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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2023] EWHC 914 (Fam)



No. FD22P00109

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 7 March 2023

Before:

MRS JUSTICE MORGAN

(In Private)

B E T W E E N :

R

Applicant

- and -

P

Respondent

ANONYMISATION APPLIES

MR M BASI (instructed by Dawson Cornwell) appeared on behalf of the Applicant.

MS L SIMAK (instructed by Victory at Law Solicitors) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE MORGAN:

- 1 This is a fact-finding hearing listed to determine four discrete questions which arise as a dispute between the parties before welfare decisions are made for two children: T, who is 8, and her sister, Y, who is 6.
- 2 The mother is the applicant in these proceedings and the father of the children is the respondent. The mother alleges that the children were stranded by the respondent father in Iraq on or about 6 July 2018 and says that the father left the children and the mother in Iraq without the ability to travel, whilst he made return visits to England for business purposes. The father denies all of the allegations made against him, as I will come on to examine.
- 3 It is necessary to set out just a little of the background and then of the procedural background. The applicant mother was born in Iraq and she has dual British and Iraqi nationality. The father was also, as I understand it, born in Iraq, although has lived in the United Kingdom for a number of years and, as I am told, also has dual nationality.
- 4 The parties are distantly related to each other, and they had an arranged marriage in 2011. The father then left Iraq and came back to England and the mother joined him in England in about February 2012 on a spousal visa, moving into the family home thereafter. Happily for the parties, in 2013 their first daughter, T, then later, their second daughter, Y, was born.
- 5 In July 2018, the family travelled to Iraq. The purpose of that trip and the circumstances in which it was undertaken were the focus of much of the evidence given before me. The mother's case is that on arrival the father took both the children's passports and hers. The family stayed with the paternal family for about a week and there was then an argument and the mother said she was thrown out of the family home. She remained away from the family home, and she says separated from the children, until she moved back in on what both she and the father have described as a reconciliation between the parties in or about the end of November or December 2018.
- 6 From December 2018 until February 2021, the mother, the children and, when not travelling for business, the father all lived at the paternal family property in Iraq and then in February 2021 the mother left and returned to the United Kingdom. This, on her case, she says, was because for the first time she was able to find her own, although not the children's, passport and travel. She left the children behind in Iraq.
- 7 The father's case is that the allegations made by the mother are all false. He denies taking and keeping the passports in Iraq. They were, he says, always freely available to the mother and she knew where they were. He denies that he threw the mother out of the house after about a week of arrival in Iraq. He says what happened was that the mother left in either July or August of her own accord. There had been what he describes as some difficulties. He says, and the mother agrees, that the parties were reconciled at the end of 2018, in about December, and that they remained living together with the children as a family until the mother again left of her own volition in February 2021, after the parties once again had problems in their relationship. She, on that occasion, left the children with him. In his statement filed defending these proceedings, he flatly denies all allegations made by the mother.

The Procedural History of The Institution and Progress of The Proceedings

- 8 Proceedings were instituted in the United Kingdom on 2 March 2022. Holman J made orders for the matter to be listed within two working days of the service of the application on the respondent. The mother was granted permission to disclose the court bundle to the British Consulate in Erbil and to an Iraqi lawyer for the purposes of securing assistance on the return of the children to England and Wales.
- 9 The order that Holman J made included on the face of it a declaration that the court was satisfied and declared on a provisional basis, and on the basis of the evidence available at that stage, first that the children were, on 6 July 2018, habitually resident in the jurisdiction of England and Wales, that being the date on which the parties left, or, second and in the alternative, that the courts of England and Wales had jurisdiction in respect of the children as British nationals whose circumstances are sufficiently compelling to require or make it necessary for the court to exercise its protective jurisdiction. In making that second alternative declaration, the learned judge relied on the authority of *Re M (A Child)* [2020] EWCA Civ 922.
- 10 In June 2022, the children moved from the paternal family property in Iraq to the home and care of their maternal grandparents in Iraq, the father agreeing at the time to them moving, and there was contact thereafter over digital platform between the mother and the children. The mother's solicitors, following the move of the children to their maternal family in Iraq, returned the matter back to court on 2 August 2022, when the matter came before Roberts J. The children were made wards of court, a return order was made and a request on the face of a separate order that the British Consulate in Erbil should issue emergency travel documents for the two girls so that they could both return to England in the care of their mother. That order was one which the mother informed the court she would facilitate by travelling to Iraq to return the children and, accordingly, the earlier port alerts made in respect of the children were lifted.
- 11 The matter next came for hearing before the court on 16 August, 14 days after the hearing before Roberts J, and it was listed to consider the progress of the mother's plans to return the children to England and Wales and whether the wardship should continue and whether to give the respondent father, who had not been on notice of the earlier orders, notice of the present application, and such other directions as might be necessary to progress the matter.
- 12 By the time of that hearing, the mother was in Iraq, had attended at the Consulate, but had not yet received any formal response. She was also seeking, with the assistance of friends and family, to obtain flight tickets back to the United Kingdom. Matters progressed accordingly and in due course the father was given notice of the applications.
- 13 When the matter came before Judd J on 5 September, the mother had arrived back with the children in England and the court made an interim order to govern the children's living arrangements, so that they would live with their mother, and a prohibited steps order to prevent the father removing them and directions made for service on him in Iraq.

