



Neutral Citation Number: [2023] EWHC 1247 (Fam)

Case No: FD23P00044

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/05/2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between :

D
- and -
T

Applicant

Respondent

Ms Cliona Papazian (instructed by Freemans) for the Applicant
The Respondent Appeared in Person

Hearing dates: 18 and 19 May 2023

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application for an order for summary return in respect of M, born in July 2010 and now aged 12, N, born in May 2013 and now aged nearly 10, O, born in January 2016 and now aged 7 and P, born in February 2017 and now aged 6. The application is made by the children's father, D. By his application, the father originally sought the return of the children to the jurisdiction of Sudan, where the father currently resides. He now seeks their return to the jurisdiction of Dubai. The father is represented by Ms Cliona Papazian of counsel. The application is resisted by the children's mother, T who currently resides with the children in this jurisdiction. The mother appears in person.
2. In determining the application I have had the benefit of reading the court bundle prepared for this final hearing, including the statements of evidence of the parents and the report of the Cafcass Officer, and of hearing evidence from the Cafcass Officer, the father and the mother. The father was able to participate in proceedings, and to give his evidence, by video link from Sudan, notwithstanding the ongoing military hostilities in that country. I have also had the benefit of Ms Papazian's written and oral closing submissions and the closing submissions made by the mother.
3. It is important to note that at this hearing the court is without any up to date evidence concerning the likelihood of the father being able to secure entry into Dubai by way of securing employment or any independent or expert evidence in support of the father's contention that he is only able to secure entry clearance into a limited number of jurisdictions, not including the United Kingdom, for the purposes of direct contact with the children should the court refuse his application for summary return of the children. Nonetheless, through Ms Papazian, the father pressed the court to determine his applications at this hearing on the basis of the evidence before it, which the court has done.

BACKGROUND

4. Both the father and the mother are Sudanese. The parents married in Sudan in 2008. Both are qualified doctors. The mother has a sister who lives in the Republic of Ireland and a sister who lives in England. As I have noted, their daughter, M, was born in Sudan on 26 January 2010. In 2011 the parents moved together with their daughter to Saudi Arabia. The mother contends this was borne out of a need to increase the family's income. The parents thereafter had three more children, as I have recounted, whilst living and working in Saudi Arabia. Four months after the birth of their youngest child, the father returned to Sudan, the mother contends because the father's employment had been terminated in that jurisdiction. The remaining children also joined the father in Sudan, where they remained for a year. The father asserts that he was the children's primary carer during that period. The mother contends that the majority of care was provided during that period by the maternal grandmother.
5. During this period, the mother remained working in Saudi Arabia seeking to complete qualifications that would allow her to work in Oman, the mother asserting that she and the father had agreed to relocate to Oman as a family. The mother contends that

during this period the father failed to apply himself to medicine and further medical training whilst in Sudan, resulting in her having to support the family financially. In 2018, the mother having completed her studies in Saudi Arabia, the family moved to Oman and lived together for four months. The mother contends that the father then returned to Sudan alone and refused to return to Oman, save for short visits. Within this context, the mother alleges that the father has been essentially absent from the children's lives since 2018. The father disputes this.

6. In March 2021 the father moved from Sudan to Dubai to work as a GP. He contends that he visited the family in Oman regularly, using the 40 minute air service between the UEA and Oman. The father contends that it was thereafter agreed between the parents that the mother and the children would also move to Dubai, so that the parents could raise the children together. In August 2021 the mother discontinued her job in Oman and travelled to Sudan with the children.
7. The father contends that it was his understanding that the mother and the children would thereafter meet him in Dubai. In this context, the father contends that the mother *chose* to leave her employment in Oman in August 2021, travelling to Sudan to visit her parents prior to moving to Dubai to take up employment in that jurisdiction. The father now alleges that the latter step was a ruse on the part of the mother designed to facilitate her actual intention, namely the abduction of the children first to the Republic of Ireland and then to the United Kingdom. In this context, during her cross examination of the mother, Ms Papazian sought to demonstrate that the timeline of the mother's application for a hospital post in Ireland demonstrated that she intended to abduct the children prior to her returning to Sudan.
8. The mother stated during cross-examination that, following her arrival in Sudan on 31 August 2023, she had started to approach agencies that might be able to secure her a hospital job some four to six week later in September 2021. She underwent two interviews in October 2021 and was offered a job in Ireland shortly thereafter in November 2021. The mother stated that she took these actions after having given the father a chance to apply for visas and make arrangements for the family to join him in Dubai, which he failed to do. The mother stated she did not tell the father of the arrangements she was making in Ireland as she knew he did not wish to live under laws that might prevent him from treating her and the children in the manner alleged below.
9. Within the foregoing context, the mother alleges that the father *required* her to leave her job in Oman and return to Sudan on the basis that the father would thereafter provide visas for the family to join him in Dubai. When the mother refused to leave what she considered to be a good job in Oman she alleges that the father came to Oman, beat her and tried to kidnap the children. As I will come to, in her letter to the court via the Cafcass Officer, N described an incident in which the "father burst into the house and snatched us away from our mother. I was crying, yelling and kicking him at that moment". With respect to the incident alleged by the mother wherein the father tried to remove the children from Oman, M asserted to the Cafcass Officer that her father had arrived in Oman to collect the children, which resulted in conflict between her parents. She described this as "one of the most scariest things in my life" and spoke about her and N's distress, P being "upset" and her mother being "so stressed". M said the father told them the next day he would be taking them "to Dubai to live the best life there" and she detailed the rest of the events that night,

