

**IN THE FAMILY COURT**  
**SITTING AT THE ROYAL COURTS OF JUSTICE, STRAND, LONDON**

(Neutral citation number - 2014 EWFC 17)

BEFORE:

**MR JUSTICE BAKER**

**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF JXN (A CHILD)**

BETWEEN:

**SXX**

**Applicant**

**- and -**

**KRN**

**Respondent**

**The Applicant appeared in person, assisted by a McKenzie Friend, Mr. Dainty**  
**The Respondent appeared in person, assisted by a McKenzie Friend, Mr. Clayton**

Judgment date: 13<sup>th</sup> June 2014

**JUDGMENT**

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Tel: 01303 230038

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**IMPORTANT NOTICE**

**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment no person other than persons named in this version of the judgment may be identified by name or location and that in particular the anonymity of the child and members of her family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

**Mr Justice Baker:**

1. This is an application by a mother for permission to take a child on holiday to China. The application is opposed by the father. The mother was born in China but has lived in this country for 12 years. In 2010 she was granted British Citizenship and thereupon renounced her Chinese Citizenship as apparently required under Chinese law.
2. Having acquired a Master's Degree from the University of Portsmouth, the mother has worked for nine years for an international electronics components company and has now risen to the position of General Manager in which job her responsibilities including reporting directly to the Board of Directors and the day to day running of the business in this country with 20 staff members reporting to her.
3. Since living in this country the mother has returned to China once or twice a year. Her parents and brother continue to live in South China and her parents have been to visit her in this country, in addition on two occasions on each occasion staying for several months. The mother tells me, however, that that is now more difficult because her father is very ill.
4. Some years ago the mother formed a relationship with Mr N, hereafter referred to as the father, and became pregnant by him and on the 24<sup>th</sup> January 2010 she gave birth to a daughter, J, therefore now aged four and a half.
5. The mother has taken J to China on four occasions. The last occasion was in the autumn of 2012. By that stage her relationship with the father was breaking down and they separated shortly afterwards although I understand that for a while they continued to live in the same house.
6. Upon separation the father filed an application in respect of the arrangements for J's care, residence and contact. This was apparently prompted by an incident when the mother removed J from the household, allegedly without telling the father, and also took J's passport. The father feared that the mother was about to abduct J and having spoken to Reunite he contacted the police who tracked the mother down at a friend's party.
7. On 22<sup>nd</sup> January 2013 District Judge Brooks in the Trowbridge County Court made an order forbidding either parent from removing J from the jurisdiction and relisted the matter of residence and contact for another hearing once the Cafcass checks had been completed.
8. That further hearing took place before the same judge on the 12<sup>th</sup> March 2013 at which an order was made defining the time that J would spend with each parent, namely two consecutive weekends and an intervening week each month with the father and the rest of the time with the mother.
9. The matter was listed for review in June 2013. At that next hearing the father apparently raised again concerns about the mother taking J out of the jurisdiction

and the judge therefore listed the matter for a day's hearing in October giving directions to the parties for the filing of evidence.

10. In the event that hearing was apparently brought forward to September at which point the district judge amended the residence arrangements ordering that J should reside with the mother save for two weekends a month when she should reside with the father.
11. The Prohibited Steps Order in respect of removing J from the jurisdiction was also amended so as to provide that neither party should remove J from the jurisdiction without having first informed the other party of full details of any planned holiday. Both parties were prohibited from removing the child from the jurisdiction permanently. The District Judge further ordered that J's passport be released by solicitors to either party to facilitate such a holiday unless the other party objects in writing to such release, whereupon that party was obliged also to make an application to the Court.
12. On 22<sup>nd</sup> October 2013 a few weeks later, however, the father filed an application for a further order stating that the mother had indicated that she proposed to remove J from the jurisdiction for a holiday. The matter came before Her Honour Judge Marshall, the Designated Family Judge for Wiltshire, urgently on the 31<sup>st</sup> October. Having heard from both parties in person the learned Judge discharged the previous order and replaced it with a further order. She recited the fact that the Court considered that the child's welfare required a more settled framework for her shared care and therefore made an order that neither party should remove J from the jurisdiction either on a temporary basis or permanently without the written permission of the other party or permission of the Court. She further directed that the child's passport be surrendered immediately to the Court and kept by the Court Office until further directions.
13. On the 21<sup>st</sup> March 2014 the mother then lodged this application for permission to remove J to China for a holiday this summer and she further sought variation of the Prohibited Steps Order made by Judge Marshall. Those applications were duly transferred to me. At a preliminary hearing in Swindon I gave directions for a contested hearing which is taking place before me today.
14. Both parties have again acted in person assisted by McKenzie Friends, Mr Dainty on behalf of the mother and Mr Clayton on behalf of the father. In passing I wish to express my thanks to both McKenzie Friends for their helpful and constructive assistance in this case.
15. The mother's case is that she wishes to take J to China for a two week holiday in the second half of August. Her life has moved on since the breakup of the relationship with Mr N. She has now bought a property with the assistance of a mortgage and has the equity in that property of around £40,000. She lives there alone with J at present but in August it is planned that her new partner, Mr R, will move into the property. Mr R it is said is going to accompany mother and J on the proposed holiday to China.

