

26 July 2013

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

Between :

NN **Applicant**

- and -

ZZ **1st Respondent**

- and-

GA **2nd Respondent**

- and-

IZ **3rd Respondent**

Ruth Kirby (instructed by Dawson Cornwell Solicitors) for the Applicant
Teertha Gupta QC (instructed by Appleby Shaw) for the 1st Respondent
Michael Edwards (instructed by Ainsley Harris Solicitors) for the 2nd and 3rd
Respondents

Hearing dates: 22-26 July 2013

Judgment date 26 July 2013

JUDGMENT

JUDGMENT – NN (Stranded Spouse)

Mr Justice Peter Jackson:

1. This is a fact-finding hearing concerning the family of two children, a girl aged three and a boy aged two, in respect of whom there are cross-applications for residence orders by their mother and father.
2. The central allegation is made by the mother, who says that in September 2012 she was taken to Pakistan by the father and abandoned there. It was not until March 2013 that she managed, after much official intervention, to return to England. The situation she alleges is that of a ‘stranded spouse’.
3. The parties to the proceedings are on one hand the mother, and on the other the father and the paternal aunt and uncle. The children are represented by a CAFCASS Guardian, who has not played any part in the fact-finding hearing. The children’s care is currently shared between the paternal family and the mother. A decision about the future will be made in September.

Narrative

4. The father, who is aged 27, is settled in the United Kingdom. He holds Dutch and British nationality. His family moved from Pakistan to Holland about 40 years ago and he and his siblings were brought up there. His parents (the paternal grandparents) now live in England, but have spent substantial periods of time in Pakistan in recent years. The father’s three siblings are an older brother, who died in 2012, an older sister (the paternal aunt) and a younger brother (the paternal uncle). Both surviving siblings are married and the entire family lives in a single home from which the father, the aunt and the uncle run a family business.
5. The father’s late brother had a wife (Ms F) who came to England in 2005, but was deported to Pakistan in 2010, shortly after falling out with her husband and the paternal family as a whole. Her spousal visa had expired in 2007 but had not been renewed.
6. The mother is a Pakistani national, now aged 30, who qualified and practised as a lawyer in her home country. She entered into an arranged marriage with the father in October 2008 and she travelled to England in March 2009 on a six month visa that was in due course extended to a five year spousal visa. Her parents (the maternal grandparents) and her older brother (the maternal uncle) live in Pakistan. Their home is about half an hour’s drive from the paternal family’s village.
7. The mother’s case is that from the time of her arrival in England, her life was controlled by the paternal family, that she was confined to the home, that she was exploited by being made to do excessive housework, and that she was isolated from her own family in Pakistan.

8. The children were born in England in May 2010 and August 2011. The aunt herself had a child in March 2011.
9. In August 2011, the maternal uncle came to England on a student visa. He was employed by the father until November, and alleges that the father assaulted him on three occasions during that period. In December 2011 he returned to Pakistan.
10. In late 2011, the entire family was in Pakistan for the paternal uncle's wedding. The mother and children, accompanied by the paternal grandparents, arrived on 23 October, while the father was there from 9 to 13 November and from 29 November to 4 December, returning to the United Kingdom with the mother and children. The grandparents remained in Pakistan.
11. At the wedding reception on 11 November, there was an altercation between the maternal grandfather and the father; the grandfather was aggrieved at the way the maternal uncle had been treated in England. This was a significant moment: relations between the two families worsened and have not recovered.
12. It is also significant that in the two months they were in Pakistan, the mother and children spent only two nights with her own nearby family. This meant that the children did not benefit from getting to know their maternal grandparents and the mother did not have her parents' company and support for any length of time.
13. The mother says that the paternal family's treatment of her worsened on return to England and that on 25 January 2012 the father assaulted her for the first time. She says that he punched her while she was holding the older child, who accidentally received a cut to her cheek. The father resumed his assault on her but was restrained by the paternal uncle. The paternal aunt was aware of what had happened.
14. In February 2012, the father's older brother died after a long illness.
15. The evidence of most of the family members is that during that year there was practically no communication between the mother and the father. In May 2012, the father moved out of the marital bedroom and in July 2012 the family moved to its present address.
16. On 22 August 2012, the father took the elder child to Pakistan to see the paternal grandparents. The mother says that she believed the trip was to Holland and only learned where the father was after his departure. The father made no contact with the maternal family on this trip to Pakistan. He returned to England on 28 August with the child and the paternal grandfather.
17. On 11 September 2012 the paternal grandmother returned, bringing with her the uncle's new wife, who had been granted a visa.