including the children being “trapped” in their father’s car whilst their parents attended the police station.

10. The mother contends that after she and the children moved from Oman to Sudan, the father placed pressure on the family to move in with the paternal grandparents in a rural location in Sudan in conditions that presented a risk to the children’s health and wellbeing. In seeking to explain her later removal of the children to the jurisdiction of the Republic of Ireland, in her statement mother asserts that “I could not remain in that Sudanese village which would have greatly threatened [the] children’s health and education in a state of poverty whilst [the father] failed to pay for any expenses related to the children”. The mother also alleges that the paternal grandmother had in the past sought to persuade the father to allow FGM to be performed on the female children. This is denied by the father. During cross examination by Ms Papazian, the mother stated that the children were aware of the father’s promises and had seen videos of life in Dubai as they faced “a horrible situation in Sudan”. She asserted further that the father refused to pay for the children’s education in Sudan.
11. With respect to the situation of the mother and children in Sudan, when speaking to the Cafcass Officer, O stated that when she had stayed with the paternal family there were cockroaches and repeated power cuts. N recalled as follows regarding their time in the paternal grandparents’ village:

“I had to live with my mother’s family. They were kind and funny, but the situation was actually a bit bad. The bathrooms were actually bad, and the tap water was actually dirty. I got sick drinking from it... [the] told us to go to his family and actually I didn’t like his family. Their house was also even more worse. Everywhere you would see insects, cockroaches, spiders and we all had to share one room... and the food was actually a bit nasty. When I returned to Khartoum it actually felt as if it was heaven, even if it’s bad”.
12. With respect to the asserted risk of FGM, the father states he is vehemently opposed to such practices, that it is not practiced within his family and is illegal in Sudan. On behalf of the father, Ms Papazian invites the court to ascribe the children’s account of their living conditions in Sudan to the influence of the mother, on the basis that the children describe similar conditions at the paternal grandparents property as those described by the mother. The Cafcass Officer’s report contains no suggestion that the children’s accounts and views have been influenced or coached by either parent. When cross examined by Ms Papazian, the mother stated that “I did not comment badly about their father or what he did, but they saw we are supposed to be going but we were not sent for.” The mother further asserted that she is “keen to make his picture brighter in front of his children because I don’t want them to have an emotional bad effect” and that “I did not tell M negative things about her father, she knew we did not get a visa, and she was looking forward to getting to Dubai.”
13. In conversation with the Cafcass Officer, M stated that the father “broke his promise” to take the family to Dubai, resulting in the family living in Sudan for five months. Again, Ms Papazian invites the court to conclude that this comment was made as a result of the influence of the mother. The mother asserts that this situation presented her with the choice of staying in Sudan where the families situation was parlous, moving to Dubai without money to fund visas for entry into that jurisdiction nor the necessary registration to work in that jurisdiction, or move to Ireland where she would

be able to work to support the family given the qualifications she had obtained whilst in Oman. The mother further asserts that the parents had previously discussed *both* the option of Dubai and the Republic of Ireland but that the father agreed that she could move to Ireland only if she signed an agreement giving him “full custody of the children”. The father confirms that whilst the mother had, on occasion, said she would like to move to Ireland or England, the father had made clear that he would not agree to the children moving to either of those jurisdictions.

