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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
[2021] EWHC 2659 (Fam)



No. FD21P00514

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 21 September 2021

**IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985**  
**AND IN THE MATTER OF THE HAGUE CONVENTION 1980**  
**AND IN THE MATTER OF THE SENIOR COURTS ACT 1981**

Before:

MR JUSTICE HOLMAN

**(In public)**

B E T W E E N :

WS

Applicant

- and -

AA

Respondent

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MR M. HOSFORD-TANNER (instructed by Duncan Lewis Solicitors) appeared on behalf of the applicant father.

MR J. FROST (instructed by Malik and Malik Solicitors) appeared on behalf of the respondent mother.

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

**( A s a p p r o v e d b y t h e j u d g e )**

MR JUSTICE HOLMAN:

- 1 This is an application pursuant to the Hague Convention on the Civil Aspects of International Child Abduction for the return of three children to Sweden, which is undoubtedly their state of habitual residence.
  
- 2 Before further describing the background to this case, I should make reference to the order for directions that was made on 9 August 2021. That order, made at a hearing in which both counsel who appear today also appeared, set up today as the substantive hearing of this matter and very clearly provided by paragraph 11 (which, I mention, was typed in bold type) that Her Majesty's Courts and Tribunal Service shall provide two Arabic interpreters for today's hearing, for the mother and the father respectively. Here we are at that substantive hearing and HMCTS have not in fact provided even one Arabic interpreter.
  
- 3 As it happens, the father, who lives in Sweden, remains in Sweden today, available by telephone, and his solicitor, who is present in the courtroom, is an Arabic speaker. So it has been perfectly possible for the father's solicitor and counsel, Mr Michael Hosford-Tanner, to communicate with their client for the giving of advice and receiving of instructions.
  
- 4 On the mother's side, the situation is much more difficult. She is personally present in the courtroom, together with her counsel, Mr Jeremy Frost. There is a gentleman called Mr Sultan, who I understand is a friend or acquaintance of the mother, who has been, and remains, available as an interpreter between Mr Frost and the mother. He is not personally present in the courtroom, or even the court building, but I understand that already several

times today Mr Frost has been able to take instructions from the mother and explain things to the mother through the intermediary of Mr Sultan by telephone.

5 When it was clear, when the case was called on at 10.30 a.m., that there were no Arabic interpreters provided by the court, strenuous attempts have been made to locate one during the course of today. It is now about 13.20. The most recent message which I received was to the effect that an Arabic interpreter could be available here in the courtroom at 14.45. However, again on instructions, Mr Frost has made quite clear, first, that he does not seek an adjournment because of the absence of an interpreter; second, that he invites the court to proceed; and third, that he does not ask that we now pause until 14.45 until an Arabic interpreter can arrive. So, in those circumstances, we have recently proceeded with this hearing (having taken an earlier lunch break), and there is no resistance to my now giving this judgment.

6 In due course, an official transcript of this judgment must be made at the expense of public funds, and the father's solicitors must then translate it, as well as today's order, into Arabic so that the mother has it available to her in Arabic, which appears to be the only language which she really understands.

7 The essential factual background is as follows. These parents are both currently aged twenty-seven. They are, in fact, related to each other. Their marriage is said to have been arranged. They are each members of Arab Iraqi families and were born and brought up in Iraq. They married in July 2013.

- 8 The father, at that time, had already moved to live in Sweden, where members of his family were living, and still do live. Following the marriage, the mother moved to live in Sweden with him.
- 9 The parents have three children, a boy, who was born in March 2016, and is now aged about five and a half; a girl, who was born in July 2018 and is now aged three; and another boy, who was born in July 2019 and is now aged two. Until November 2018 (that is, before the younger boy was even born), the parents were living together with their elder two children in Malmo in Sweden. The parents separated in November 2018, after which the children lived with their mother. In due course, the younger son was born, and he has always lived exclusively with his mother.
- 10 There was a serious incident on 15 November 2018, to which I will refer more fully in a moment, but it seems to have had the effect that, for an appreciable time after that incident, there was no contact at all between the father and the children, and when contact did resume it was initially supervised. Effect was given to that by a Swedish court order made in January 2020, which gave interim sole custody to the mother and limited supervised contact to the father. Also in January 2020, the parties were formally divorced. At about the same time, the mother moved from living in Malmo to living in Kristianstad in Sweden, which is apparently about 100 kilometres from Malmo.
- 11 In the spring of 2020 the local authority social worker who was supervising the contact reported that the contacts between the children and their father were sufficiently good that there was no need for supervision to continue. As a result, and apparently also because the mother felt “that her ex-husband had changed” (see an email dated 31 August 2021 from the mother’s Swedish advocate, Maria Lekholm, to her English lawyer, Ayesha Bhatti), the mother agreed that the father should now have joint custody of all three children, with

provision for contact twice weekly from 13.00 to 16.00 hours. All this is recorded in an order made in the District Court of Malmo on 10 September 2020. That provides:

- (1) that the parties shall have joint custody of the three children;
- (2) that the three children “shall be permanent residents in the household of” the mother; and
- (3) that the father should have a right to access every Wednesday and every Saturday from 13.00 to 16.00.

