



Neutral Citation Number: [2024] EWFC 198

Case No: BT23P00033

IN THE FAMILY COURT SITTING AT WEST LONDON

Gloucester House
4 Dukes Green Avenue
Feltham
TW14 0LR

Date: 19 July 2024

Before:

His Honour Judge Hyams-Parish
(Sitting as a Judge of the High Court)

Between:

F

Applicant

And

M

Respondent

Hearing dates: 1 & 2 July 2024

Shárin Diegan (Instructed under the Direct Access Scheme) Counsel for the Applicant father.
Mother appeared unrepresented but was accompanied by a McKenzie Friend

APPROVED JUDGMENT

This judgment was handed down remotely at 10am on 19 July 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

WARNING

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 the anonymity of the children and members of their 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.

His Honour Judge Hyams-Parish:

BACKGROUND

1. I am concerned with a young girl called G who is 8 years old and was born in November 2015.
2. Her mother and father, the parties to these proceedings, met in 2012. They are both originally from Pakistan. They are both highly educated and intelligent people who hold down responsible jobs.
3. They married within months of their meeting, in March 2013. It is clear that the marriage fell into difficulties at an early stage, but nevertheless the parties made a planned decision to try for a child, as a result of which, G was born.
4. As it turned out, the parties separated in April 2017 in acrimonious circumstances. The father says he left the mother because she assaulted him in front of the child, and he realised that the relationship was not doing the child any good. The mother has a different account of what happened. No findings have been made by me in respect of such matters as I did not hear evidence about it. I take much of the above, and the history of the proceedings referred to below, from the written judgment of Her Honour Judge Harris following a hearing at the Central London Family Court on 14 June 2018, together with an order made by her following the hearing.
5. I have no doubt that G is much loved by her parents. Both want the best for G but have different views about how the shared living arrangements should operate in respect of her.

HISTORY OF PROCEEDINGS

6. Following on from the separation, there became an issue whether the father should be permitted unsupervised contact with G between April and July 2017. The father says this happened on a number of occasions and the mother says it only happened once. From July 2017 to February 2018 contact had been supervised at the mother's behest.
7. When this matter came before Her Honour Judge Hughes QC, she made some very robust comments about the mother's opposition to unsupervised contact. As a result of this, unsupervised contact took place between the father and G between February 2018 and the next hearing on 14 June 2018 to which I have referred.

8. Before Her Honour Judge Harris were a number of issues to determine, including:
 - a. The timing and commencement of overnight contact.
 - b. The duration of overnight stays.
 - c. The periods G should spend with her father during holidays.
 - d. Whether there should be a Prohibited Steps Order (“PSO”) against the father not to remove G from the jurisdiction.
 - e. Whether there should be a prohibition on the paternal grandparents and extended family having any direct or indirect contact with G.
 - f. Whether a Child Arrangement/lives with order should be made in favour of both parents or whether there should be a “lives with/spends time with” order as the mother suggested.
9. Her Honour Judge Harris made a Child Arrangement/lives with order in favour of both mother and father. The detail of when G would live with each parent was contained in the schedule to the order. That schedule also dealt with other matters at paragraph 8(a)-(c) above.
10. At the same hearing the father consented to a PSO being made which prohibited him, save where it was agreed by the mother, from:
 - a. Removing G from the jurisdiction of England and Wales.
 - b. Encouraging or facilitating the removal by anyone else of G from the jurisdiction of England and Wales.
 - c. Applying for any travel document in relation to G, to include a passport.
 - d. Seeking to keep hold of any travel document(s) in relation to G, with that travel document(s) to remain instead with the mother.
11. I accept that the father consented to the PSO as a way of reassuring the mother. In the judgment of 14 June 2018 hearing, Her Honour Judge Harris commented at paragraph 11:

Indeed, the father, as the judge observed, offered consent to various orders, all with the purpose of providing reassurance to the mother and that included a Prohibited Steps Order not to remove the child from the care of the mother, as well as not removing the child from the jurisdiction.

12. The above comment was no doubt also made in the context that the CAFCASS officer stated that she did not believe either parent represented a risk of abduction to G.
13. The father also entered into undertakings that he would not permit G to have any contact with any member of the paternal family save in his presence.