14. Within the foregoing context, the mother alleges that domestic abuse has featured in the parents relationship, including both physical abuse and financial control and contends the father has never provided for the children financially. The mother makes the following allegations in her statement:
 - i) The father would frequently threaten the mother with divorce in order to “keep me in line”.
 - ii) The father would prevent the mother from knowing how much was in his bank account and would demand the mother pay for everything, contending she owed him a living as he was permitting her to work.
 - iii) The father would take the mother’s income without her consent in order to send it to his parents.
 - iv) In April 2014 the father took hold of the mother’s head and hit it against the wall several times whilst the mother was pregnant.
 - v) The father assaulted the mother again whilst in Sudan by kicking her in the knee, damaging a ligament after he had returned home late at night.
 - vi) After the father discovered the mother had taken an English language exam in Oman he hit her on the shoulder, causing her to cry and causing the police to be called.
 - vii) The father threatened to take the children from the mother and remove them from Oman to Dubai after the mother refused to be intimate with him.
15. In speaking to the Cafcass Officer the three older children, who were spoken to separately, each reported seeing incidents of domestic abuse between the parents. O recalled “seeing my mother and father in a fight. They were arguing and my dad made my mum cry”. M told the Cafcass Officer that her father “said something that made the mother feel so bad she just told him to get out and her mother ran to the kitchen to get a knife and planned to kill herself.” M stated that she had to run to her friend’s house to ask her friend’s mother for help. Once again, the father resolutely denies the allegations, maintaining a flat denial of the allegations of physical abuse. He however, conceded that the mother sustained a leg injury, although he contends as a result of her falling over. In conversation with the Cafcass Officer, and as recorded in her report, the father also conceded that he had “screamed” at the mother once, but asserted it was because she had physically chastised one of the children. In this context, Ms Papazian again invites the court to ascribe the children’s accounts of domestic abuse to the influence of the mother. Once again, I note that the Cafcass Officer’s report contains no suggestion that the children’s accounts and views have

been influenced or coached by either parent. The mother denies coaching or influencing the children.

16. The mother further alleges that the father would behave inappropriately towards the children. She contends that the father would lock P (who suffers from delayed speech and development) in a dark room to discipline him whilst in Oman and would also hit P and push M. O also recalled to the Cafcass Officer her father locking P in a room by himself. M told the Cafcass Officer that the father had “screamed” at her and P and N told the Cafcass Officer that the father would shout and yell at her and M and would punish the children for “the littlest things”. In speaking to the Cafcass Officer, M was unable to identify any positives in respect of her relationship with her father. As I have noted above, with respect to the incident alleged by the mother wherein the father tried to remove the children from Oman, M asserted to the Cafcass Officer that her father had arrived in Oman to collect the children and the resulting conflict between her parents. She described this as “one of the most scariest things in my life” and spoke about her and N’s distress, P being “upset” and her mother being “so stressed”. M said the father told them the next day he would be taking them “to Dubai to live the best life there” and she detailed the rest of the events that night, including the children being “trapped” in their father’s car whilst their parents attended the police station. Again as noted above, in her letter to the court, N described an incident in which the “father burst into the house and snatched us away from our mother. I was crying, yelling and kicking him at that moment”. N stated that the father would call P “bad names...usually in Arabic” and stated as follows to the Cafcass Officer:

“I don’t really feel safe around him because he would lock my brother in a room whenever he was crying or yelling and actually make my mother cry. That’s why I don’t really like him”.

17. As with the allegations concerning the children’s alleged circumstances in Sudan prior to their removal by the mother to the jurisdiction of the Republic of Ireland and the allegations of domestic abuse, the father resolutely denies behaving inappropriately towards the children and Ms Papazian once again invites the court to ascribe the children’s accounts of the father behaving inappropriately towards them to the influence of the mother. As before, the Cafcass Officer’s report contains no suggestion that the children’s accounts and views have been influenced or coached by either parent.
18. At the last hearing, the mother indicated to the court that she did not consider that the allegations of domestic abuse and allegations of inappropriate behaviour directed towards the children prevented contact taking place between the father and the children. That position was recorded in the order of Moor J dated 3 May 2023, which I shall come to below. Within this context, the mother filed a schedule of proposed contact detailing her proposals for contact between the father and the children in this jurisdiction and proposals for contact in a third country should the father not be able to secure a visa for entry into the United Kingdom. Those proposals did not make mention of the need for contact to be supervised. However, during her oral evidence, the mother made clear that she does consider the allegations of domestic abuse relevant to the question of contact and contended that contact could only take safely place if it was supervised.