- 14 By 10 October, the father had arrived back in the UK into Heathrow. An order had been executed on him, his travel documents had been seized and he was served. The father attended at the Royal Courts of Justice for a hearing listed on that day, but he left before the case was reached in the afternoon. Accordingly, by the 11 October order, there was a holding position. Prohibitive orders were made and the father was directed to file a statement.
- 15 The matter progressed to a hearing before Williams J on 31 October. By that time, it became clear there had been a serious issue of fact as between the father's and the mother's evidence and Williams J directed that there should be a finding of fact hearing, which is how the hearing which ultimately ended up before me came to be.
- 16 Judd J, at the pre-trial review for this hearing on 17 February of this year, at which hearing father was represented by counsel, made directions to set the scope and shape of this hearing, in the light of an interim report from CAFCASS, which at this hearing it is not necessary for me to consider. Pursuant to the directions of Judd J, she identified the four questions to be determined before me: (1) on what factual basis the children travelled to Iraq in 2018; (2) whilst in Iraq, why the children remained there until 2022; (3) what were the circumstances that caused the mother to be separated from the children; and (4) who retains their travel documents and passports.

Evidence

- 17 At this hearing, I have heard evidence from the applicant and the respondent only. Whilst I am aware that there are, in the wider welfare context, as is obvious from the fact there has been an interim CAFCASS report, allegations of domestic abuse and welfare decisions to be made for the children, those have not formed part of that which I have heard at this hearing. There is agreement between counsel that following on from any determinations of fact at this hearing, welfare decisions should be made at the Family Court local to the family home and that those decisions should not form part of this hearing and I entirely agree with that. The evidence that I have heard has been confined to questions identified following the PHR before Judd J.
- 18 I was provided in good time with a well-ordered, Practice Direction compliant bundle, the parties written evidence and, in the case of the applicant, with a practice direction document. Mr Basi and Ms Simak have, at this hearing, each put their client's case with skill and precision in oral submissions following on from the evidence of the parties.

The Law

- 19 The relevant and applicable law in relation to fact finding hearings is uncontroversial and well-known. Mr Basi acknowledged that, as his client makes the allegations, he bears the burden of proof in establishing them and that burden is discharged if I am satisfied in relation to each that it is more likely than not that an event occurred. It is no more or less controversial than that and it is unnecessary for me, in the course of this judgment, limited as it is to fact finding, to rehearse the passages of the well-known authorities which I had firmly at the front of my mind.

