

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 22nd February 2013

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

Between :

ML (Mother)

Applicant

-And-

KW (Father)

1st Respondent

-And-

IW
(through his Children's Guardian)

2nd Respondent

Mehvish Chaudhry (instructed by Dawson Cornwell) for the Applicant
Finola Moore (instructed by JD Spicer Zeb Solicitors) for the 1st Respondent
The 2nd Respondent was not represented at this hearing.

Hearing dates: 18th to 22nd February 2013

Judgment date: 22nd February 2013

JUDGMENT

Mr Justice Peter Jackson:

Introduction

1. In these wardship and contact proceedings, the father (KW) seeks contact with his son I, who was born on 15 July 2010 and is now aged two. His application is opposed by I's mother (ML), who makes serious allegations against him and his family. The mother and I are living at an undisclosed location and the father has had no contact with I since May 2012.
2. This hearing has been a fact-finding hearing in respect of the mother's allegations. Any party seeking a finding of fact bears the burden of proving it and in order to make a finding of fact that an event occurred, the court must be satisfied that it is more probable than not that it did.
3. The hearing has lasted for five days, with the court sitting long hours to enable evidence to be taken by video link from abroad. I have read the court papers and heard from eleven witnesses, seven of whom gave evidence via a video link and required an interpreter. The witnesses were:
 - The mother, giving evidence in London by video link through an interpreter, and listening to the remainder of the hearing from the mechanical recording room.
 - The mother's parents and her sister A, giving evidence in Kabul by video link through an interpreter in London.
 - The father
 - The father's father and sister M, and a family friend Mr K, giving evidence in Kabul by video link through an interpreter in London.
 - Three witnesses on behalf of the father: Mr T (a neighbour in London), Dr A (the father's cousin) and Dr B (his wife).
4. Although the technology that allows evidence to be taken from abroad is remarkable, I am very conscious that the court's task in judging the truthfulness of witnesses is made less easy when evidence is given by video link through an interpreter. This applies in the present case to those witnesses who gave evidence from Kabul, at a distance from the interpreters in London. These two interpreters had difficulty understanding the witnesses and their language at times, and the evidence was quite frequently interrupted while matters were clarified. Overall, the quality of those parts of the hearing was adequate, but no better than that.

5. The mother, in contrast, had the advantage of a good video link and a very able interpreter. In consequence, the court has had a full opportunity to assess her credibility, and also that of the father, who speaks excellent English. Between them, they gave evidence for some ten hours in total.

The history

6. The parents originate from Afghanistan and are members of respectable, educated families, resident in Kabul. The father is aged 33 and the mother 24.
7. In 1999, the father came to England claiming asylum. In 2005, he was granted British citizenship. In 2007, discussions about marriage began between his family and the mother's family and in February 2008 he and the mother met for the first time. In October 2008, they entered into a civil marriage ceremony in Peshawar, Pakistan. In February 2009, the marriage was celebrated in Kabul, and in May 2009, the mother entered the United Kingdom on a spousal visa.
8. In June 2009, the mother suffered a miscarriage. The father had not been in favour of having children at this early point in their relationship.
9. In November 2009, the mother became pregnant again, and I was born in July 2010.
10. The mother makes six allegations against the father in relation to his conduct in the home between September 2009 and January 2011. I will return to these. The sixth allegation relates to 31 January 2011, a date on which the mother called the police to the family home.
11. By June 2011, I had been issued with a British passport.
12. On 16 June 2011, the father purchased return air tickets for the three members of the family, departing for Dubai on 29 June and returning from Dubai on 24 August.
13. On 22 June, the father purchased onward air tickets for the three members of the family from Dubai to Kabul on 30 June, and a return air ticket for himself from Kabul to Dubai on 23 August. He did not purchase air tickets for the mother and I for the return leg Kabul-Dubai.
14. On 30 June, the family travelled from London to Kabul via Dubai. As it transpired, the mother and I remained in Afghanistan until 22 May 2012, when they returned using new travel documents, having received assistance from the Afghanistan Independent Human Rights Commission and from the Foreign & Commonwealth Office. The mother's seventh and final allegation relates to events in Afghanistan.