19. On 7 January 2022, the mother removed the children from Sudan to the jurisdiction of the Republic of Ireland without the father's knowledge or consent. The mother makes clear in her statement that she would have preferred to travel to England with the children but due to Internet communication difficulties in Sudan she was unable to communicate with a hospital in England that had a vacancy. The mother makes clear that she always intended that England would be her final destination with the children. The mother is in this jurisdiction on a Skilled Workers Visa with the children as her dependents. The mother's visa expires in August 2024 and can be renewed. The mother states that she plans to settle in England with the children and wishes the children to study in the United Kingdom. The mother further contends she has now divorced the father under Sharia law but the father claims to have had no knowledge of this or notice of the divorce. He considers that the mother remains his wife under both Islamic and Sudanese law.
20. The father discovered the removal of the children from investigation with the airline, which revealed that the mother and the children had travelled from Sudan to Abu Dhabi and that the final destination was Dublin. The father asserts that he contacted the Irish Embassy to enquire whether it would issue visas for the children to travel without both of the parents' permission. The Embassy informed the father that it had received documents confirming both of the parents' permission. In March 2022, the Applicant father received copies of the alleged consent documents that it is asserted the mother had used to obtain visas to unlawfully remove the children. The father contends that the mother arranged for father's consent to be forged. For her part, the mother makes the following, candid, admission in her statement:
- “I completely accept that in relocating to Ireland from Sudan and without having [the father's] consent to do so (as he refused to do so without me signing over full custody of the children to him) my father agreed to present himself as [the father] to a lawyer, along with my brother as a witness and thereby obtain consent. My father, who is 82 years of age, with tears in his eyes was willing to go to prison so that his daughter and his grandchildren would be liberated from poverty and ill-health and the lack of education that had culminated in [the father] failing to stand up to his financial responsibilities.”
21. The father asserts that as a result of the mother's conduct, there are now ongoing court proceedings in Sudan in respect of the mother, her father, her brother and the lawyer who produced the forged affidavit, the latter having been suspended from practicing for five years. The father further asserts that there are ongoing communications via Interpol between the Sudanese and Irish authorities in an effort to locate the mother. Whilst the father asserts that the Sudanese authorities had recently requested a translated file of documents to provide to Interpol, the father told the court that the recent outbreak of hostilities in Sudan means that no further steps are currently being taken.
22. The father states that he tried to engage lawyers in the Republic of Ireland but that they did not assist or advise him to make an application to court. In May 2022 the left his job in Dubai and returned to Sudan in circumstances where he did not know the whereabouts of the children. In May 2022, the father managed to speak with the children by telephone, but contends they were guarded as to their location. In late 2022 a friend of the father's who works as a doctor in England informed father that he

believed that the mother was working in a hospital in England. In light of this application, the father issued a without notice application on 23 January 2023 for disclosure and location orders and for an order for the summary return of the children to the jurisdiction of Sudan. On that date, Mr Justice Moor granted the orders sought and listed the matter for a further hearing on 17 February 2023 with directions that the parents file and serve statements.

23. The matter came before the court again on 17 February 2023 before Mrs Justice Judd. At that hearing, the mother did not seek to dispute the fact that she had removed the children from Sudan on the 7 January 2022 to the Republic of Ireland, and then removed the children to England on the 12 August 2023, without the consent of the father. The mother opposed the return of the children to Sudan asserting that it is not in their best interests for that step to be taken. The mother agreed to provide copies of all school reports in respect of the children and a summary of their health, education and development during the period following their removal from Sudan. The parents further agreed that they would engage with mediation.
24. The father continued to have contact with the children pursuant to the order made by Judd J on 17 February 2023. The mother provided the children's school reports but did not provide the summary of the children's health, education and development. Rather than file a statement, the mother sent an email dealing with the points set out in the order of Judd J. The father's statement was filed and served on 31 March 2023. In that statement the father sought the return of the children to the jurisdiction of Dubai rather than the jurisdiction of Sudan. He further sought direct contact with the children in Dubai or in another country.
25. On 23 March 2023 the father made a complaint about the mother to the GMC, alleging that the mother abducted the children from Sudan, and used forged documents to do so. The father told the court that he had made this complaint when "very angry and was very desperate". He further stated that he had not given any thought to what would have happened to the children had the mother been suspended from practicing or dismissed as a result of his complaint.
26. The Cafcass welfare report was served on 21 April 2023. In that report, the Cafcass Officer concluded that for all four children the best outcome is for them to remain in the care of their mother and that, although not without difficulties in terms of sustaining the children's relationship with their father, the children's best interests would be better served if they remained living in the UK. Subsequent to the report of the Cafcass Officer, it became apparent that the mother intended to move from her current home in England to another town, having secured a job that would promote her from ST2 to ST3 and secure greater income for the family (the mother pointing out that the father pays no child maintenance for the children). On 15 May 2023, Cafcass Officer provided a short letter dealing with the question of contact, which I will come to below.
27. The matter came before the court again at a hearing on 3 May 2023 before Mr Justice Moor. Moor J directed further statements from the mother in respect of contact and a reply from the father. Moor J also directed that, in light of the allegations of domestic abuse, that any questions in cross-examination of the father that the mother wished to put should be put by the court. In these circumstances, Moor J directed that the mother provide her questions in writing to the court. This the mother has done. On 5