18. On 17 September, the grandparents asked to speak to the mother. They say that they encouraged her to improve her conduct for the sake of the marriage and the children. They say that the mother hardly spoke, but when she did it was to say that she wanted to go to Pakistan and that the paternal family could look after the children in her absence.
19. The mother says that during this conversation the grandparents told her that her own mother was seriously ill and that she should go back to see her, but she also felt that the trip provided her with the opportunity to talk to her parents about her future. The grandparents deny referring to the maternal grandmother's health. Their evidence, and that of the aunt who was also present, is that they expected the mother to go for a week or a few weeks.
20. At all events, the father played no part in the conversation. The grandparents spoke to him later and prevailed upon him to accompany the mother to her family. He bought tickets on 19 September for departure on 20 September: a single ticket for the mother and a return ticket for 22 September for himself. The mother says that she was unaware that she had only a single ticket, or that the father had an immediate return flight – this is contested.
21. On 20 September, the father and mother flew to Pakistan, taking cabin baggage only, and arriving the following day. They were driven by an airport hotel taxi straight to the home of the mother's family (who were surprised by her arrival). The father and mother parted wordlessly. The father then went to visit his brother's grave and to spend the night at the hotel. While he was in Pakistan, he spoke by telephone to the maternal grandfather in a conversation that left both men feeling offended.
22. The mother says that the father took her passport with him. The father says that he held the children's passports but that the mother kept her passport at all times.
23. On 22 September, the father flew back to England. He made no direct contact of any kind with the mother in the months that followed, nor did he take any step to allow the children to have contact with her.
24. On 25 September, the UK Border Agency received a letter from the father dated 20 September. In it, he said that on the advice of his solicitors, he requested that the mother's residence permit be cancelled and that he had been a victim of deception in that she had used him to gain status in the United Kingdom. The father now says that he had not in fact had legal advice and that the letter should have borne the date 22 September - he describes typing it on his laptop in midair. He says that he did not keep a copy of the letter and a copy was not seen until it was disclosed by the Home Office to this court in June 2013.
25. The mother says that she telephoned the family home in the days following her arrival in Pakistan, to find that the father had returned to England and to be told by the grandmother that the father had cancelled her visa and that she should stay in Pakistan.

26. At that point the mother did a number of things, assisted by her brother:

- (1) On 30 September, she sent emails to the Foreign and Commonwealth Office, the British Consulate and her English local authority, saying that she had been the victim of violence and that the father had taken her passport and ticket, separating her from her children.
- (2) Between 2 and 13 October, she sent emails to the UKBA, the English police and the consulate.
- (3) In early October, she telephoned the English local authority and was recorded as being distressed about her children being taken away from her.
- (4) On 5 October, she made a complaint to the Pakistani police.
- (5) On 8 October, she obtained a new Pakistani passport, which of course did not contain a UK visa.
- (6) She visited a law firm in Islamabad, who liaised with the English local authority.

27. Meanwhile on the father's side:

- (1) On 22 October, using solicitors, he issued a County Court divorce petition stating that the mother had returned permanently to Pakistan without the children and had not asked to see them. The mother received this on 1 December.
- (2) On 5 November, the paternal family put the older child into nursery without reference to the mother.
- (3) On 17 November, the Shari'a Council wrote to the mother saying that the father had approached them seeking an Islamic divorce and asking whether she had any monetary claims.
- (4) On 22 November, the younger child had a significant surgical corrective operation. He had been awaiting this imminently at the time of the mother's departure and she had referred to it in her police complaint as another reason why she needed to return. In fact, the mother only found out that the operation had happened on her return to England.
- (5) Between 29 November and 5 December, the father and paternal grandfather travelled to Pakistan, where the father apparently had some business. They put out feelers to the mother's family via an intermediary, but received no response. The mother does not accept that there was contact of this kind.