12 After paragraph 7 of that order are these important words:

“The court notes that the parties agree that [the mother] shall be given the opportunity to travel alone with the children and that she will give timely notification of departure and return dates to [the father].”

13 At the end of the order it is recorded that:

“The parties’ agreement appears to be in keeping with the children’s best interests. There are therefore conditions for the District Court to establish the agreement.”

14 It might have seemed, therefore, that by September 2020, after an earlier unstable period in their lives and relationship, the parties had reached some consensus and a good working understanding in relation to the needs of their children. The father did have regular contact with the children and says that the last date upon which he saw them was 13 December 2020. Within a few days of that, he had discovered that the children had been removed from Sweden by their mother. She appears to have travelled, first and briefly, to England, and then to Iraq, where she remained for many months. However, in June or July 2021 she returned with the children to England. She was successfully located here and these proceedings for the return of the children to Sweden got under way.

15 There is no doubt that, in the circumstances which I have described, there was an abduction within the meaning and objects of the Hague Convention. It may be a moot point whether the children were wrongfully removed from Sweden in the first place, or whether there came a time when the children were being wrongfully retained out of Sweden. There is some divergence between the parents as to the extent, if any, to which the mother forewarned the father that she was planning on bringing the children to England. She says at paragraph 13 of her statement dated 31 August 2021 that:

“I eventually told my ex-husband that I was going to the UK for a week ...”

16 The father denies that, and it does not seem to me necessary or material to resolve that issue. Either way, it is quite clear from the terms of the still recent order made on 10 September 2020 that the only permission to the mother was to travel with the children for periods of time with a clear “return date” pre-notified. That follows from the provision after paragraph 7 of the Swedish order which I have quoted above.

17 It is indeed accepted by Mr Frost on behalf of the mother that there is, in this case, either a wrongful removal or a wrongful retention, and that the Hague Convention is engaged. It is fully accepted that, immediately prior to those events, the children were habitually resident in Sweden, and fully accepted that the father was exercising his rights of custody pursuant to the order of 10 September 2020.

18 Accordingly, it is the effect of Article 12 of the Convention that I must order the return of these three children to Sweden forthwith unless the mother can establish one of the so-called defences under Article 13 of the Convention. The only one in point and relied upon in this case is that under Article 13(b), which provides that the court is not bound to order the return of the children if the respondent to the application establishes (the onus being upon

her) that a return forthwith would expose one or more of these children to a grave risk of physical or psychological harm, or otherwise place them in an intolerable situation.

19 In her statement dated 31 August 2021 the mother describes an unhappy marriage in which, she says (although the husband disputes), that she was treated more as a servant than as a wife and mother. She says that her husband did not love her or respect her. He expected her to do many, many chores and tasks, and would become angry with her when she had not done so. She says at paragraph 2 of her statement that:

“He would shout at me and tell me not to ask questions, and sometimes even physically abuse me. He would hit me or push me away.”

20 The mother says that she felt trapped in the home and trapped in Sweden, and quite unable to leave. She says that even after the family moved away from living in a home with members of his family, his behaviour did not change. She says at paragraph 6 of her statement:

“I decided to confront him about his behaviour and ask if we could make the situation any better. Instead, he beat me and punched me in the ribs and I could not breathe. I thought I was going to die. A few times I even lost consciousness; my hands were cold.”

21 The mother describes that, as she was unconscious, he and his family began to drive her to hospital, but she regained consciousness on the way there, and they then turned the car around and drove her back to the flat and took the elder son away from her. These events appear to have taken place in about 2016 or 2017.

22 Most vividly, the mother describes a serious event on 15 November 2018. There appears, at that time, to have been a considerable rift in the wider family, and the mother says that this resulted in the father’s father telling the father’s brother to come and collect her. She says:

“I said that the children cannot be taken away from me, and my brother’s relationship with his wife should not affect our relationship. He then called his father and told him to bring my ex-husband’s older brother with him. They turned up at my house at 11.00 p.m., dragged my children away and beat me up. I was still pregnant with my third child and tried to block them from entering my children’s bedroom. My father-in-law slapped me and grabbed the children. He instructed my ex-husband to beat me whilst they took the children away. My ex-husband threw me on the floor and kept kicking me, even though I was pregnant with our third child. He knew I was pregnant but kept stamping on me. I screamed out that I was going to die, and my father-in-law said, ‘This should teach her a lesson’. I begged him to stop and to bring my children back. My ex-husband eventually stopped and left with my children and did not return ...”