16. The mother insists that the visit to China is planned purely as a holiday. She has no intention to do any work while she is on that trip. J has been enrolled in a primary school in Wiltshire and is going to start there on the 4<sup>th</sup> September, and the mother's plan is that J will be back in this country by that date. She insists that she has absolutely no intention of removing J permanently from the jurisdiction. She says that she and J are now settled in this country. She has a good job and has a new relationship. J is British and is settled in this country.
17. In reply the father says that he continues to fear that there will be an abduction. He has set out his arguments in a written document which, although he has been apologetic about it, is to my mind a very clear exposition of his argument and concerns. He submits that as the issue of contact remains unresolved (he having recently launched a fresh application in Swindon in respect of child arrangements) it would be inappropriate for there to be foreign travel of this sort until contact matters have been properly dealt with in full. He says that that may take months, possibly up to a year. He is concerned about the risk of abduction, particularly as China is a non-Convention country. Any safeguard offered by the mother would, he says, be ineffective to ensure J's return. He is concerned that the mother has used the promise of foreign travel to J to alienate the child from him. He points out that the grandparents have been visitors to this country and therefore contends that there is less justification for the mother to need to take J on holiday to see her family there.
18. The father also states that the mother has access to considerable funds through her business and says that she is part of an informal business debt work which has, as one of its objectives, the channelling, indeed laundering, of money into and through this country. He makes a number of other points in his written document all of which I have carefully considered.
19. At this hearing today the mother's given evidence and I was able to ask questions and gauge her responses and form a view as to her reliability. The father also was able to ask her a few brief questions. The mother totally refuted the idea that she was involved in moving, channelling or laundering international funds. She insisted that she is a British citizen, settled here, plans to return and has no intention of abducting J. The father did not give evidence but he made a further oral statement, all of which I have taken into account.
20. In considering this application J's welfare is my paramount consideration and I take into account the matters in the welfare checklist in Section 1(3) of the Children Act. I have regard to the case law cited to me today, in particular the decision of the Court of Appeal in *Re K* [1999] 2 FLR 1084, the more recent decision of the Court of Appeal in *Re R*, (sometimes called *Re A*) [2013] EWCA Civ 1115, and the decision of His Honour Judge Clifford Bellamy sitting as a judge in the High Court in a case also called *Re R* [2014] EWHC 643 (Fam).
21. In particular I have to apply and adopt the approach as summarised by Patten LJ in the *Re R* [2013] decision of the Court of Appeal at paragraph 25:

“applications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements:

- a) the magnitude of the risk of breach of the order if permission is given;
- b) the magnitude of the consequence of breach if it occurs; and
- c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.”

22. As Patten LJ emphasised:

“It is necessary for the judge considering such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave.”

- 23. Having heard the mother give evidence in this case I entirely accept her evidence. I am entirely satisfied that she is telling me the truth when she says that she does not intend to abduct J, that she and J are British citizens and are going to live here. She is in a good job, has a new relationship with a British man who lives here. J is enrolled in primary school here.
- 24. Having heard her I am very confident that she is telling me the truth. There is in my judgment no reliable evidence of any risk of abduction in this case. Accordingly I consider the risk of any breach of the order to be negligible. I accept that were a breach to occur and were the mother to fail to return J to this country at the conclusion of the holiday, the consequences would be very serious. But as I think the risk of that happening is negligible it seems to me that the consequences of any breach are not a significant factor in this case.
- 25. The mother has a house here and if she were to fail to return J to this country steps could be taken against that property. In addition, the mother is willing to offer to lodge her passport with a Chinese lawyer who has named and identified and agreed to hold the passport and J’s passport on arrival in China pending their return.
- 26. I do not consider that the level of risk requires any such safeguards but if it would provide reassurance to the father, as I think it may, I would accept an undertaking by the mother to lodge her passport and J’s passport with the Chinese lawyer for the duration of the stay in that country.
- 27. Looking at J’s welfare as a whole, I consider it is unquestionably in her best interests to see her family, to travel to China this summer. It is important that she keeps in contact with her family and with her Chinese heritage, particularly as her grandfather is unfortunately not in good health. I am sure it would be an exciting trip for J and something that would greatly benefit her. There is, I find, no risk of harm befalling her as I am confident that she will be returned.
- 28. Of course it is important that J should have contact with her father and if as may be the case there will be some contact lost in the second half of August because she is going to be in China, then I think it would be appropriate for there to be some compensating contact for the father in the first half of the school holidays.

29. Consequently I grant the mother permission to remove J to China for a holiday on the basis discussed on her undertaking, first, to return J to this country at the conclusion of the holiday, and in any event before the 4<sup>th</sup> September so she can start school, and, secondly, to lodge her passport and J's passport with the Chinese lawyer for the duration of their stay in that country.
  30. As I indicated in the course of the judgment, the mother's application also included an application for variation in respect of the Prohibited Steps Order, and in addition the father has recently lodged an application for a readjustment of child arrangements in respect of the child.
  31. As I observed to the parties in the course of the hearing, it seems to me this is a case which cries out for mediation. Both parties are intelligent. I am satisfied both of them have the interests of their daughter at heart, and I would hope that with the assistance of mediation they will be able to arrive at an agreement for the future care of their daughter.
  32. The mother and father both indicated their agreement to this proposal and accordingly what I propose to do is to transfer the other application which was listed before me today (the father's application) back to Swindon and direct that it be listed before District Judge Ralton for a preliminary hearing so he can determine exactly what steps should now be taken to direct this matter towards mediation.
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