15. During the months between June 2011 and May 2012, the father was in Afghanistan during the following three periods: 30 June - 22 August, 26 September - 13 October, and 27 March - 29 May.

16. During the same period, the mother's whereabouts in Afghanistan were as follows:

30 June – unclear date

With I at the paternal family home, possibly with some time visiting or staying at the maternal family home. I's first birthday on 15 July was celebrated at the paternal home.

Unclear dates (13 days)

Following an incident at the paternal home in which I received a minor cut to his nose, the mother went to live with her own family for 13 days while I remained with the father in the paternal home.

Unclear date – 20 September

The mother returned to the paternal home and was reunited with I. During this period, the father left for England on 24 August the Eid festival was celebrated at the end of that month. The father says that the mother spent Eid with her own family (but she was not asked about this). On 20 September an incident occurred between the two families at the paternal home, as a result of which the mother left that address for the last time.

21 September - 5 December

The mother and I lived at a refuge provided by the Human Rights Commission, and she approached the British Embassy in Kabul for assistance.

5 December – 22 May

The mother and I lived at various addresses. At one stage they visited the British High Commission in Islamabad, Pakistan, to obtain a travel visa. On 20 May 2012, consular staff in Kabul issued an emergency travel document for I.

17. Following the father's first return to Kabul on 26 September, there was a series of official interventions by the Afghan authorities, including the police and

courts, with a decision on 22 April 2012 that granted weekly contact to the father and a decision on 7 May 2012 that granted care of I to the mother.

18. The father had contact with I under court order and controlled conditions on 10 and 11 October 2011 and again on a handful of occasions in April/May 2012.
19. On 11 May, the mother's English lawyers issued wardship proceedings in this court and on that date a location order was made. The mother returned on 22 May and the father on 29 May. The location order was executed and the father was found to be in possession of I's passport.
20. On 31 May, the mother made a statement to the police containing the allegations that are now under consideration. The father has not been charged with any criminal offences.
21. On 31 August 2012, the father issued his contact application.

Assessment of the parents as witnesses

22. The mother was not willing to give evidence in court in the father's presence. I found her in most respects to be a satisfactory witness. Her descriptions of events were usually clear and consistent, and fitted well with what is known about the surrounding circumstances. On a few occasions during her evidence she became appropriately distressed, but she was able to stand up to contradiction and overall spoke in accordance with her statements. She was willing to describe good times in the relationship with the father, but on her account these did not continue after her pregnancy with I.
23. The father is plainly very affected by these events, and by his separation from I. He is a man of obvious intellectual intelligence, but I am afraid that I did not find him to be a satisfactory witness. He showed a marked lack of understanding for the mother's position and was unable to give any plausible alternative explanations for the events that have engulfed his family. He was unable to describe any shortcomings in his own behaviour and described the allegations against him as a premeditated plot, orchestrated by the maternal grandmother, to enable the mother to leave the marriage while remaining in UK, to the benefit of her family in Afghanistan.

The mother's allegations

24. The first allegation is that in November 2009 the father punched her, giving her a black eye. In evidence, the date was changed to September 2009. The father says that he has never lifted his hands to the mother at any stage (though I note he accepted grabbing her by the face during the course of the incident in which I's nose was injured). I find this allegation proved, the date being September

2009 or thereabouts. I reach this conclusion because I prefer the evidence of the mother on this question to the evidence of the father, and because there is some photographic support for her claim. In two photographs taken around the time, one of which is attached to the mother's driving licence dated 26 September, a mark is clearly visible below the mother's eye. She says, and I accept, that this is the residue of a bruise around the whole eye. I reject the father's explanation that it is the result of a burn caused by cooking oil.