May 2023, the Respondent mother filed and served her statement in relation to contact as noted above. On 11 May 2023, the Applicant father filed and served his statement. Also on 11 May 2023, and having regard to the terms of the extant location order, the Respondent mother made an application for permission to move address with the children by reason of her employment. That application was opposed by the father.

28. The matter now comes before the court for final hearing. As I have noted, whilst initially seeking the summary return of the children to Sudan, the father now seeks the return of the children to Dubai in circumstances where he now plans to live in that jurisdiction and it is the only jurisdiction in which all members of the family are entitled to live. If the court does not accede to his application, the father invites the court to make a child arrangements order providing for direct contact between himself and the children, which contact he contends is likely to have to take place in a third country as he will be unable to gain entry clearance to the United Kingdom. As I have noted, the father remains in Sudan (where he asserts that he is currently not working and has no income) and the court is without any up to date evidence concerning the likelihood of the father being able to secure entry into Dubai by way of securing employment, or any independent or expert evidence in support of the father's contention that he is only able to secure entry clearance into a limited number of jurisdictions, not including the United Kingdom, for the purposes of direct contact with the children should the court refuse his application for summary return of the children.

THE LAW

29. The relevant law is now well established. In *Re J (A child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 the House of Lords confirmed that the High Court has jurisdiction under its inherent jurisdiction to order the return of a child to a country that is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In determining whether to take such a course, the House of Lords confirmed that the child's welfare will be the court's paramount consideration and that the court will not import the principles governing the 1980 Hague Convention when determining an application for a return order under the inherent jurisdiction.
30. At [41] in *Re J (A Child)(Custody Rights: Jurisdiction)* Baroness Hale stated that in such cases the court is tasked with making a '*swift and unsentimental decision*' as to whether the child should be returned. In making that decision, in *Re J (A Child) (Custody Rights: Jurisdiction)* Baroness Hale considered that the following factors will be relevant:
- i) Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his or her home country. On the other hand, summary return may very well be in the best interests of the individual child.
 - ii) The focus has to be on the individual child in the particular circumstances of the case.
 - iii) The court may find it convenient to start from the proposition that it is likely to be better for a child to return to him or her home country for any disputes about her future to be decided there. A case against him or her doing so has to

be made but the weight to be given to this proposition will vary enormously from case to case.

- iv) It should not be assumed that allowing a child to remain in this jurisdiction while his or her future is decided here inevitably means that he or she will remain here for ever.
 - v) An important factor will be the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. Factors relevant to determining what is the child's 'home country' will be his or her nationality, where he or she has lived for most of his or her life, his or her first language, race or ethnicity, religion, culture and education so far.
 - vi) A further important factor will be the length of time the child has spent in each country. A distinction falls to be drawn between a child who has been here for a short time and is deeply unhappy and a child who has been here for some time without objection. In the latter case it may be less disruptive for him or her to remain a little while longer while the medium and longer time future is decided than it would be to return.
 - vii) It is wrong to proceed on the basis that the future of the child should be decided according to a concept of child welfare which exactly corresponds to that which is current in this jurisdiction.
 - viii) The court will not start from any *a priori* assumptions about what is best for any individual child. It will look at the child and weigh the factors set out in the welfare 'check-list' in s. 1(3) of the Children Act 1989. Within this context, the court can in an appropriate case give great weight to the culture in which a child has been brought up when deciding how and where he or she will fare best in the future.
 - ix) Differences between the legal systems cannot be irrelevant but their relevance will depend upon the facts of the individual case. Where there is a genuine issue between the parties as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned.
 - x) The effect of the decision upon the child's primary carer must also be relevant, although again not decisive.
31. In *Re NY (A Child)* [2020] AC 665, the Supreme Court confirmed the power of the High Court to make a summary return order under the inherent jurisdiction. It is of note that the Supreme Court formulated the question for the court as being whether the child's welfare *requires* his or her immediate return.
32. As the manner in which the court should approach an application for such an order, the Supreme Court in *Re NY (A Child)* stated that before making such an order, the court should give consideration to whether, in order sufficiently to identify what the child's welfare requires, it should conduct an inquiry into any or all of the factors in

set out in welfare ‘check-list’ in s. 1(3) of the Children Act 1989 and, if so, how extensive that inquiry should be.