- 20 The parties each required the assistance of an interpreter to give their evidence. There was, I regret to say, a difficulty with the provision of interpreters in that where there should have been two, only one was booked. By the efforts of the interpreter who was present yesterday and the cooperation of the parties and their counsel, it was possible to conduct the hearing despite the fact that we were one interpreter short and I was grateful to her for the pragmatic approach taken.
- 21 The mother has, it was evident, very little English indeed, either written or spoken. The father, on occasion, elected to answer questions in English and, on one occasion, to correct the English words of the interpreter's interpretation of his answer. He had also prepared, at a time so Ms Simak told me that he did not have solicitors, a statement himself in English. From this, it is reasonable to infer that he has rather more facility in English, but I readily accept that in the stressful environment of the court he would wish to give evidence by an interpreter.
- 22 Neither party was a wholly satisfactory witness, despite the best efforts of their respective counsel. Neither were able to manage to give focused answers, even on the straightforward questions that they were being asked. I recognise that that may perhaps be reflective of the stressful and difficult emotional circumstances in which they find themselves and bear that in mind, but it was a noticeable feature of both.
- 23 The mother told me that she travelled on 6 July 2018 to Iraq with her husband and children. She told me that within about four or five days on arrival there, the father had, as she put it, kicked her out of the house following a row. She said he had taken the passports and when she was asked what she meant by "seizing" the passports, she said he kept them either with him or with his family and did not allow her to come back here or to use the passports to travel and allow her access to them. When kicked out of the house, she told me she went to her relatives and the children remained with their father.
- 24 She pleaded, so she told me, with his brothers to make contact with the father. When she was asked how it was she knew the father was travelling to England for long periods, she said, not entirely clearly, that she put it this way: "We were somehow aware about each other" and she said to his brothers "I am the mother of these children. If the father is not here, I have the right and am eligible to have my children with me", but they responded that because the father was not there they were not prepared to give them back.
- 25 She told me that she had felt she was psychologically in a very bad situation because she suddenly could not see her children for four or five months and explained that she had to find a way to put an end to what she called "this problem", because she was so desperate to see her children. Ultimately, when asked how she had found a solution to that, she told me that although she was in what she described as a psychologically very bad situation, she had reconciled with him towards the end of the year because she could think of no other way of seeing her children.
- 26 Cross-examined carefully and appropriately by Ms Simak, she denied that in 2018, when she left on holiday, that had been because she was going to see her sick father. She denied that her father was sick and she denied that he had any problems with his heart. She was explicit that she and the children were going only for a holiday and said that there was no truth in the fact that her father had been unwell and that that was also part of it.

- 27 I did not find her evidence about that particularly compelling or believable. It seemed to me that she was not being frank about her father's health, but I accept her evidence that the primary purpose of the trip was a holiday. She explained that it was a normal holiday to go and visit family and friends in Iraq and what had happened later was, as she described it, a problem that developed. She did not have a clear idea, or, if she did, she did not give me clear evidence, of how long she thought they were going to be staying. I accept her evidence that one of the reasons that perhaps it was not clear in her mind is she did not buy the tickets to go. Asked if she had seen the tickets, she responded that it had not been important for her to see the tickets. She did not need to see them because she saw it only as a holiday to go back and return.
- 28 I had thought that was a curious answer, until later I heard the husband's evidence about the tickets, in which, on his case, the tickets were transmitted entirely electronically to him and the first opportunity for the mother to have seen them, on his case therefore, was at the airport. That explanation of the tickets made her answer to why she had not seen them slightly less curious.
- 29 What I found rather more curious was, when she was asked whether there had not been any discussion with the husband about the length of stay, because she would need to think, for example, about how long she would need to pack clothes for and what to take, she said that she did not ask that, but that too was explained more readily when she explained to me that she was thinking they would stay as long as the school holiday is, and that fits with a departure at about the end of term in July and an intention to return by the end of the summer.
- 30 The lack of discussion of how long they would stay was similarly vague when I came to hear father's evidence. So I did not feel that I had a clear idea from either of these parties of what discussion there had been between them.
- 31 Entirely in-keeping with a visit of a family with roots in the country they were going to travel to and visit relatives, they both told me that there was a broad intention to stay partly in the father's relatives' home and partly in mother's relatives' home. The mother told me that it was true that they had had some problems in their marriage before, but the in-laws had mediated, but that the problems had started again later. The relationship she had with her in-laws she told me was broadly good, except that when the problems developed between the spouses they would, as she put it, back him. Asked about whether the in-laws had been helpful when the husband kicked her out, she said they had not. They had not sought to interfere, saying that "It is nothing to do with us" and they would back their son and alter their position so as to support him. She told me that she did not ask her mother-in-law once she had been kicked out whether she would assist in seeing the children because all of them were, as she put it, saying "No, the children's father does not want you to see them so there is nothing you can do".