APPLICATIONS

14. Just over five years on from the 14 June 2018 hearing, the father says that he had no option but to make an application to the court to vary the orders made at that hearing, when G would have been still very young.
15. At a PTR on 28 March 2024:
 - a. The parties agreed some variations to the Child Arrangements Order.
 - b. The undertakings referred to at paragraph 13 above were discharged.
 - c. A specific issue order was made permitting the father to travel to France with G for a period of 3 consecutive nights during the school summer holiday of 2024.
16. Also, at the PTR the mother made an oral application for a PSO prohibiting the father from leaving the child in the care of another person overnight during times when the child was living with him.
17. Unfortunately, the agreement reached on 28 March 2024 did not resolve all matters, leaving me to determine the following matters at this hearing:
 - a. The application by the father:
 - i. To discharge or vary the PSO made on 14 June 2018, in particular, enabling him to travel outside the UK with G.
 - ii. To vary the spending time arrangements with G, particularly the division of time during school holidays.
 - b. The application by the mother:
 - i. for a PSO prohibiting the father from leaving G in the care of any other person overnight.

HEARING

18. The mother had been represented at previous hearings by counsel, as recently as the PTR in March 2024. It was clearly anticipated by the father that she would also be represented again at the hearing before me. When the father discovered that the mother intended to represent herself at this hearing, he applied to the court for special measures to be put in place, notably to prevent the mother from cross examining him herself. He did so on the basis that he alleged domestic abuse against her.
19. By the time this application was considered late in the week prior to the hearing, it was too late for the court to appoint a Qualified Legal Representative and therefore it was ordered that the mother submit written questions which could be asked by the Judge.
20. When it came to the cross examination of the father, I asked him those questions prepared by the mother that I considered relevant to the issues I needed to determine. I discussed with the mother those questions that were not relevant, or which did not need to be asked because the evidence was not in dispute.
21. The morning of the first day of the hearing was usefully spent discussing some preliminary matters and narrowing the issues. During discussion with me, the parties were able to agree a significant number of changes to the “live with” arrangements, leaving only the following matters to be determined by me having heard evidence:
 - a. Whether I should discharge the PSO prohibiting the father from taking G outside of the jurisdiction.
 - b. How many consecutive days G should stay with mother and father during the summer school holidays commencing 2025 onwards.
 - c. Whether I should make an order prohibiting the father from leaving G with a third party whilst she is in his care.
22. Those matters that were agreed during discussion with me were incorporated into a draft order prepared by Ms Diegan. Whilst this went through a number of changes, by 14.49 on the second day of the hearing, I sought the confirmation from the parties that everything in it was agreed, apart from those matters to be determined at paragraph 21(a)-(c) above. Both parties agreed.
23. I should add that during discussions on the morning of the first day of the hearing, the mother confirmed that she did *not* oppose travel to Hague convention countries, provided that there was no onward travel to Pakistan or Egypt. She said she feared

abduction if the father travelled to Pakistan or Egypt, whether from the UK or onwards from a Hague convention country.

WITNESS STATEMENTS AND REPORTS

24. The parties had prepared a number of witness statements for these proceedings. The mother had filed four witness statements, whilst the father had filed three. I confirm that I have read and considered carefully the content of those witness statements, in addition to having listened to the oral evidence given during the hearing. I did not, however, consider everything in the witness statements to be directly relevant to the issues I must determine.
25. Prior to the hearing, the mother had filed three further witness statements, in addition to those mentioned above. The mother needed permission to rely on them. Having spent some time narrowing the issues and having explained to her what my focus would be, she decided that she would not, after all, seek to rely on the additional statements. I have therefore not considered these as part of my determination of the issues.
26. The parties had been given permission to instruct experts in family law in the jurisdictions of Pakistan and Egypt. The reports of those experts were contained in the bundle.

MY IMPRESSION OF THE WITNESSES

27. My impression of the father is that he had sought the court's assistance with deciding the above issues as a last resort. During the discussion which resulted in agreement on the first morning of the hearing, I found him to be accommodating and completely willing to make concessions in the interests of G. In evidence he spoke candidly and honestly. He answered questions directly. I found his evidence more reliable and credible than the mother's evidence.
28. I believe the mother found herself in a very uncomfortable position during this hearing because she had been dragged to a position which she did not want to be in. She too made concessions, but my impression is that she felt that she had to because her objection had become unsustainable. I found her to be somewhat evasive when answering questions, obfuscating considerably at certain points during cross

examination. In many instances, there was a direct answer to a question, which she simply would not give until I asked it of her. It left me less convinced by many of the answers she gave.

29. I was concerned to see during the evidence that the relationship between mother and father had descended into frustration and distrust, allegations, and counter allegations. I am in no doubt that both have played their own part in the deterioration of the relationship since 2018, but I also firmly believe that the current arrangements have been weaponised by the mother and that a better balance in arrangements is needed to restore some normality to the relationship. I don't think either party takes enough time to understand the other parent's perspective and there clearly needs to be more of this.