33. Where the case involves disputed allegations of domestic abuse, having regard to FPR PD12J the Supreme Court held that the court will also need to ask whether it should conduct an inquiry into those allegations in order sufficiently to identify whether it is in the child's best interest to make an order for summary return and, if so, how extensive that inquiry should be. The court will also need to consider whether the evidence before it is sufficiently up to date to enable it to determine an application for summary return, whether findings are required sufficient to justify summary return, whether oral evidence is needed and, if so, the extent of that evidence, whether a report from a CAFCASS Officer should be directed and consider the comparative ability of the jurisdictions engaged to reach a swift resolution on the substantive issues between the parties.
34. The decision of the Supreme Court in *Re NY (A Child)* does not act to alter the ‘*swift and unsentimental*’ approach to applications for summary return orders under the inherent jurisdiction articulated by the House of Lords in *Re J (A Child)(Custody Rights: Jurisdiction)*. Rather, *Re NY (A Child)* seeks simply to ensure that the court has asked itself the questions that are required to ensure it is properly equipped to apply the approach set out in *Re J (A Child)(Custody Rights: Jurisdiction)*. At [63] in *Re NY (A Child)* Lord Wilson made clear that:

“The effect of the above is not to submerge efficient exercise of the inherent jurisdiction to make a summary order within an ocean of onerous judicial obligations. The linked obligations are obligations only to consider the eight specified matters.”

DISCUSSION

35. Having heard the evidence and listened to the submissions in this matter, I am satisfied that the father’s application for the summary return of the children to the jurisdiction of Dubai should be dismissed. I am further satisfied that the court has insufficient evidence before it at the current time to make any final determination on the question of direct contact between the father and the children, and that that issue should be adjourned for further consideration in the Family Court by a judge of Circuit Judge level, subject to directions for further evidence. My reasons for so deciding are as follows.

Summary Return

36. The question before this court on the application issued by the father is whether the children should be summarily returned to the jurisdiction of Dubai under the inherent jurisdiction of the High Court. In my judgment there is, and has always been in this case, a magnetic factor that points to that course of action not being in the children’s best interests. Namely, that the father is not currently in Dubai, is not able to indicate when he will be in Dubai and has no clear plans for living and caring for the children in that jurisdiction, a jurisdiction the children have never visited. As the Cafcass Officer put it in her oral evidence, the children have in Dubai “No reality, or previous reality, on the ground.” Whilst the father asserted during his oral evidence that he has an unspecified number of job applications pending in Dubai, there was no

evidence as to the timescales for the determination of those applications or the likelihood of them being successful.

37. Indeed, it is far from clear that the father is able at present to leave the jurisdiction of Sudan in light of the current hostilities in that jurisdiction. Whilst the court was not presented with independent evidence in this regard, in answer to a question put by the court the father stated that he *might* be able to leave overland via Ethiopia. Whilst in no way the fault of the father, this serves to further emphasise that the father's plans for living in Dubai are not only inchoate but, at present, non-existent. The father has provided no cogent details of the arrangements that will be in place in Dubai for the children, who as I have noted have never lived in Dubai. In these circumstances, the prospect of the children moving to Dubai is characterised by manifest uncertainty, including as to timescales.
38. In the foregoing context, it is self-evident that it would not be in any of the children's best interests to order their summary return to the jurisdiction of Dubai, a country where neither parent resides and in respect of which it remains unclear whether the father will ever be able to return to. It is likewise not in the children's best interests to make a summary return order *conditional* on the father arriving in Dubai. Such a course would expose the children to unacceptable levels of uncertainty. I agree with the Cafcass Officer that the children's future should not be left in abeyance.
39. In my judgment, and as sensibly recognised by Ms Papazian during her closing submissions, the foregoing matters must be determinative of the application for an order requiring the summary return of the children to the jurisdiction of Dubai. This conclusion of course results in the court ratifying a situation borne of the mother's removal of the children from Sudan without the father's consent and by clandestine and fraudulent means. I am satisfied in this case that, as she concedes, the mother deliberately removed the children from the jurisdiction of Sudan without the consent of the father and by means that involved the use of forged documents. As set out above, there is a dispute between the parents as to the mother's motivation for taking that course of action, the mother contending it was an act of desperation following her and the children having been left in desperate circumstances in rural Sudan as a result of an already dilatory father's inaction in Dubai, and the father contending that it was the culmination of a deliberate plan to deprive him of family life with the children, who he has not seen now face to face since August 2021. However, given the inevitable consequence of the magnetic factor in the case of the father's absence from, and uncertain arrival, in the jurisdiction of Dubai, it is not necessary for the court to determine this factual dispute.