- 32 She was asked why she left the house in February 2021, having reconciled, as I have already said, to enable contact to resume with the children at the end of 2018. She said it was because the father had physically attacked her and asked for her sister to take her out and that is why she left. I was reminded by both counsel that I am not considering matters of domestic violence at this hearing, although I recognise, they may be considered elsewhere. The sister came and took her away and she had accepted that he had come back to sort out the problem with the children, as she said, when he had calmed down in three days or so. What she told me is that “When the father gets angry, he gets very bad, but after that he slows down, and so I was thinking if he comes and tries honestly to sort out the problem, I was happy to do that for the sake of my children”, but it did not happen.
- 33 She was cross-examined appropriately and carefully about the fact that she had described herself as escaping from the house in her statement, when in fact she had left after an argument. She did not agree that she had left in the sense that it was being put to her, because what she said had happened was that the father, having attacked her, had required her sister to take her away from the home. I have thought carefully about that point, which was appropriately pitched to the mother by Ms Simak, but in fact I do not think in the context that I heard the evidence, in the wider sense, that there is any meaningful distinction to be made here between leaving and escaping, in the context that it happened.
- 34 There came a time when the mother had been asked about contacting the police when she was living away from the father and before they had reconciled at the end of 2018. The point was made to her that if she was contacting the police and the police were making enquiries, as I have heard that they were, in England as to where the children were and why they were not back at school, that would have been the perfect time for her also to seek the assistance of the British Consulate and to say that she was being held to stay in Iraq against her will. The mother did not feel that that was something which she had felt she could do or that it would have resulted in her seeing her children. She agreed that she had eventually left the country, leaving the children behind in February 2021, when she had found her own passport, but she did not at the time regard herself as having the ability or the appropriate information to seek help and she did not, she told me, want to, as she put it, intensify the problem, so she had taken the pragmatic step of reconciling with the father in 2018 and taken her chance when she was able to obtain her passport.
- 35 The mother denied absolutely that the father’s account of the passport always being available to her was true. She had not been able to come across the passport previously. When she was asked if she had not thought previously of going through the father’s belongings to try and find it, she told me that she had many times, but she had not been able to find it and she took it, but on this occasion it had been God’s will that it happened to be open to her to come across it, but she had not been able to find the children’s passports.
- 36 She told me that she had been completely unaware that the children’s passports were due to expire in the case of the older child in 2018, as I will come on to, or, in relation to the other child, in 2020. She told me she had no knowledge of that or of where the passports were now.

- 37 The father agreed that the purpose of the trip to Iraq had been for a holiday. He told me in his evidence that it was also the case that his wife had been concerned about her father not being well, wanted to go and see him because he had a heart attack and kidney problems in the past, and that he has in fact since unfortunately died in September 2022.
- 38 It seemed to me, having listened to both the father and the mother, that the purpose of the trip as a holiday and the wish to see relatives were not mutually exclusive. The father told me he did not discuss the duration of the trip with his wife, but was insistent that he booked a return ticket. He told me in chief that he had intended to stay for two months but could be he spent maybe more, maybe less than that, but that his wife on arrival wanted to extend the stay. He said that the passports were not kept by him, but on arrival in Iraq they were in a wardrobe, they both knew where they were, there was a box inside the wardrobe and the passports were kept inside. His wife, he said, knew perfectly well where they were and had access to it.
- 39 He gave evidence to me about the expiry of his own British passport, which I found both unsatisfactory and incredible. The family travelled on 6 July 2018 to Iraq. It is common ground that T's passport expired later that month. When he was asked about how he was able to book return tickets to travel, he responded "Well none of us knew about the expiry of her passport until at the airport we were told that it was going to expire".
- 40 That, it seems to me, is a curious feature for anyone who has booked return tickets to travel anywhere not to have come across the need to check the validity of passports in the booking process. When he was asked whether it occurred to him to extend the passport once they had arrived in Iraq, having been alerted at the airport on the way out, he said "Yes, I did think about it", but he did not do it because, as he said, he had a family problem and "Psychologically I was very tired and did not think about it again". That was not an answer that I thought made any sense in the context that he gave it to me.
- 41 The father accepted in his evidence that the mother and children had been separated for about four months from July or August 2018 to November/December 2018, although he did not accept that there had been a row and he had thrown the mother out. He said there had been no other separation once there had been the reconciliation in December 2018 until she left in 2021.
- 42 He was obliged, when cross-examined by Mr Basi, that during that separation from July or August, or thereabouts, 2018 to the end of 2018, there could not have been a time when the mother told him that she wished to stay, because she had been separated from him and the children. He was asked whether he accepted that, at the time they left for Iraq, T was in reception class and Y was in nursery. They had finished their school holidays and term would start again in September. He accepted also that the mother was primarily caring for the children, because he was out at work (he had his own barber shop in England) and the mother was not working outside the home. In fact, he told me she had not worked outside the home at all during the marriage and looked after the children day-to-day.