- (6) On 5 December, having arrived back in England, the father telephoned the UKBA asking whether they had received his letter dated 20 September, and on 6 December he sent a chasing letter to them couched in a very similar format to that of the original letter.
28. On 11 January 2013, the solicitors now acting on behalf of the mother began wardship proceedings in this court. Following a request by the court to the Home Office, the mother was issued with a visa and on 3 March she returned to England. She and the children had been separated for over five months.

The hearing

29. At the outset of the hearing, the father submitted that the court did not need to make a decision about the allegations made by the mother in order to progress the long term welfare of the children. I rejected this proposition.
30. During the course of the hearing, which lasted for five days, I read a volume of documentary material and heard evidence from 11 witnesses:

On behalf of the mother:

The mother (interpreted)
The maternal grandfather (interpreted, by video link from Pakistan)
The maternal uncle (interpreted, by video link from Pakistan)
N (the paternal uncle's widow, interpreted, by video link from Pakistan)

On behalf of the paternal family:

The father
The paternal aunt
Her husband (interpreted)
The paternal uncle
The paternal grandmother (interpreted)
The paternal grandfather (interpreted)
A taxi driver (interpreted, by video link from Pakistan)

The issues

31. The burden of proving any disputed fact is of course on the person seeking to establish it, and the standard of proof is the balance of probabilities.
32. There are a very large number of facts in issue between these parties, and it is neither possible nor necessary to consider them all. I shall identify those that in my view require resolution:
- (1) How was the mother treated by the paternal family in the 3½ years between her arrival in this country in March 2009 and her departure in September 2012? In particular, was she, as she alleges, (i) isolated and enslaved, (ii)

assaulted by the father, (iii) assaulted by the aunt and uncle, and (iv) locked into rooms and tied up by the aunt and uncle? In considering these allegations, the allegations made by the maternal uncle and by Ms F are relevant.

- (2) What was the basis on which the mother went to Pakistan in September 2012? Did she go voluntarily, or was she tricked into going as part of a plan by the paternal family? Having arrived in Pakistan, did the mother remain there voluntarily? In particular, (i) did the grandparents tell the mother that her mother was ill? (ii) did the mother know what air tickets had been booked by the father? (iii) did the father take the mother's passport? (iv) were the mother's contacts with official bodies genuine, or were they, as the father says, a charade designed to acquire independent immigration status?

Overall assessment

33. I have heard from no less than ten members on both sides of this bitterly divided family. My conclusion is that some responsibility for the children's current predicament rests with both sides, but that there is a significant power imbalance between the mother and the father and much the greater share of responsibility rests with the paternal family.
34. In my assessment, the root of the difficulties in this case lies in the way in which the paternal family operates. It relocated from Pakistan to a part of Holland where there was no significant Pakistani community, and that it has succeeded in achieving some prosperity as a result of its concerted efforts. All other considerations take second place to the success of the family as a whole, the women being expected to defer to the men. Differences of view are interpreted as lack of cooperation.
35. The most striking feature of the evidence of the father, his parents and his two siblings, was the complete lack of curiosity about the views and feelings of anyone else. The family demonstrated an unquestioning belief that everything its members do is justified: except for a single issue, during several hours of evidence none of the witnesses conveyed the slightest acknowledgement of any fault on their part, or even the least sign of regret. The exception was that the father was forced to express some discomfort at his letter to the UKBA, explaining that he was "broken" by his wife's departure: in the circumstances, no other stance was possible for him.
36. In this family, daughters-in-law must either fall in or fall out. The first daughter-in-law, Ms F, ran away. Not one family member could offer any explanation for why she might have been unhappy. Having culpably neglected to ensure that her immigration status was regularised, the family thereupon washed its hands of her and she was deported.
37. The father is a strong personality, but in the matter of personal relationships he is an immature individual whose attention is largely directed towards business matters

and achieving a quiet life for himself. I am clear that his evidence was untruthful in a number of respects.

