

Neutral Citation Number: [2013] EWHC 3554 (Fam)

Case No.FD11P01347

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

[

Royal Courts of Justice

Date: Thursday, 7th November 2013

Before:

MRS. JUSTICE PARKER

B E T W E E N :

A

Applicant

- and -

A

Respondents

*Transcribed by **BEVERLEY F. NUNNERY & CO**
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

MR. A. PERKINS appeared on behalf of the Applicant.

MR. E. DEVEREUX appeared on behalf of the Respondents.

MS. CAREW appeared on behalf of the Guardian.

MS. R. AMIRAFABI appeared on behalf of the Local Authority.

J U D G M E N T

MRS. JUSTICE PARKER:

- 1 This is an extraordinarily difficult decision, and I have swayed back and forth between the two options as this day has progressed. I have made three orders since the decision of the Supreme Court in September this year which relate to the return of the four children: a girl 12, a girl almost 11, a boy 8, a boy just 3. The father conceded that the children should be returned.
- 2 I was anxious, in the light of the history, that this was a pragmatic decision only and that there would continue to be obstruction of the court process. Unfortunately, it seems that I was right. Reasons were given by the father for the children not being returned as I had expected. I was not satisfied that he had done everything he could to get them back. I had a second hearing on 13th October when the father was in person. I spoke to him over the telephone from Pakistan. His two brothers - the second respondent and his other brother who had been a McKenzie friend - were in court. The father still said that there were problems particularly in relation to H's passport; he has never had one. The children's passports were said to be expired or at least some of them were said to be expired, as was the father's. The father again agreed to bring the children back to this jurisdiction. The father had asserted that the Pakistan proceedings prevented the children from being removed. That appears to have been an obstacle which, even if it existed, was easily overcome, as subsequent events show. He said he would cooperate with CAFCASS in providing details of those residing at the family home, the homestead. A discussion took place as to whether all four children ought to come back together, or whether the three elder children could be sent back in advance of the father and H. I made an order on the alternative basis, that the three elder children would be sent ahead without the father, the father following with H, or that all four might be able to travel back together. The father did not suggest to me that he would bring the three elder children back himself and leave H in Pakistan, but that is what has happened.
- 3 They arrived back here on 25th October. I had made an order that if the children were to be sent without the father that they were to live with the mother and have contact with the father. If he was to come back with all four together, they would remain with him but have contact with the mother until the matter could be brought back for an early determination of who was to live where. And I made it clear that I expected that contact to be generous and frequent.¹
- 4 It seems to me obvious that the father chose to bring the three elder children back himself in order to avoid the possibility of the children going into the care of the

¹ The father did not suggest that the children would refuse to see her.

mother. Only today, through Mr. Devereux, who again appears on behalf of the father, has the court or indeed anyone been told what arrangements have been made for three year old H in Pakistan. I do not think anyone had the courtesy to tell the mother what was happening to her son. I am told that he is in the care of his 65 year old grandmother and 72 year old grandfather, and a nanny, whoever she may be. The mother has the gravest fears and suspicions that in fact the nanny/housekeeper - she may be either or both - has had the primary care of all of these children.

- 5 The only contact that has taken place has been fraught with difficulty. The children have shown terrible fear of their mother - shaking in her presence, and did not allow her to touch them. The father asserts that there was an unpleasant scene during the contact handover and that mother behaved inappropriately. I have my strongest doubts about that, although I have not yet heard any evidence. The father has remained with the children on the three occasions when there has been an hour's contact at McDonald's and the children have engaged in limited conversation with the mother.
- 6 The matter came back before me today and, as a result of what I have been told, I formed the view that the threshold had been crossed under section 31 of the Children Act in that the children are suffering significant harm and have suffered significant harm due to their separation from their mother against whom previously nothing adverse has been said as a parent², and who cared for the children with the father in Pakistan until her escape.
- 7 The father, although he had not deigned to attend the court proceedings before me early in 2012, had presented a case, supported vociferously by his two brothers, that the mother had deliberately abandoned these children because she did not care about them. I reject that case. The father's explanation - I heard him not on oath but I asked him to address me directly and I spoke to him whilst he was in the witness box today - is that the children know that their mother has abandoned them and that is why they want nothing to do with her.
- 8 The children were brought to court today pursuant to my order. They saw Mrs. Odze who has been appointed as their Guardian. They told her that they did not want to see their mother. I suggested that they should see their mother together with Mrs. Odze and Ms. Carew. They spent about 20 minutes together. They went out to a local café. The children were wholly uncommunicative with the mother, refusing to speak to her, refusing to acknowledge her, refusing to respond to her unobtrusive and unemotional or at least unpressurising questions as to how they

² And their retention in Pakistan

were, what they were doing at school, and so on. It was all, as I am told by Mrs. Odze, low key and appropriate in the circumstances. The mother behaved herself and comported herself entirely appropriately, which is one of the reasons why I have serious doubts about the father's account about the way she behaved on other contact visits when only he was there. It is quite obvious to me from everything I know about this case that this father is absolutely determined to exclude this mother from these children's lives, as shown by his actions, and as shown and demonstrated by what his brothers have told me during the various phases of these proceedings.