- 43 The tickets which he had bought to travel, after some consideration, he told me he thought had been sent by email. Initially, he said he bought them through a friend, because his English was not good. He did not show them to the mother, in the sense that because they were sent through by email they came as a reference number and only at the airport were they printed out as tickets, but at that stage he told me they were seen by the mother.
- 44 When he went over this ground again, he told Mr Basi that he had bought the tickets through a Kurdish company. That answer came in the context of his evidence that he had not had hard copy tickets. He was asked, not unreasonably, how it is, knowing that there is a dispute as to whether return tickets were bought or not, he has not produced any evidence at this hearing that there were. His answer to that was that they had been sent by email, but it was not an email that was valid anymore, so he could not access it. He said he had purchased them through a Kurdish company and, if need be, those could be contacted. That seemed to me to be a shift of position from his earlier answer that a friend had arranged it, but, either way, I am left in the position of there being no evidence before me of the return ticket bought.
- 45 He was asked how it could be that he had been able to buy such a return ticket, given that T's passport was to expire in July 2018. So if he was buying a ticket for travel at the beginning of July with a return contemplated either two months or sometime after that, it would not have made sense when one of those travelling would have had an expired passport by the contemplated date of return. He did not have an answer at all to that, still less a satisfactory answer, and maintained that the first time he had known the passport was to expire was when he arrived at the airport. He had no answer at all as to why he had not then set about obtaining a renewed passport for that child once it was brought to his attention and once they were in Iraq.
- 46 He denied there had been any marriage difficulties in England before travelling, although he accepted reluctantly that there were difficulties in 2016, as to which I had my attention drawn to police reports in the bundle before me, where the mother makes allegations to the police and the father was interviewed, but those matters, he told me, had subsided by the time of 2018 when they were travelling. He denied that he had kept hold of the passports, except of course in the sense that because the children are children they cannot hold on to their own passports when travelling. Once arriving in Iraq, as I indicated, he explained they were kept in a place which was known to all and to which all had access. He denied kicking the mother out. He does not remember, he told me, exactly when it was that the mother left, but it was a day in either July or August.
- 47 Within that context, the father was asked to pinpoint, since his case is that the mother asked to stay in Iraq longer than the intended holiday, when that was. In a most effective passage of cross-examination, he was asked when it was that the mother told him she would like to stay longer. The answer to that was "At the time when we were reconciled and came back together". So that exact date, he said, he could not remember, but was sometime in November or December.