38. The paternal grandparents, and in particular the grandfather as head of the family, are responsible for the family culture. On their own account, the departure of the mother to Pakistan was unsatisfactory but they did nothing to help to resolve the difficulties or to protect their grandchildren.
39. The paternal uncle is a pugnacious character who radiated an assertive and at times aggressive response to questioning. It is almost impossible to imagine him taking a different point of view to the father, his older brother.
40. The aunt is a capable person who supports her brothers and defers to them.
41. All in all, the picture is of a strong family unit that took offence at the behaviour of the maternal uncle in the autumn of 2011 and the maternal grandfather in November 2011. This led to a marked deterioration in the situation of the mother. After she returned to Pakistan in 2012, the paternal family may have been willing to have her back, but only on its terms.
42. The mother was in some ways an enigmatic witness. She too is an intelligent person and her evidence was given clearly and directly. Unfortunately, even in the face of my assessment of the paternal family, there are aspects of her narrative that I am unable to accept. Although I cannot be sure, I believe that the most likely explanation for these untruths is that she has attempted to embellish an essentially correct account of events with a number of ultimately unconvincing additions. This is unfortunate as it has made it harder for me to reach my overall assessment and, because the embellishments and inventions have enabled the paternal family to express understandable indignation, deflected attention from other issues.
43. On the mother's side, family pride has no doubt played its part too. Following the mother's arrival in Pakistan, the family decided to secure her return to England without recourse to the paternal family. The maternal grandfather and uncle clearly hold strong feelings about the paternal family's methods, as does Ms F, based upon her own experience.
44. I found the maternal uncle to be an essentially straightforward witness upon whose evidence I can rely.

Specific findings

45. The treatment of the mother by the paternal family after her arrival in this country was what would be expected of that family, but will have come as a surprise to the mother. She was used to having some personal independence and a degree of respect in her profession. What she found was an environment in which she was required to subordinate herself to the group, and to do whatever housework and childcare was necessary. She was at a disadvantage in being an individual who was

not by birth a member of the team and who spoke neither English nor Dutch. Nor was she asked to participate in the family business. The paternal family showed no real interest in helping her to gain any independence by going out or making friends of her own, or by giving her any form of financial allowance: what was in it for them to do this? As a result, the opportunities for the mother to go out on her own or with the children were limited and she would almost always be accompanied by the aunt. Likewise, even before the breakdown in relations at the end of 2011, communication between the mother and her family in Pakistan was at best tolerated; it was never encouraged. When the family was in Pakistan for the wedding, the paternal family strongly discouraged the mother and children from going to stay with the maternal family because it was, in their view, less comfortable there for the children: that view naturally prevailed.

46. I consider that it would be an exaggeration to describe the mother as having been enslaved or made to act as a servant, though I can understand how it must have felt to her. From the paternal family's point of view, the way that the mother was treated was perfectly normal. The lack of respect for the mother's individual feelings recalls the similar way in which they treated Ms F.
47. I do not accept that the mother was physically locked up by means of alarms or keys. It was not necessary for the paternal family to confine the mother when, in truth, she had nowhere to go. In relation to the specific allegations that the aunt and uncle locked the mother in a bathroom and in the kitchen, I reject this evidence, having regard to the layout of the rooms and the absence of locks. I also reject the mother's most striking allegation, which is that on an occasion in August 2012 she was tied to a chair by the uncle and aunt for half an hour while they went out. This most unusual accusation appears only in passing in a statement made by the mother's solicitor, and is not repeated in the mother's own statements or even in the schedule of allegations prepared for this hearing. This was not remedied by the mother's own evidence on the subject, which I found entirely unconvincing. Likewise, while there may have been conflict of some kind between the aunt and the mother about mobile phones, the mother's evidence did not persuade me that the aunt made her strip naked on 25 August to show that she did not have a concealed phone.
48. Despite these findings, affecting the mother's credibility as they do, I am satisfied that on three occasions she was the victim of physical assault.
49. The first of these was during the night in January 2012, when the father struck her in the course of an argument. The older child, who was in her arms, accidentally suffered a slight injury. The mother is clear that there was no physical violence offered to her before this occasion. I find that there was a second assault by the father that night and that the paternal aunt and uncle were aware of what was going on, and intervened. I reach this conclusion notwithstanding the inconsistent first description given by the mother, which has the father's elder brother present (he was in hospital at the time).