MOTHER'S EVIDENCE

30. The mother was born in Lahore, Pakistan. Her parents split up when she was nine years old. Her mother married a Saudi doctor and they relocated to Ireland where he was practicing, and then later relocated to Jeddah. Her mother is an artist and her father, whilst he trained as a lawyer, is a musician. The mother was raised by her father following the divorce for a period of two years after which she went to live with her maternal aunt and maternal grandfather. Essentially her father and aunt/uncle shared the parenting.
31. After finishing college in Pakistan, the mother went to Harvard Law School in the US. Following that, she stayed in the US and worked at the United Nations and the World Bank.
32. Her father is now retired and lives in Islamabad. She does not have an extended family in Pakistan. She said her aunty did not agree to her divorcing the father and they have not spoken for approximately nine years.
33. On the subject of how many consecutive nights G should stay with her father, she was of the view that there needed to be a much more gradual increase in the length of stay than the father was suggesting. She said that the maximum number of nights stay should be 9 in 2024 (this was agreed by the father), 10 in 2025, and increasing by one day each year until the maximum of 14 days is reached in 2029, when G will be 13 years. In contrast, the father says that the number of days should increase to 12 in 2025 and 14 in 2026.

34. In support of her proposal for a more gradual increase in consecutive nights with each parent during the summer holidays, the mother referred to G's recurrence of UTIs (urinary tract infections) and said that a more gradual increase would allow her to recover and reduce the recurrence of these infections as she grows older. She also referred to G suffering from separation anxiety and suggested that a longer stay too early on, when G was younger, would not be good for her. She said in her first witness statement:

I witnessed G's behaviour change, because she is otherwise a happy and chirpy child who started behaving in a cranky and clingy manner with me after she returned to me after a long gap of being separated from me (her behaviour is the same if separated from the father for long gaps as she cries when he goes on holiday trips for longer periods and she is with me)

35. Her opposition to travel to Pakistan was based solely on the premise that with an ageing and elderly mother in Pakistan, who had suffered recently with her health, particularly in view of a recent heart attack, that the father would inevitably feel that he needed to return to Pakistan to look after her. Her focus during her evidence was on Pakistan and she did not really elaborate at all on what her objections were to Egypt and why she thought the father would abduct G when taking her there. She did say that there were no practical measures that could be taken which would allay her fears. She said the potential costs of returning G if abducted, would far exceed the bond which the father said he would offer to pay (albeit it was not explored with the father during questioning whether he would offer a larger bond, if needed).

FATHER'S EVIDENCE

36. The father was born in Lahore, Pakistan. His family migrated from Pakistan to Canada in 1999. He then moved to the UK from Canada in 2008. He became a British citizen in 2013 and is settled here. He owns a property in Kensington which has a small mortgage on it. He has a successful career as a banker and can earn in the region of £400-500k a year. He tells me, and I accept, that it would not be an attractive proposition for him to return to Pakistan: job opportunities are fewer, and his standard of living would be lower, not least because he could not earn anything like the salary he earns here.
37. He has three siblings: an older sister who lives in Canada with her two children, a younger sister who lives in Egypt with her two children and a younger brother who

lives in Montreal, Canada. His parents are separated and live in Pakistan. His mother now lives alone, and his father lives with his stepmother. His parents are now elderly, and his mother has suffered with her health, having had a heart attack in April 2023. When suggested to the father that he might be required to return to Pakistan to care for his parents, he rejected this, stating that his parents were educated people and had the means to buy in support themselves. He said that it was possible that his mother could go to live in Canada, his sister having already started the process of her moving there. However, it was likely to be her preference to move to Egypt if indeed she decided to move out of Pakistan, as she has Egyptian residency. As for his father and stepmother, they had the option of staying in Pakistan or moving to Canada.

38. Returning to the father's ties here, the father said his closest friends live here and importantly his partner is British and it would be unacceptable to her to live in Pakistan.
39. There is a good, and very positive, relationship between G and her paternal grandparents and extended family. The joy on G's face when accompanied by her father's family is clear to see from the pictures I have been shown.
40. He said his reasons for this application were because the original child arrangements order was made when G was aged 3. As time has moved on and G is older, the original order is outdated and requires variation. He stated that as G grows older, she becomes more aware of the situation and does not understand why certain restrictions are placed on what they can do. He said G regularly asked why she could not travel to see her cousins and grandparents and why she can't be left in their care. He says it is becoming more difficult to offer any reasonable explanation for these restrictions.
41. The father fully acknowledged G's problems with her UTIs. But he denied it was quite the problem that the mother suggested or that it occurred with the frequency she stated. His experience with G was such that it did not present a significant problem for G. As for the separation anxiety, the father did not disagree that G could be 'clingy' before leaving one parent. However, he suggested that this was normal in the circumstances and questioned whether, and the extent to which, the mother's own anxieties contributed to the problem.

