

Neutral Citation Number: 2014 EWHC 4730 (Fam)

Case No. FD14P00871

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Date: Friday, 31<sup>st</sup> October, 2014

Before:

MR. JUSTICE HAYDEN

(In private)

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B E T W E E N :

S

Claimant

- and -

M

Defendant

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MR. H. SETRIGHT QC and MS. M. CHAUDHRY (instructed by Dawson Cornwell Solicitors)  
Appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

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**J U D G M E N T**

**MR. JUSTICE HAYDEN:**

*(Ex tempore)*

- 1 I am concerned in this application with two children, MA, born on 14 February 2007, and his twin, ME. The mother, US, has applied for summary return of the children and has sought protective orders in relation to a younger child, MS, who was born on 27 September 2013. MS, I should say, remains in her mother's care in the UK at an address which is not to be disclosed to any party without leave of the court.
- 2 The case comes before me today specifically pursuant to the order of His Honour Judge Heaton QC, sitting here in London as a deputy judge of the High Court on 24 October 2014.
- 3 Mr. Setright QC, who appears with Miss Chaudhry on behalf of the mother, has taken my attention to the specific details of Judge Heaton's order which listed this matter today for a determinative hearing, on notice, at 2pm, interposed so that it could be heard expeditiously in the Applications List. His Honour Judge Heaton also recorded and confirmed in his order that consideration, including but not restricted to any representation by the father as to whether, in the light of matters relating to jurisdiction to the welfare interests of MA and ME, the order of Sir Peter Singer dated 5 September 2014 requiring the return of the said children to England should remain in force and be complied with if necessary.
- 4 A feature of the case is that the father has asserted diplomatic immunity, pursuant to the Vienna Convention on Diplomatic Immunity, incorporated by the Diplomatic Privileges Act of 1964. It appeared, following the father's arrest on 14 October 2014, that whilst the diplomatic protection the father enjoys is in effect full immunity from the criminal jurisdiction and in the civil and administrative jurisdiction, it was limited to acts performed only within the course of his duties. As matters have evolved it seems the scope of his protection is more extensive and he remains, it is asserted, inviolable at all time to any form of arrest or detention.
- 5 Self-evidently, this extensive protection has circumscribed the enforcement procedures of this court in this application. Mr. Setright and Miss Chaudhry, in their helpful position statement filed for today, set out the history of the father's non-compliance and non-attendance at this court. Mr. Justice Moore considered the matter on 14 October and ordered that the father file a statement by 17 October. The matter was relisted for 20 October. The father was ordered to attend and the father was served with the order of Mr. Justice Moore on 15 October. The father did not attend the hearing before His Honour Judge Heaton QC on that day. The matter was then relisted for further

consideration today. The father has been ordered to attend today and again has been personally served with the order of His Honour Judge Heaton.

- 6 There is a statement from the father dated 28 October which, to put it shortly, has a very different account of events to that advanced by the mother. That is the entire extent to which the father has involved himself in the process. I should say that when I refer to his 'statement', it is a document that does not appear to have been drafted by a lawyer and is not in the correct format for the proceedings.
- 7 The father did not attend today and I was faced with three possibilities. Either that I make directions for the mother to file a response to the father's vastly differing account of events in the statement to which I have referred. Secondly, that the orders should stand with liberty to the father to apply or, thirdly, that I should hear oral evidence from the mother to establish an account of events in order to bring a conclusion to these proceedings. The third option seemed to me to fit most logically with the children's timescales and the general philosophy of this jurisdiction.
- 8 It seems to me that, from the father's non-attendance, his skilful avoidance of any real cooperation with the process, the unimpressive nature of the document that he has filed, I am entitled to draw inferences adverse to his case.
- 9 In addition, I had the benefit of hearing the mother give evidence. I found her account to be congruent, consistent, coherent and, if I may say so, moving. She is plainly a mother who is very distressed and missing her children.
- 10 In so far as there is any difference of account between the mother and the father, with little hesitation, I prefer the account of the mother. I find that the children have been forcibly separated from their mother by the father now for over a year and I make that finding to stand in these proceedings.
- 11 As I have already stated, the order requiring the children's return remained in place but for the avoidance of doubt and now, having made the findings, I reissue the order for the children's return.

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