50. I accept the mother's evidence that on the following morning, the father slapped her because she refused to make his breakfast and that he pushed her out of the house.
51. I also find that on 25 August 2012, the uncle struck the mother in the face because he and the aunt were unhappy about her behaviour when family members visited for the younger child's first birthday.
52. In reaching conclusions about the father's use of violence, I am assisted by the evidence of the maternal uncle. I accept that he was assaulted by the father while he was working for him on three occasions in the way that he describes.
53. I can reach no conclusion about whether the mother agreed to the father taking the older child away at the end of August 2012, and if so whether she thought this was to Holland or Pakistan. What is, to my mind, interesting is that the father decided to go abroad to see his parents, taking the older child, at exactly the time of the younger child's first birthday. There is no doubt that the mother was left in the care of the paternal aunt and uncle in his absence; put another way, she was left under their control.
54. Turning to the mother's departure to Pakistan, I have given careful thought to the evidence. My conclusions are these:
 - (1) I accept the evidence of the grandparents that the mother said that she would go to Pakistan, but the repeated claims of the paternal family that "it was her choice to go" and that "she walked out on the marriage" do not represent the reality. This conversation took place entirely on the paternal family's terms and the mother was by now worn down and defeated. She said very little and the grandparents took no trouble to consult her feelings.
 - (2) I do not accept that the grandparents told the mother that her own mother was ill and that it was serious. The mother, even on her own account, made no enquiry of them or of her own family about what might be wrong with her mother, who is in good health. I am afraid that the mother has added this detail to cover her embarrassment at having agreed to go at all. Her own evidence was that the visit also offered her the opportunity to talk to her parents about the poor state of her marriage. I believe that this was what the mother wanted and needed. Her situation in the paternal home – it was never in truth her home – had become impossible and she needed support. I therefore do not accept that the paternal family tricked the mother into leaving. They had no need to do so as they had achieved her departure by other means.
 - (3) I am quite clear that the mother never intended to be away for any length of time and that she expected to return within a few weeks at most. All the evidence of the paternal family supports this. The younger child was awaiting an operation, about which the mother was anxious.

- (4) Once the mother had decided to leave, I find that the father and his family decided that she was not going to return. Their concern was to retain control of the situation and their position was that if she was coming back, it was going to be on their terms. I find that the mother did not know that the father was due to return straight away. I also find that the father kept her passport. I prefer the mother's evidence on this point and I reject the suggestion that she applied for a new passport without a visa when she had a valid passport with one. I find that the father's letter to the UKBA dated 20 September was probably written on that date (i.e. before departure) and I reject his evidence that it was wrongly dated through "human error". I am also confident that the father was lying when he said that he had not kept a copy of that important letter, parts of which were replicated in his chasing letter in December, which refers to the previous letter by date. These letters, aptly described by Ms Kirby as "the smoking gun", are ones that the father has had in his possession all along but chose not to produce amid the plethora of other documentation he exhibits.
- (5) I unhesitatingly reject the father's case that the mother's many anxious contacts with officialdom were a protracted charade designed to achieve her return to England with an improved immigration status. The truth, as the father knows, is that she was desperate to be reunited with the children, but was prevented by his decision to punish her for her insubordination.
- (6) The behaviour of the father in launching procedures for civil and Islamic divorces without the least effort to consult the mother or to save the marriage was typical. His evidence that he took these steps "to wake her up and make her think" shows the kind of attitude that the mother has had to endure.
- (7) As the father was reluctantly forced to concede, the mother had been the children's main carer all their lives. The behaviour of the paternal family in depriving the children of all contact with their mother, while taking important steps affecting them in her absence, was a disgraceful abuse of their dominant position. Had the mother not acted decisively, her separation from the children could have been a very much longer one.