25. The second allegation is that the father insisted upon having vaginal sex with the mother within a few days of I's birth. This caused her stitches to come away and she was in pain. The father strongly denies having had intercourse at this time. I accept the mother's account, which is corroborated to a degree by medical evidence of a vaginal skin tag that has required subsequent treatment.
26. The third and fourth allegations are that the father forced himself upon the mother by way of anal intercourse in about September 2010, and again in the following month, when I was some two or three months old. The father says that he has never had anal intercourse at any time. I do not believe him. I accept the mother's detailed evidence about these events and the pain that they caused her. She describes the second occasion as involving the use of some considerable force, and causing injury. In October 2010, the mother visited the GP, complaining of an anal fissure. At the time she made her allegation, she did not have sight of this record, and in my view it provides some corroboration for her account.
27. The fifth allegation is that in January 2011 the father, during an argument, picked up I in his car seat and dropped it from a height onto the mother's lap, causing her bruising and making I cry. There is no plausible reason for the mother to have invented such an unusual incident, and I find that it occurred.
28. The sixth allegation is that on 31 January 2011, the father assaulted the mother during the course of an argument by slapping her more than once and stretching her leg until it hurt. The father accepts that there was an argument, but no violence. The mother called the police, but did not describe any violence as having occurred that evening. I nonetheless accept that the father behaved in the way that she describes. It is not surprising that a person in the mother's position, speaking very little English, would hesitate to inform the police once they had arrived, whether or not she had been told to keep quiet by the father as she alleges.
29. Likewise, the fact that the earlier allegations were not made publicly until May 2012 is not a reason for doubting them. Up to this point, the mother was very dependent upon the father, and it was only with the considerable support that she later received that she was able to speak of these very personal matters.

30. My overall assessment of the parents' time in England's together is that, as the mother agreed in evidence, there were periods of happiness. This is confirmed by the evidence of the father's cousin and his wife, who saw the public face of the marriage. However, they were not in a position to know what went on in the family home.
31. To some extent, I find that the mother exaggerates the level of daily control that the father exercised over her. I accept his evidence in relation to the activities that he arranged. I find that he exercised the sort of influence that would be expected of an accomplished man, now accompanied by an inexperienced wife; unfortunately, I also find that he has a self-centred and controlling streak, so that it will often have been difficult for the mother to feel free of him.
32. The father himself said that the mother is not the sort of person to make up such events and he added that he is puzzled that she plainly believes what she is saying. While the father does not have to prove anything, I find his explanation -- that the mother is carrying out a plan dictated by her own mother -- to be unconvincing and I reject it.
33. I turn now to the evidence relating to Afghanistan. The mother alleges that the father abducted her and I when she believed that she was going to Dubai for a family holiday, that she was held captive by the father's family and prevented from spending time with I, that she was beaten frequently and that a gun was held to her head and threats to kill were made.
34. I am not satisfied by the mother's evidence that she did not know that she was travelling to Afghanistan when she left London on 29 June 2011. I find it more probable that she knew that this was a holiday with her family and the father's. This is what she told the consular staff in Kabul. I accept the evidence of Dr B that the mother spoke of a forthcoming holiday and of the neighbour Mr T that she was present when he and the father discussed the trip. I find that the mother knew that the vaccination she received was for a trip to Afghanistan, as recorded in her GP notes. Moreover, a trip to see family would have been an entirely natural event after an absence of two years and the arrival of a new grandchild. In contrast, this family was in no position to take a holiday in Dubai and no accommodation had been booked. I accept that the father took the lead in making arrangements of this kind, but not that the mother was so passive that she took no interest in where they were going. Dubai is the natural staging point for travel to and from Afghanistan, and I do not accept that the mother walked onto the second flight before realising where it was bound. I also suspect that the evidence of the father's family that the maternal grandmother was present at the airport in Kabul is likely to be correct, but I make no finding about it as she was not asked about this.