Contact

40. The father's secondary case is that if the court is not minded to order the summary return of the children to the jurisdiction of Dubai, the court should put in place a comprehensive child arrangements order providing for direct contact between the father and the children in a third country, the father contending that he is not able easily to obtain entry clearance into the United Kingdom given the immigration rules applicable to him. Whilst the determination of the question of direct contact is plainly very important in circumstances where the current situation is interfering significantly with the father's ability to have a relationship with the children, I am

satisfied that the court is not in a position at this hearing to make any final determination on the question of contact between the father and the children.

41. First, in this case allegations of serious domestic abuse have been made by the mother against the father, including abusive behaviour towards the children. Those allegations are also reflected in certain things the children have said to the Cafcass Officer. In particular, it is alleged that:
- i) The father exhibited controlling behaviour by frequently threatening the mother with divorce.
 - ii) The father exhibited controlling behaviour by preventing the mother from knowing how much was in his bank account, would demand the mother pay for everything and would take the mother's income without her consent.
 - iii) The father physically abused the mother on one occasion by taking hold of the mother's head in and hitting it against the wall several times whilst the mother was pregnant, on one occasion by kicking her in the knee, damaging a ligament and on one occasion by hitting her on the shoulder, causing her to cry and causing the police to be called.
 - iv) The father threatened to take the children from the mother and remove them from Oman to Dubai after the mother refused to be intimate with him.
 - v) O saw the mother and father in a fight wherein they were arguing and the father made the mother cry.
 - vi) M saw the father say something to the mother that resulted in the mother running to the kitchen to get a knife and planned to kill herself resulting in M running to a friend's house to ask her friend's mother for help.
 - vii) The father locked P in a dark room to discipline him.
 - viii) The father hit and screamed at P and called him names and pushed M.
42. Within this context, the order of Moor J dated 3 May 2023 contains a recital, endorsed by the court, that records the mother's position as follows with respect to the question of the relevance of the foregoing allegations to the question of contact:
- “The Mother agrees that a fact-finding hearing is not necessary and she does not rely on the disputed allegations of domestic abuse in respect of the determination of the future contact arrangements between the Father and the children. Rather her case is that she is agreeable to contact so long as it is safe and there are appropriate practical arrangements in place. She further agreed that it was not necessary for the Cafcass Officer to see the children again to elicit their views about contact with their Father.”
43. As a result of this position, this final hearing of the application for an order for summary return was not set up in a way that required forensic examination of the serious allegations of domestic abuse set out above. Further, and notwithstanding that the father's proposals for contact include the children travelling to a third country for immediately unsupervised direct contact in circumstances where they have not

seen their father for nearly two years and have themselves recounted incidents of domestic abuse and expressed reservations about feeling safe with their father, this court is also without *any* evidence of the children's views as to contact, including M who is nearly 13 years old and N who is nearly 10 years old.

44. Before this court, the mother indicated she *does* assert that the allegations of domestic violence are relevant to the question of whether direct contact can be safely implemented in a third jurisdiction (whilst this can be characterised as a change of position, having heard the mother in evidence, and the extent of her English language skills, I remain unconvinced that she clearly understood the consequences of the concession she made as a litigant in person on 3 May 2023). In any event, by the terms of FPR PD12J, the court is required to reach its own conclusion on whether the question of domestic violence is an issue and, if so, to identify the factual and welfare issues involved. Within this context, in *K v K* [2022] EWCA Civ 468 at [42] the Court of Appeal reiterated that the court must take time to identify the welfare issues, to understand the nature of the allegations, and then to consider whether the facts alleged are relevant to those issues and whether it is, therefore, necessary for the factual dispute to be determined. By reason of the mother's concession on 3 May 2023, it is not clear whether that exercise was undertaken ahead of this final hearing. Given the nature and extent of the allegations made, and the mother's position on the question of the relevance of the allegations to the question of direct contact, it is plainly an exercise that now needs to be undertaken before the court determines definitively the question of direct contact.
45. Second, and within the foregoing context, the court is disadvantaged in undertaking that exercise in this case, and is prevented from factoring in the wishes and feelings of the children in any decision on contact as required by s.1(3)(a) of the Children Act 1989, in circumstances where it does not have from the Cafcass Officer a comprehensive analysis on the question of contact. The Cafcass Officer was directed to file and serve an addendum report on the question of contact between the children and their father but not required to ascertain the children's views on that subject, again notwithstanding that M is nearly 13 years of age and N is nearly 10 years of age. The addendum letter from the Cafcass Officer contains no welfare analysis to accompany the bare proposals for direct contact, whether by reference to the matters set out in s.1(3) of the Children Act 1989 or at all. In particular, the Cafcass Officer simply accepts at face value the concession made by the mother on 3 May 2023, without undertaking her own analysis of the extent to which the question of domestic violence is an issue in this case and, if so, to identify the factual and welfare issues involved. In the foregoing context, the court is deprived of *any* comprehensive safeguarding analysis from the Cafcass Officer in respect of the proposed contact in a significantly complex case involving allegations of serious domestic abuse.
46. I am satisfied that these evidential *lacunae* cannot be ignored in circumstances where what is being proposed by the father is the immediate commencement of direct contact with the children, following the children travelling to a third country, in circumstances where O told the Cafcass Officer that she does not feel safe with her father, where N told the Cafcass Officer that she did not "really feel safe around" her father and where M was unable to identify any positives in respect of her father. Whilst I make no observations as to the credibility or impact of these statements on any final determination of contact, it is plain the court cannot in such circumstances