55. These findings about past events will now contribute to an assessment of the children's welfare to which the Children's Guardian will significantly contribute.

Postscript: preparation of statements

56. In this case, seven of the witnesses gave evidence through an interpreter. During the hearing, concerns arose about statements taken from the witnesses in English, a language they did not speak.
57. Ms F, called by the mother, gave evidence from Pakistan through an interpreter. The mother's solicitor, who is also qualified in Pakistan and is an Urdu speaker, has provided a statement explaining that she took Ms F's statement on the telephone and read it back to her, making corrections in the process. She then drew it up in

English and sent it to Ms F via the mother for review, approval and signature. Ms F signed and returned it and it was filed and served. Asked during her evidence about the contents of her statement, she said, amongst other things, that she had not read it in English before signing it – how could she? – and that some of its contents, as explained to her, were not correct.

58. The taxi driver, a peripheral witness called by the father, had signed a statement in English, but was unable to give a clear explanation as to how the statement had been created or how he knew what it contained.
59. Issues of this sort can arise whether or not a party is legally represented. In international cases, the contribution of experienced solicitors of the kind found in this case is invaluable, and I do not intend to be unduly critical of those involved. What occurred is nonetheless procedurally irregular and potentially unfair to the parties and to the witness.
60. At my invitation, counsel made submissions about the way in which evidence from witnesses who do not speak English should be prepared. In the light of those submissions, I record the following basic principles:
 - (1) An affidavit or statement by a non-English-speaking witness must be prepared in the witness's own language before being translated into English. This is implicit from Practice Direction 22A of the Family Procedure Rules 2010, paragraph 8.2 of which states that:

Where the affidavit/statement is in a foreign language –

 - (a) *the party wishing to rely on it must –*
 - (i) *have it translated; and*
 - (ii) *must file the foreign language affidavit/statement with the court; and*
 - (b) *the translator must sign the translation to certify that it is accurate.*
 - (2) There must be clarity about the process by which a statement has been created. In all cases, the statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype or based on a document written in the witness's own language.
 - (3) If a solicitor has been instructed by the litigant, s/he should be fully involved in the process and should not subcontract it to the client.
 - (4) If presented with a statement in English from a witness who cannot read or speak English, the solicitor should question its provenance and not simply use the document as a proof of evidence.

- (5) The witness should be spoken to wherever possible, using an interpreter, and a draft statement should be prepared in the native language for them to read and sign. If the solicitor is fluent in the foreign language then it is permissible for him/her to act in the role of the interpreter. However, this must be made clear either within the body of the statement or in a separate affidavit.
 - (6) A litigant in person should where possible use a certified interpreter when preparing a witness statement.
 - (7) If the witness cannot read or write in their own native language, the interpreter must carefully read the statement to the witness in his/her own language and set this out in the translator's *jurat* or affidavit, using the words provided by Annexes 1 or 2 to the Practice Direction.
 - (8) Once the statement has been completed and signed in the native language, it should be translated by a certified translator who should then either sign a *jurat* confirming the translation or provide a short affidavit confirming that s/he has faithfully translated the statement.
 - (9) If a witness is to give live evidence either in person or by video-link, a copy of the original statement in the witness's own language and the English translation should be provided to them well in advance of the hearing.
 - (10) If a statement has been obtained and prepared abroad in compliance with the relevant country's laws, a certified translation of that statement must be filed together with the original document.
61. In this case, these basic steps were not observed. As a result, some time was needlessly spent exploring the process by which the statements had been taken, and the court's task in assessing the witnesses' evidence was made more difficult, to their disadvantage and that of the party calling them.