- 9 I said that I intended to make a section 37 direction. The Local Authority had not carried out safeguarding checks, as I had requested in my previous order. I put the matter back to the end of my list, after having told the father that I would consider an interim supervision order, an interim care order, (or perhaps no order at all). I was extremely concerned about the children. The father is not able to give me any reassurance that he can do anything about facilitating the children's contact. He says that he will tell them in my presence that he is pro contact, but I am very concerned about what he will say outside the court, and indeed what his brother, Parvase, who is here with the children today, will say to the children, and indeed other family members as well. I see no recognition in the father that he has behaved in any way inappropriately. He maintains his case that he did not coerce the mother to stay in Pakistan and that she voluntarily abandoned the children. I see no true commitment to trying to change the children's minds or in asking them to reflect or look at matters from the mother's point of view. I have enquired whether I could have an input. Sometimes seeing a child can make a difference. Mrs. Odze is of the view that this is not one of these cases. I am terribly concerned that I may make things worse. But there is a valid role for a judge in attempting to persuade a child to a different point of view, and sometimes I hope and I think I have managed to achieve that in the past.
- 10 As a result of the stage to which we have got, Mr. Perkins asks me to make an interim care order on the back of a section 37 direction. The Guardian leaves that to me but is obviously very worried indeed about it. Mrs. Odze told me when she spoke to me this morning that she thought that the appropriate course was to try and get things to improve, and she thought that they would. I regard that, from what I know of this family and this father, which is rather more than Ms. Odze does - I am not being critical in any way, I make that absolutely clear - as a forlorn hope. The Local Authority is not urging me to do one thing or another. It recognises the trauma that will be caused to these children if I remove them. The Local Authority is here through Ms. Amirafabi, who has been instructed this afternoon with very

limited knowledge of this case. Two social workers are on the way. The Local Authority adopts a wholly neutral position, but does tell me from all that it knows about this case - it has not even yet had an opportunity to read the judgments of course, and that again is no criticism - that it does not think that it can possibly carry out any effective assessment whilst the children remain in their current setting.

- 11 I have agonised over this decision. I recognise that if I do remove the children I have to be satisfied that the children are at immediate risk of really serious harm; I paraphrase the test. I entirely accept that the fact that I am satisfied that the interim threshold criterion is satisfied is not a ground for removing a child from a parent. The decision taken by a court on an interim care order application must necessarily be limited to issues that cannot await the final hearing and must not extend to issues that are being prepared for determination at that hearing, and separation is only to be ordered if the child's safety demands immediate separation. However, from recent decisions, including an appeal from a decision of mine in a section 37 case, safety includes emotional safety. I accept that the standard must be high and removal must be proportionate in the light of the risks posed by leaving the children where they are. I also accept that the balance has to be struck between the interests of the child remaining in care and those of the parent in being reunited with the child, attaching particular importance to the best interests of the child which, depending on their nature and seriousness, must override those of the parent.
- 12 So far as Article 8 is concerned, these children and both of their parents have a right to family life, and if I remove these children that will need to be proportionate to the risk which is demonstrated to them. Of course the children have a right to a family life with their mother as well as a right to a family life with their father.
- 13 It is quite apparent to me that these children have been used as pawns, as weapons, in the father's battle against the mother, and that no regard whatsoever has been paid to their emotional welfare. The risk of increased emotional pressure of an extremely damaging nature being exerted on these children if they are to remain where they are is extremely high. I have discussed with counsel whether or not I should adjourn the decision to see whether contact can work. It is suggested that there might be daily contact of an hour a day. Mrs. Odze suggests a gradual build up. That would require involvement of the father at the weekends. That, in my view, makes contact unworkable. I accept Mr. Perkins' submission that the father has been given every opportunity to comply with court orders, has only done so in respect of three of the children so far, has returned the children in a way that best suits his needs and wants, without regard to the interests of little H, separated from his siblings and his father, and that he has done so only under threat of financial penalty arising from the

fact that an application would have been made for sequestration of his assets or will shortly be made.