safely proceed to finally determine the issue of contact without fulfilling its obligations under PD12J to determine whether the question of domestic violence is an issue and, if so, to identify the factual and welfare issues involved, informed by an analysis from the Cafcass Officer of that question, and a welfare analysis in respect of contact from the Cafcass Officer, undertaken by reference to the matters set out in s.1(3) of the Children Act 1989, including the wishes and feelings of the children.

47. Third, the court has no evidence before it in respect of the contentions that underpin the father's case on contact, nor as to the practical proposals by which such contact will be facilitated. Whilst the father contends that contact must take place in a third country as he will be unable to gain entry clearance into the United Kingdom, there is no independent or expert immigration evidence before the court to support that proposition. The father's contention that he is unable to gain entry clearance to Turkey, a country the mother would be prepared to contemplate for the purposes of contact in a third country if such contact could be effected safely, is likewise not supported by independent or expert immigration evidence. It is in any event at present unclear if the father could even travel out of Sudan for the purposes of contact in the circumstances I have described above. The consequence of this is that there are currently no concrete proposals for contact in a third country for the court to evaluate against the children's best interests having regard to the matters set out in s.1 of the Children Act 1989. Once again, the father's detailed proposals for contact are not so much inchoate as non-existent.
48. In all these circumstances, having dealt with the application that is before the court, namely for an order for summary return under the inherent jurisdiction of the High Court, I am not satisfied it would be appropriate or safe to determine the question of direct contact between the children and the father at this hearing. Rather, I am satisfied that that issue needs to be set up for a hearing before the Family Court on proper evidence, including a comprehensive welfare report from the Cafcass Officer on the question of contact. In the interim, it is in the children's best interests for the current arrangements for indirect contact to remain in place. In addition, I am satisfied that it is in the children's best interests for the court to make a specific issue order requiring the mother to keep the father informed of the children's circumstances and progress, and to involve the father in decision making in respect of the children consistent with the fact that the father holds parental responsibility for the children.

CONCLUSION

49. For the reasons I have set out above, the father's application for summary return is dismissed.
50. With respect the question of contact, I shall deem the father to have made an application for a child arrangements order under the Children Act 1989 and shall re-allocate that application to the Family Court and make the following directions:
- i) The father shall be deemed to have made an application for a child arrangements order under s.8 of the Children Act 1989, which application shall be allocated to a judge of Circuit Judge level at the Family Court.
 - ii) The matter shall be listed for directions before a judge of Circuit Judge level at the Family Court to consider, *inter alia*, (a) the provision of a report from

Cafcass pursuant to s.7 of the Children Act 1989 on the question of direct contact, including the question of whether the question of domestic violence is an issue and, if so, to identify the factual and welfare issues involved, and (b) the provision of evidence, whether expert evidence or otherwise, as to the father's ability to obtain entry clearance into the United Kingdom or other country proposed by the father for direct contact.

51. Finally, I shall discharge the location order which will have the effect of removing the prohibition on the mother of moving from her current home to another town. Whilst the Cafcass Officer deprecated that development in her evidence in terms of it introducing further change and instability in the children's lives, this situation represents the reality for a large number of parents in certain occupations who must move to secure better and more remunerative employment, with the concomitant need for the children to move school and develop new friendship groups. A parent not involved in proceedings would not ordinarily be criticised for taking such a step. It is important that the realities of modern day to day life are not elevated to welfare issues simply because the family is before the court.
52. That is my judgment.