LAW

42. Section 1(1) of the Children Act 1989 (“CA”) provides that when a court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration.
43. Section 1(2) of the CA states that in any proceedings in which a question of the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
44. Section 1(5) of the CA states that where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.
45. Section 1(3) of the CA provides that when deciding whether to vary or discharge a s.8 CA order, the court shall have regard in particular to –
 - a. The ascertainable wishes and feelings of the child (considered in light of his/her age and understanding).
 - b. His/her physical, emotional and educational needs.
 - c. The likely effect on him/her of any change in her circumstances.
 - d. His/her age, sex, background, and any characteristics of his/hers which the court considers relevant.
 - e. Any harm which s/he has suffered or is at risk of suffering.
 - f. how capable each of his/her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.
 - g. the range of powers available to the court under this Act in the proceedings in question.
46. It is clear from *Re A (Prohibited Steps Order) [2014] 1 FLR 643* that the overriding consideration for a court in deciding whether to allow a parent to take a child to a non-Hague Convention country was whether the making of that order would be in the best interests of the child. Where there was some risk of abduction and an obvious detriment to the child if that risk were to materialise, the court had to be positively satisfied that the advantages to the child of her visiting that country outweighed the risks to her welfare which the visit would entail. The court had to investigate what real and tangible safeguards could be put in place to minimise the risk of retention and to secure the child's return if that transpired. In most cases there would be a need for the effectiveness of any suggested safeguard to be established by competent and complete

expert evidence. If in doubt the court should err on the side of caution and refuse to make the order.

47. Thorpe LJ in ***Re K (removal from jurisdiction) [1999] 2 FLR 1084*** said more about the risk assessment that needed to be undertaken in such cases:

'.. Applications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements:

- i. The magnitude of the risk of breach of the order if permission is given.*
- ii. The magnitude of the consequence of the breach if it occurs; and*
- iii. The level of security that may be achieved by building into the arrangements all of the available safeguards...*

SUBMISSIONS

48. Regarding the PSO prohibiting the father from taking G out of the jurisdiction, Ms Diegan submitted that I should first determine whether the PSO should be discharged, applying the welfare test. If I decide to discharge the order, then there is no need to conduct the risk assessment contemplated by ***Re K***. In the event that I do not discharge the PSO, or I decide to vary the order to deal specifically with whether the father should be permitted to take G on holiday to Pakistan or Egypt, then the assessment in ***Re K*** would need to be undertaken, and would involve a consideration of the risk as against the safety measures that can be put into place. I agree with that approach and further agree with her, that in any event the welfare test itself requires me to consider any harm G is at risk of suffering if I were to discharge the PSO.
49. Ms Diegan submitted that the mother had failed to advance any proper basis which demonstrated the need for a PSO. There is no evidential basis in the current circumstances which demonstrates that an order restricting the father's ability to travel with G is necessary.
50. I do not repeat Ms Diegan's other submissions save to say that she invited me to increase the number of consecutive nights stay during the summer holidays to 12 in 2025 and 14 in 2026. She submitted that the court should not grant the PSO requested or stipulate as a term of the child arrangements order that the father should not be permitted to leave G in the care of any other person overnight when G is living with him.

51. The mother made oral submissions which essentially reinforced what she said in evidence.

CONCLUSIONS AND ANALYSIS

52. I have considered all of the evidence very carefully, with the welfare checklist at the forefront of my mind, in reaching the decisions below.

Should the PSO preventing the father taking G out of the jurisdiction be discharged?

53. In my judgment, the PSO should be discharged. The principal reason is because the father, in my judgment, poses no risk of abducting G to Pakistan, Egypt or indeed any other country. I find the suggestion that he would abduct G entirely fanciful and without a proper evidential basis to support such a contention. The mother's position rests entirely on her belief that as the paternal grandmother (a term I shall use to describe the father's mother) grows older, the father would feel duty bound to go and live in Pakistan with her. This may well be based on what the mother's views are on what happens with many families, but it does not factor in the particular circumstances of the father's family. It is, as the father suggested in evidence, based wholly on a stereotypical view of a Pakistani family. I do not think for one moment, seeing the standard of life the father has here, together with a highly paid job and a property in a wealthy part of London, that the father would give that all up to live in Pakistan. Firstly, the family have the means to ensure that the paternal grandmother is well looked after in Pakistan if she wishes to spend her remaining years there. It may mean that the father has to travel there more often than he has done in the past, but it is a huge leap to suggest he would go and live there – and abduct G to live there as well. Secondly, it is more likely that the paternal grandmother will go to live in Canada or Egypt with the father's sisters, and steps are already underway to prepare for this possibility.
54. The second reason for discharging the PSO is because it has been the cause of a number of bitter exchanges between the parties. As time has passed since the order was made in 2018, the father has sought the mother's permission to take G on holiday and the mother has continually said no. I find that she was wholly resistant to the father taking G out of the UK at all, even to Hague countries. This is evidenced by the fact that a Specific Issue Order needed to be granted to allow the father to take G to France for a holiday, albeit this was eventually ordered by consent. The mother's