- 14 Expressing the views they do at the moment, and subject to the pressures to which it is quite obvious to me that they are subjected, the continued daily contact would prove to be distressing, conflicted and would be almost certainly unsuccessful. It could rapidly turn into torture for them and torture for the mother. I have thought about having two contacts of, say, four hours each, before bringing this case back on the 19th, when there is a slot. Again, I think that there is every prospect, bearing in mind what has happened over the last 10 days, that that will also be wholly unsuccessful. There is a high likelihood in this case that if I leave the children where they are now, the problems in achieving contact with the mother will be compounded and I do not see that the father, who has shown no respect for this court, has any incentive to induce a change in the children's attitude. Otherwise we would not be in this situation. If I thought that there was any prospect that that mindset would be changed in one or two weeks, I would take the risk - and a serious risk it would be - of seeing what he could do. I expect also that, whatever the father may say in court or pay lip service to, the insidious influence has been so protracted and so persistent that the children are now in a state where nothing that the father says or does can change their minds. I recognise that these children at their ages are not only capable of expressing their views and their wishes and their feelings, but that they have of course some degree of reasoning process behind it. But the reasoning is false. The reasoning is that their mother has abandoned them and that she chose to leave Pakistan without them. The girls say they have a memory of this - a memory which I strongly suspect has been persistently reinforced.
- 15 I have come to the extremely difficult and painful conclusion that these children must be removed under an interim care order now. I will review this matter on 19th November. The Local Authority has already had an appropriate foster placement identified³. I have paid tribute to them, and I am extremely grateful to them. Of course I will be able to give full consideration to what is in the children's interests in 12 days' time, but unless this opportunity is grasped now, the moment for intervention will be passed. I have considered the express wishes and feelings of the children concerned. I am not sure whether I know what their ascertainable wishes and feelings are. It seems to me that if they could be reassured that their mother had not abandoned them, they might very well take a different view. Their physical and educational needs are to be well cared for and to be in school. They are not in school at the moment. Their emotional needs are to be released from pressure to support the family case, and to be given a safe haven where they can begin to

³ That was not in fact correct: see post judgment discussion : it was confident that it would identify an appropriate placement.

understand what has happened to them and what has happened to their mother and between their parents. There is likely to be a significant effect on them of removal into care - an effect, however, which I regard as justified by the circumstances which I have identified. Age, sex, background and characteristics I have dealt with. Harm which the children have suffered or at risk of suffering, is the harm of emotional pressure and a false history, and they are at risk of suffering further harm by being further drawn into supporting adult views. The capacity of each of the parents and any other person in relation to whom the court considers the question to be relevant. The father may have physical capacity to care for these children - I have no idea, because I have no idea who has actually been providing the physical care for these children - but he has shown himself incapable of treating these children as independent, emotionally sensitive beings, who deserve proper care in the emotional sense, and respect for their feelings and relationship with both parents. The mother I regard as wholly capable of meeting these children's needs.

- 16 I have a range of powers. I do not think that a supervision order will give this Authority the ability to assess these children's needs, as they themselves tell me, and it is certainly not appropriate to make no order at all. As the Supreme Court said in *Re B*, endorsed by the Court of Appeal, I can only make a care order, interim or final if nothing else will do. Nothing else will do.
- 17 I am very sorry that it has come to this. When I made the last order, I did so on the basis that I fully intended these parents, each of them, to be able to co-parent⁴ their children and play a proper part in each of their lives. The father is inevitably distressed. It is to the mother's credit that she shows no pleasure or no triumph in my decision, but is very sad and is weeping as I say this. That is my decision.

LATER:

- 18 First of all, the driving force for this application has been the court. I make no bones about it. The father has been a party to these proceedings, which are still proceedings which are subsisting in respect H for a long time now. Section 37 ICOs are unusual by their nature, because they always court-driven, and I consider that in the unusual circumstances of this case it is appropriate that the father tells me precisely what has been going on and what he proposes for these children, and in particular contact, whilst the Local Authority is carrying out its assessment, which it will be hard pressed to do in any event.

⁴ But not what role each would play

- 19 The only question is whether I should advance the Local Authority and the Guardian's presentations before 3.30 on 18th November. I would love to give more time to the father and indeed the mother to consider the recommendations. I do not think, unfortunately, in the circumstances it is feasible. Wednesday next week is just simply too short a time.
- 20 So far as H is concerned, these wardship proceedings are presently continuing. They have been brought back, as I say, for the third time since the decision of the Supreme Court. H is my ward. I am in a position to make orders to promote his welfare in the short term. One does not necessarily expect there to be a formal application and a statement in support where the court has to respond to an emerging and developing set of circumstances. I am quite clear that H should not be in the care of his father or indeed any member of the father's family, being so intimately engaged in their campaign against the mother with the father. H should be returned to his mother's care on his return to this jurisdiction. I include in family members the father's parents, the paternal grandparents, who I have not seen but who are plainly also allied with the family and who have been instrumental in maintaining the children's retention out of the jurisdiction for two and a half years, together with the father, or at the very least, have been passive bystanders. If there is to be any question of the mother not being able to have care of H, then I will have to consider whether or not to make an interim care order.

LATER:

- 21 I gave Mr. Devereux two opportunities to address me. I accept that this was essentially *ex parte* but it was on notice in the sense that the father and Mr. Devereux and everyone else has been here since 9.30 this morning, and I made first reference to section 37 and the possibility of an ICO or ISO at about 9.35, as I recall it. I have heard from the Guardian, albeit not on oath, but that makes not the slightest bit of difference. I have heard submissions. I know that CAFCASS did not invite me to do this, and that Mrs. Odze took a different view from me - a view with which I dealt in my judgment. I know that the Local Authority was extremely circumspect in what it said to me, but I came to the conclusion, for the reasons expressed in my judgment, that this was a case which, against this history, required immediate removal, and I think I said words to the effect that if I did not do so, the children were likely to be subjected to increasing emotional pressure and continuing significant harm. So, difficult though this decision has been, I refuse permission to appeal, and I refuse a stay.