- 48 Faced with the inevitable consequence of that answer, that she was separated during the period between, at the latest, August, and, at the earliest, November from the children and they remained with the father, she could not possibly have been saying during that time that she had wanted to stay in Iraq, since he had just pinpointed that to the reconciliation. The father's answer was that she did not want to see the children during that time and, therefore, she did not. When it was pointed out to him that he had, in essence, just admitted that for those months she could not have said that she wanted to stay in Iraq and remain there longer, that could not be true, the father said he could not remember. He accepted that during those four months with the children he remained in his property with his parents and he said he could not now remember whether it was the case that the mother was expressing a wish to see them, although he had to accept that his earlier evidence was that before travelling she had been their primary carer.
- 49 The father, in the course of his evidence, said to me, which does not appear elsewhere, that before the family had left to go to Iraq, there had been a night or two when, after visiting one of her friends, the mother had kicked him out of the house with the children and they were so young and upset that he, the father, was having to care for them. I found that piece of evidence difficult to fit with the fact that elsewhere in his evidence he had accepted that he was not used to caring for the children and required help and support to do it when he was on his own. Either way, that piece of evidence did not help me with what happened in the overall picture, nor did I believe it.
- 50 The father, during the period that he says the mother left him and in which he has accepted she could not have said to him that she wished to stay in Iraq, returned to England. He did not contact the nursery or the school to say that the children were staying longer in Iraq, nor was he able to give the answer to why he did not do that. What he said when he was asked by Mr Basi was "It has been a long time and I can't remember why I didn't tell them". I did not find that a helpful or believable answer. He said he had to travel here for business to deal with the rent on his flat and for his shop. He said he did not, in his second answer, when he was asked why he did not go to the school to tell them that the mother had arranged for the children to stay on in Iraq, was that because "All the time I was wanting to return with the children so they would not miss out on any time here at school". That answer, I regret to say, makes no sense at all, because during the whole of this time the children were with the father and he knew perfectly well how to achieve the best outcome for them.
- 51 He also made no effort during this time to renew T's British passport, which he knew, even on his case, from the time of the airport when they flew out, had expired. When he was asked why he did not bring that passport back to renew it in England, he responded in the following way: "I didn't notice that or pay attention to it as there was a big allegation against me". That, as I accept the submission made, cannot possibly be true, because he responded to his own barrister that he realised that the passport was to expire when he travelled out of the airport.
- 52 I found the father's evidence of the trip and the reasons for the trip, but moreover of the reasons why the children remained with him and in Iraq beyond the date that had been intended, on his case, to return at the end of the school holidays, or thereabouts, to be wholly unsatisfactory. During the time he was in England, he was spoken to by the police to ask where the children were. In the course of this hearing, I have had produced to me text communications between the police and the mother on 23 November 2018, when the police were plainly worried about where the children were and whether they were safe.

- 53 The father says he gave the police the mother's telephone number. He denied that, for him, an attraction to the reconciliation which occurred in November or December was that he knew by then the police were anxious about the safety of the children. He knew by then that they were contacting the mother and he wanted to stop that happening again. He did not accept before me that he was worried about her talking to the police in England. I think that is unlikely to be the case, because it seems to me he must have been worried about that, against the background of the circumstances in which the police were explicitly worried about the children's and the mother's safety.
- 54 It is also the case that the father was travelling to and from England throughout this time. He accepted that it was probable that he travelled about three times. He denied that he was travelling up to eight times, but on none of those occasions did he take steps either to return the children or to renew travel documents.
- 55 By 2020, Y's British passport had also expired. Asked why he had taken no steps to renew that passport, the father's answer was "I don't know and I cannot remember". I regret to say that I found his evidence of the failure to renew his children's passports unconvincing and incredible.
- 56 When the father was asked how it was that the children were returned by him to the maternal grandparents' care, he said he did not take them and leave them there. He took them there because the mother asked. That may well be the case, but what was telling to me was the answer that the father volunteered to a question that he had not been asked immediately after that passage of his evidence, when he said this. He said "I have to say something, that she came back to England in April 2021 until May 2022 and she was there without my knowledge or permission". He was asked why it was he thought she needed his permission, to which he responded that she did. I wanted more to understand why the father spoke about his wife in terms of permission to her coming back here and the answer that he gave me, when I asked him to expand on that answer, was "I want her to know how it was important for her to ask my permission or not".
- 57 That gave me a clear idea of the father's view that the mother's travelling was something that he would expect to give permission for and his view of the way in which matters operated between them.
- 58 A little later on in his evidence, he was asked by Mr Basi, in terms which I listened to carefully and regarded as clear, the following questions: "Do you still have the expired passports? It is important for the mother to get new passports, to renew them for the children. Will you bring them back?" to which the father responded "Yes". Later on, he said that he did not understand that question to relate to the passports still being held by him and he did not mean that and what he amended his answer to was "I don't have them", when he was asked where the passports were.
- 59 I did not, overall, regard the father as a satisfactory witness. I regarded with some disquiet the evidence he gave me that, when they left, the elder child's passport was due to expire. It is hard to believe that he would not have known during the booking process. However, either way, I did not find that this father was seeking to tell me the truth about any of the matters that were put to him, despite the fact that he was represented at this hearing by Ms Simak with care and skill.