35. I accept the father's explanation for the lack of a return ticket for the mother and I from Kabul. Had he been intending from the start to take them there and leave them, he would not have bought the return tickets for them from Dubai.
36. However, I do not accept the father's evidence that he did not keep the mother's passport. He described keeping I's passport either locked up or with him and I prefer the mother's evidence that he held on to her passport in the same way. The mother complained to the Afghan authorities and to the British authorities about him doing this and I find this consistent with his tendency to coordinate and control.
37. Although a great deal of the hearing was devoted to events in Kabul, I do not intend to make comprehensive findings about them. In part this is because of the limitations of the hearing, referred to above, but also because I wish to say no more than is necessary. If there is to be the opportunity for the mother and I to visit Afghanistan in future, there will need to be a coming together of two families, and I want to limit the risk of being unfair to either.
38. Nevertheless, I find that the treatment of the mother or father and his family in Afghanistan was oppressive. They attempted to control her movements, particularly when I was with her. They would not have allowed her to take I with her after the incident when he injured himself because the father was angry and they regarded her as negligent. The only way that she could be with her son, who had never been apart from her before, was by returning to live with them. I reject their explanation that the mother was happy to live with them for weeks at a time in preference to her own family. I find that on 20 September 2011 there was a serious disturbance at the paternal home, sufficient to cause consternation among the neighbours, and that this caused the mother to flee and to be so concerned for her safety that she sought refuge, preferring to live in a shelter for 2½ months than to live with her own family. I further find that the father and his family pursued the matter through legal means, portraying the mother as an unsuitable parent, imposing conditions, and contesting custody. Cumulatively, this placed considerable pressure upon the mother and caused her acute anxiety about the father's intentions. It is this that explains her seeking help from the authorities to return safely to England. Taken together with the abuse that she had suffered in this country, I find that the mother's concerns were essentially genuine. They will have been increased by the father's extensive lies during these proceedings.
39. There are other matters about which I take a different view. I make no finding either way about any injuries suffered by the mother during her stay in Afghanistan. There is nothing to corroborate her evidence and that of her family and even though her sister A made covert tape recordings, no photograph of any injury has been produced.

40. I cannot be satisfied that the maternal grandfather, a man of some standing, was kept in custody for three days. His own evidence and that of his family on this point was confused and I think the evidence of the father's witness Mr K is more likely to be correct.
41. Based on the evidence as a whole, I find it more probable that the sister who attended at the paternal home on 20 September was sister S and not sister A. Sister A had difficulty in describing the occasion, which she did not even mention in her statement, and I prefer the evidence of the father's family on this point. The fact that a witness has given evidence in this way, to the mother's knowledge, is a cause for serious concern.
42. However, I also reject the evidence of the paternal family that the mother and her relatives departed peacefully from their home on 20 September. There was undoubtedly a great and frightening upsurge of emotion on that occasion, marking as it did a crisis in the parents' marriage with all the social and family consequences that that entailed. I make no finding either way about whether the paternal grandfather threatened the mother with a gun in the way that she describes. The grandfather denies ever having owned a weapon. The only evidence is the mother's own account, unsupported by her own mother who was present. I do not accept that the grandfather remained indoors: I find that he was very upset at the situation that he found and that he was part of the general fracas that took place but I am not prepared to make a finding of this seriousness on such limited evidence.
43. These are my findings. Future arrangements for I will be based upon them, and the court will hold another hearing in due course. Unfortunately for I, there have been some very serious events in the past that would make it difficult for him to enjoy important relationships with his father and wider family members if things remain as they are. It is now up to the parties to respond to the court's decision. If there is a substantial acceptance of what I have found, it may be possible to work towards some degree of reconciliation and I urge the parents, and in particular the father, to reflect on the position, accept responsibility for what has happened, and make some progress possible.
44. I shall discharge the wardship proceedings and make a residence order in favour of the mother, together with any necessary protective orders. I will hear submissions from the parties, including from I's Guardian, as to how other issues are to be investigated and resolved.