resistance has been the cause of more requests by the father which she has then alleged as him harassing her.

55. Even at this hearing, whilst the mother said that she was content for the father to travel to Hague convention countries, this was somewhat qualified, because she said she was also concerned that there could be onward travel to Pakistan or Egypt. If this PSO is retained, it will be a continual source of contention that will not be in G's best interests.
56. In view of my above comments about there being no risk of abduction, it would be inappropriate and unnecessary to impose safeguards to any travel to Pakistan and Egypt even though the father has offered them.
57. Turning to the welfare check list, I can see from the evidence and photographs exhibited to witness statements that G enjoys being with members of her paternal family. I accept that she wants to travel with her father and will want to enjoy going on holiday with him. Not only will a time come soon that G will want to go to Pakistan or Egypt to visit the paternal family and see where her parents grew up, she will benefit enormously from doing so. I accept that she will want to celebrate family events and I consider that restrictions such as those proposed by the mother may be harmful to G. Educationally, travel will widen her understanding of the world and increase her independence. I do not believe this order will result in the father suddenly taking G on lengthy trips overseas and I accept that he will use his judgment when deciding on when and where to take G on a first trip. She has already been to France with her father and enjoyed it. I do not consider that any such change to her circumstances will have a negative effect on her. The father is fully attuned to G's physical and emotional needs and if G was unwell at any point whilst abroad, I am in no doubt that he would know what to do.

What should be the maximum number of consecutive nights' stay during summer holidays?

58. I accept that there should be a stepped increase in the number of consecutive nights stay but do not accept that the proposal put forward by the mother is justified or in G's best interests. In any event, we are talking about a difference of 2 days in 2025 and 3 days in 2026. If the court were to adopt the mother's proposal, she would not be able to spend two weeks consecutively with either parent until 2029. The advantage of each parent having two weeks during the summer holidays is that it would allow the parent to book a holiday with G. I have considered carefully the points made by the mother

concerning G's UTI problems and her separation anxiety. Firstly, I believe that in time the UTI problems will be resolved and secondly the father is more than capable to deal with such problems as they arise. I do not consider that to be a good enough reason to reduce her stay with either parent. Further, one does not need to be an expert to know that the level of tension and hostility between the parents will play out both physically and emotionally in G. A degree of separation anxiety is understandable in these circumstances. However, as these arrangements settle down, and a better relationship is restored between the parents, the likelihood is that G's anxiety will reduce in any event.

59. For these reasons, and once again applying the welfare checklist, in my judgment the number of consecutive nights stay will be 12 nights in 2025 and 14 nights in 2026. I have reflected that change in my order.

Should I make an order prohibiting the father from leaving G in the care of any other persons overnight when she is living with him?

60. In my judgment my answer to this is 'no' and I make no such order. I consider this stipulation to be entirely unnecessary. Firstly, I accept that the father does not have any particular plans to leave G with anyone whilst she is living with him. Secondly, if the situation arises, I accept that the father is capable of exercising his own parental judgment in such circumstances in the best interest of G. In her evidence, the mother said that she too would be happy to abide by such an order, but I consider it no more necessary for her than I do the father. I do not consider it in G's interest to tie the parents' hands in this way. I was not persuaded during the hearing that there is any good reason for it.
61. Having made the decisions I was asked to make, it just remains for me to make this comment which I do so as neutrally as I can. To state the obvious, whilst the parents' own relationship has long ended, they will always be parents to G and so there has to be some form of continued relationship between them that is conducive to the well-being of G. Now is the time for both parents to put historical events behind them and work hard to restore a workable relationship with each other, so that neither of them has to revert to the courts again to resolve matters. It includes both parties encouraging a good relationship with extended family too. G should not be placed in the intolerable position of being witness to this type of conflict. Everyone must put G's interests first.
62. That is my judgment.