- 60 I have ultimately reached the following conclusions on the four questions which fall to be determined by me today. I find that the children travelled to Iraq in 2018, so far as the mother was concerned, for the purposes of a holiday. It was intended and understood by her that they would be there probably for about the school holiday period. I find that more likely than not the father did not intend that they should return to England at the conclusion of that trip.
- 61 Most particularly, in that respect, I take account of the fact that no evidence has been produced to me that return tickets were booked and, whilst of course I have guarded against reversing the burden of proof and expecting the father to prove the mother's allegation is not true, I am entitled to and do take notice of the fact that one child would by then have required a renewed passport in order to travel on a return ticket. The father, who made return trips to the United Kingdom and who, by the time that the school holidays were over, had, on his own case, been left by their mother, did not then either bring the children back to start school or take steps to renew that passport.
- 62 Accordingly, I find that the mother understood this to be for a holiday. The father, on balance, more likely than not never intended that the children should return and that, to the extent that there was a wish to see the mother's father, that was as part of the intended holiday. In that respect, I reject the father's case that there came a time when the mother said to him she wished to stay longer in Iraq, because even on his case, as exposed by Mr Basi's skillful question of him, the time at which he suggests the mother said that could not possibly have been the case, because she had already been separated from him and the children for some time until the reconciliation in November/December, when he says that took place.
- 63 The second question as to why were the children there until 2022, I make the overarching finding on that because they were not able to be returned before then because the father had kept them there. I accept and prefer the mother's case that from July until the end of 2018 she was kept apart from them until a reconciliation which she decided to undertake so as to be with her children.
- 64 The mother's evidence about how it is that for a further two years she remained there and did not take steps to leave with the children, or with the assistance of consular services or her own family, as put to her by Ms Simak, is less satisfactory than her earlier evidence, but I nevertheless prefer it to the evidence of the father. I simply do not accept that this mother was able to leave and had access to her passport before February 2021. Accordingly, I take the view that the father did indeed strand the children and the mother and the reason, in answer to the second question, that they were there until 2022 is that they were only retrieved from Iraq when they were within the mother's family and she, having sought the assistance of the English courts and had legal advice here, was able to take steps to retrieve them.

- 65 I turn to the answer to the third question (what were the circumstances that caused the mother to be separated from the children), which I take to be in two periods. First of all, between July and December or November 2018, I find the circumstances were that there was, as she asserts, a row following which she was not able to see the children and only on reconciliation was she able to see them. Accordingly, I find that she was kept from them by the father and his family and that, following February 2021, which is the other period of separation, that she was not able to see them again until they were back within the maternal family in or about June 2022. It follows that I prefer the mother's account to the father in relation to the separation of the children. I expressly reject the father's case that the mother had said she wanted nothing to do with the children and deliberately abandoned them.
- 66 As to the final question, which is who retains the travels documents and passports, to the extent that it is possible to determine this, I think it is more likely than not that they either are or have until recently been in the care and control of the father. They are, in any event, expired. I note that the father, in giving evidence, as I touched on earlier, to Mr Basi's questions, had said at first that he appreciated it was important for the mother to get new passports for the children and agreed that he would bring them back, having been asked explicitly if he still had the expired passports. Although the father later went on to say that he had not understood that question and did not mean to say that he would bring them back, I do not agree that he misunderstood. I think he caught himself out with his own answer.
- 67 It may be that it does not matter whether he still has them, but, to the extent that anyone had them, I am satisfied that it was the father and not the mother. Whether the father still has them or has disposed of them, may not matter much, because they are expired. It may ultimately be that they have to be replaced by reason of having been lost, as well as expired, but I find that certainly they are not with the mother and that they are likely, until the very recent past, to have been in the father's possession and certainly were in the father's possession during the time that the parties were in Iraq.
- 68 Those are the findings I make on the four questions which are before me. I will invite counsel to draw up an order which reflects those findings, and which progresses the matter to its next welfare stage, which I think we all agree is the Central Family Court. It may be that there will be other matters relating to the cross-allegations of Domestic abuse, which will be ones which will have to be considered further by any other judge, but I would be surprised if there was the need for any further issues of fact to be determined, because it seems to me, on the basis of the CAFCASS enquiries carried out thus far, that this is squarely now a matter for welfare decisions.
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