- 23 The father very strongly denies most of that account, and indeed denies that, at that time, he even knew that the mother was pregnant with the third child. But at a hearing such as this, where neither party has given oral evidence, I must take the account advanced by the mother at its highest and decide the outcome of this case on the basis of what she says.
- 24 What is clear is that the mother then sought the help of the police and, as she says in paragraph 10 of her statement, the police tracked the children down straightaway and returned them to her. The children have, indeed, been able to live with the mother ever since then and, as I mentioned earlier, there was a long period of well over a year during which there was simply no contact at all between the father and the children.
- 25 On 7 September 2021 the mother made a supplementary witness statement in which she says that during a telephone call on 29 August 2021, the father told the children not to worry and that “Soon, we are going to live our lives together in Kuwait.” The father has only very recently seen that statement and has had no opportunity to make a statement in answer to it. I have been told today by Mr Hosford-Tanner that, in any event, it is a complaint of the father that although it has been possible for him to see the children by video connections, the mother has not enabled him to speak to the children, and so, it is said, he could not have made the alleged comments to the children. Again, however, I must take what the mother



says at its highest and, for the purposes only of this judgment today, I must approach the case on the basis that, in a telephone call on 29 August 2021, the father did tell the children that soon they were going to live their lives together in Kuwait.

26 The mother continues in her statement that since that was said to the elder son:

“He has started to wet himself at night. This is exactly the same behaviour he had following the assault on me and the kidnapping of the children [*vis* a reference to the events of 15 November 2018] as he was deeply affected by what happened.”

27 The mother concludes that statement by saying that:

“I am genuinely terrified for my children’s safety and now that the applicant has said this directly to my son, I am even more certain that the applicant will take the children from my care to another country where I cannot reach them.”

28 So, in summary here, Mr Frost submits, first, that the mother herself has, subjectively, what he describes as an abject fear of returning to Sweden, and that that fear is now shared by the elder son, aged five and a half. Second, Mr Frost submits that those subjective fears are, as he put it, grounded in objective reality. The anchor of the mother’s case is what she alleged took place on 15 November 2018. Mr Frost says that she fears that similar events will happen again and, more than anything else, fears that the father might be able successfully to abduct the children from Sweden altogether to some country such as Kuwait, from which she would never be able to recover them.

29 I wish to emphasise, as I did during the argument, that I perfectly understand and am sympathetic to the subjective fears of the mother in this case. In my long experience, few parents abduct their children unless they feel that there are very good reasons for doing so. To uproot your own children, and especially to bring them to a country with which neither you nor your children have any previous connection, nor speak the language, is not a step

that many parents would take lightly. Now that she has, as she feels, settled in England, I perfectly understand that the prospect of a return now to Sweden is a brick wall to this mother. So I am very sensitive and sympathetic to her own subjective position and anxieties. But the Hague Convention is part of the law of Sweden and also part of the law of England and Wales. The defence under Article 13 is deliberately a narrow one. Higher courts have repeatedly said that the words in Article 13 mean what they say. There is an emphasis on the words “grave” and “intolerable” where they appear in Article 13(b), and the bar set by Article 13(b) is a high one.

30 If the events of 15 November 2018 had occurred in November 2020 and had been the immediate trigger to the mother removing the children from Sweden, then the circumstances and context of this case might have appeared markedly different. But the fact is that, however badly, and however unjustifiably, and however frighteningly the father and members of his family may have behaved on 15 November 2018, the mother was able, quickly, to recover her children with the help of the Swedish police. For two whole years after that, she was able to live with the children in Sweden without molestation or interference from the father. Limited contact between the father and the children was resumed during 2020; and, as I have said, the mother herself, in September 2020, positively agreed to the custody order changing from sole custody to one of joint custody.

31 There is, frankly, nothing at all in the evidence to indicate or suggest that if the mother does return to Sweden with the children now, she will not be able to resume a life there with the children still free from molestation or any inappropriate interference by the father. Further, the father voluntarily offers a range of undertakings to the overall effect that he will not come anywhere near the mother and the children nor have any dealings with them, apart from video contact, until a first on-notice hearing before a Swedish court.

- 32 The Swedish system safely protected the children in 2018. There is, within the papers, a most thorough report by the Swedish social administration authorities, dated 30 December 2019, which indicates a very thorough, caring and conscientious approach to the welfare of these children by those authorities.
- 33 The alleged threat that the children will move with the father to Kuwait is, of course, deeply concerning. But, frankly, there is no reason to suppose that the Swedish authorities, if alerted to that threat, cannot protect the children at least as well as the English authorities could do if a similar threat was made here.
- 34 In summary, although I am deeply sympathetic to the mother, it does not seem to me that anything that she alleges in this case comes anywhere near to establishing a defence under Article 13(b) of the Convention. It is therefore my duty to order their return to Sweden forthwith, subject only to the safeguards of the several undertakings which have been voluntarily offered by the father and which will be incorporated as part of the order. So, for those reasons, there will now be an order for return in the terms which have been drafted and further amended by both counsel today.
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**CERTIFICATE**

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