not want to live with him there may be real difficulties in her obtaining a sponsor and a home, and without that she would not receive a visa.

28. The father claims he cannot now go back to Pakistan for fear of "wicked" Uncle S and the family. He says he will be murdered if he went back. The evidence from the family, including Uncle S, is that he would be accepted back and he would, be it all under supervision perhaps, be allowed to see his daughter. If she were to remain here, her mother, on the face of it, would be lost to her forever. If she returned to Pakistan, on the face of it, the father could return. He is free to return. He has the ability to return. He says it is not safe to return. I noted that, although he offended the family deeply twice with the allegations of adultery and the second marriage, the family were able to move on and effect a reconciliation between the parents. They said he would be welcome to return, that he is not at risk from Uncle S or anyone. This is a family that has shown it

can move on. The father may well be able to go back, but it may take a lot of eating of "humble pie", an expression of remorse, a deep apology and some negotiation between, perhaps, Uncle S and the father's father. He is entitled to return to Pakistan and it may be possible, therefore, for him to see his daughter.

29. Ideally, of course, a child should know and love both sides of her family, both parents, both sets of grandparents and both sets of uncles and aunts. There is a large, loving, extended family in Pakistan, a lesser extended family here. I am sure she is loved by her paternal grandparents. They both seem to show that love to me and I am sure they have looked after her as well as they can.

30. If F were to return to Pakistan, the mother does not work. She will be educated in due course. The father criticises the educational standards in the villages of Pakistan. The mother says that she has found an independent, international school in Jhelum and she, herself, is intelligent and well educated, and it may be that an over-bleak picture was being painted for my benefit by the father of the conditions in Pakistan.

31. It is well known that the courts of a child's habitual residence are the best courts to consider the issues of welfare for a child. There is no reason if he wanted to make an application to the Pakistani courts that the father could not. He is fully entitled to be heard. He can go there. He can speak the language. He can instruct his own lawyers and, of course, the family is there. Some members may support him. Some members may support the mother on welfare issues. What the family is very clear about is that F is much loved and well cared for and should be in Pakistan with her mother. Frankly, I see no reason for her staying here. She should be returned immediately. She has been wrongfully removed and wrongfully deprived of her mother's love and care for now nearly six months. The father did this for his own selfish motives. This child was born and bred in Pakistan and there she should return and, for the time being, until the Pakistani court say otherwise, reside with her mother.

32. There are some consequences of that that you may wish to consider, namely, I have made the declarations, that the child should be returned, there should be a date, and arrangements for the return.

33. I just want to add one thing, Ms. Chaudhry. I was deeply upset that notwithstanding the mother's applications, two applications, to come to this jurisdiction for this hearing, to be engaged fully in this hearing, those applications were rejected. This is not the first time that this has happened. Two years ago, I made a request to the immigration authorities in another not dissimilar case of a wife, or mother, who had been left behind in Pakistan and a child retained or brought here, and who wanted to recover her child. This is the second time I am protesting that arrangements have not been made to enable a young woman who is making a claim in this court of wrongful removal or wrongful abandonment, wrongful deprivation, separation, of herself from her child, to come to this country for the purpose of litigation. If such mother cannot come to this court they cannot engage fully. They cannot come to this court to engage fully. Two years ago, I requested that arrangements should be made, that such mothers should be enabled to come. There are advantages to them and advantages financial to the taxpayer. I accept that such arrangements might be a little restrictive, but it would at least enable, hopefully, some contact to take place so the separation between mother and child could be shortened in some way and justice seen to be done. I would be very grateful if the ministers concerned would look at this matter and make, if they can, suitable arrangements and give advice to those who deal with the applications to look upon these applications with favour.