

**RE S (WARDSHIP) GUIDANCE IN CASES OF STRANDED SPOUSES**

Family Division

Hogg J

25 June 2010

**HOGG J:**

Soon after my recent judgment on 25 June 2010 the UK Border Agency granted the mother a 6-month visa to enter this country in order to participate in the ‘welfare’ proceedings relating to the little boy. I am most grateful to the immigration authorities for enabling her to be present.

The child was reunited with his mother in the precincts of the court, and most unusually came into court in his mother’s arms. His mother’s face radiated joy. He was fast asleep.

In a brief hearing, and having heard the parties and recommendations of the child’s guardian within the wardship proceedings I granted interim care and control to the mother, contact to the father, and gave various directions to further the ‘welfare’ hearing.

Having given judgment in respect of the fact-finding hearing and as there have been a number of similar cases, some of which have been reported, and counsel and solicitor for the mother are aware of other current cases where it is alleged that a parent has been left stranded abroad by the other parent, it was suggested that it would be helpful to practitioners and other judges if I could provide some guidance and assistance with the issues that such cases raise, and which may need to be considered by the court at an early stage in proceedings.

The suggestions I make are designed *inter alia* to ensure that the ‘stranded spouses’ and indeed the other parties’ Art 6 and 8 rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 are upheld; to ensure that there is a fair trial of the factual allegations and to enable the child/children to have contact with both parents pending a final welfare based determination on issues of residence and contact.

[1] Given the international element and the experience of the judges of the Family Division in dealing with cases of this type, child abduction and other international cases, the best vehicle for these type of cases is wardship. Such proceedings should be managed, if possible, and heard by a judge of the Family Division.

[2] At the first hearing (on an ex parte basis) the making of a Tipstaff Passport order should be considered (amended where necessary) to include that the tipstaff shall search for and seize the mother’s passport where it is alleged that the father has taken it. Location orders are also suitable in these cases but collections orders should only be employed in the most exceptional of cases.

[3] There should be a court request for disclosure from the Home Office in form EX660 at the ex parte stage to ascertain the spouse’s immigration status so that s/he can immediately make arrangements to obtain an expedited visa/transfer of an existing valid visa to a new passport. This information may also assist the stranded parent in knowing which immigration application

should be made. That parent's solicitor may also wish to consider whether expert immigration advice might assist, and if so seek the appropriate direction at an early date.

[4] At an early stage the court should consider whether there should be an urgent fact-finding hearing to investigate and ascertain the circumstances in which the parent and child/children came to be stranded internationally. Consideration should be given to any disputed allegations made by the stranded parent, as to the gravity of such allegation and if proved, the impact it may have upon the court's determining the welfare issues and future upbringing of the child/children concerned. If a fact-finding hearing is thought to be appropriate, directions should be given for an early hearing, and thereafter the judgment to be disclosed to Cafcass, and such other agencies including the local authority and local police as may be deemed appropriate.

[5] If the court considers that the stranded parent's presence in this jurisdiction is necessary to the court's determination of the child's/children's welfare appropriate recitals in directions orders may assist with that parent's application for a visa to enter/re-enter the jurisdiction. Such directions could include:

- (a) the mother must attend the hearing at ..... on .....  
.....
- (b) the court indicating that the mother needs to be here to determine issues as to ..... ;
- (c) the court expressing the view that the mother's evidence be best given in person in this jurisdiction.

[6] The court could consider allowing semi-anonymised publicity in the media to highlight the stranded parent's circumstances, particularly if other efforts to secure that parent's return to participate in the proceedings have been unsuccessful. It would be appropriate to canvass the views of any Cafcass officer/guardian ad litem in relation to publicity as Cafcass would be concerned about publishing any information that would lead to identification of the child or potentially put the child at risk of harm.

[7] The court should consider whether to invite/order any members of the family to assist with funding flight costs to enable the stranded parent to return to participate in the proceedings. If they refuse such invitation or disobey an order the court could consider making an order for costs at the conclusion of the fact-finding hearing/welfare hearing.

[8] The court should consider whether to request the relevant British High Commission/Embassy and/or FCO to assist by provision of information or otherwise as may be appropriate.

[9] The court should consider whether the local authority in whose area the child is living should be directed to investigate the child's/children's circumstances and report pursuant to s 37 of the Children Act 1989. Such a direction will be dependant on whether the evidence filed indicates that the child/children may be suffering, or at risk of suffering significant harm.

[10] In such cases, it would be appropriate to consider whether the child should be joined as a party and a guardian ad litem appointed. Given the expertise of the Cafcass High Court team the court should consider referring the case to the manager of the team to consider the papers and the courts

invitation to appoint a guardian. Until the stranded parent is able to return to the jurisdiction the guardian's role may be limited and it may not be appropriate to expect the guardian and lawyer to attend frequent review hearings during the fact-finding process. However, their assistance will be of importance when the court deals with the issues of interim care and control, and interim contact issues that might arise particularly on the stranded parent's return to the jurisdiction and with safeguarding checks.

[11] The court may, and the stranded parent's solicitor should, consider that assistance may be provided by the various agencies to the stranded spouse upon the return to the jurisdiction, and what monetary or other applications should be made against the other parent.

[12] Upon the return of the stranded parent there should be an urgent interlocutory hearing to consider further directions and the interim welfare arrangements for the child/children and the court's managed reunification of the stranded parent and his/her child, which will probably require the input of the Cafcass High Court team guardian.