

IN THE FAMILY COURT

Royal Courts of Justice

Date: Tuesday, 17th January 2017

Before:

MR JUSTICE PETER JACKSON

(In Private)

B E T W E E N :

M

Applicant

- and -

F

Respondent

M v F (Travel to Non-Convention Country)

MR M. GLASER (instructed by Simons Muirhead & Burton LLP) appeared on behalf of the Applicant (Mother).

MRS. D. TODMAN (instructed by Mr A. Spearman of A City Law Firm) appeared on behalf of the Respondent (Father).

J U D G M E N T(Approved)

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the family members must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

MR JUSTICE PETER JACKSON:

- 1 These proceedings concern two children, a girl aged 12½, and a boy now aged 11½.
- 2 The parents are both of Iranian origin but now have British citizenship, as do the children. The mother is a pharmacist, and she and the children live with her partner, Mr P, whom she has married by a religious ceremony and intends, shortly, to marry by a civil ceremony. Mr P is also British, but of Greek Cypriot origin. Together the mother and Mr P have a son of their own, A, who is now approaching six months old.
- 3 The father is a Consultant Psychiatrist, working within the Health Service. He lives in London, and when the children live with him that is where they are to be found. In addition to his regular work, the father also works, advises and advocates in the field of LGBT rights.
- 4 Both parents have a number of important family members in Iran. In the mother's case her family is well-to-do. She has two siblings in Iran as well as her parents, and one of the siblings has a young child who is, of course, a cousin to the children with whom I am concerned. The mother's links with England go back to her birth, because her parents were resident here at that time, and she lived here until she was three years' old. About 20 years later, she came back to England via a brief stay in Germany, and has remained here.
- 5 The father, who is a distant relative of the mother, came to this country to study, and it came about that in 2002 they married in Iran, returning to England where the children were born. The marriage itself was relatively uneventful until 2011 when the father left the home in March following the mother's discovery that the father is, as he describes himself, bisexual. Since then the parties have divorced in Iran.
- 6 The children are clearly a credit to their parents, but there have, unfortunately, been proceedings about them. These culminated in an order being made on 9th September 2011 by District Judge Carr. That contains a shared residence order under which the children spend four nights a fortnight and half the holidays with their father, and a prohibited steps order (obtained at the behest of the mother) preventing overseas travel, and certain other provisions no longer material. As a result of that order children have spent very significant amounts of time with both parents, and it is plain that their relationships with each parent are strong and very important to them.
- 7 Unfortunately, the relationship between the parents themselves is not a good one and, despite their obvious intelligence, they have not succeeded in establishing the levels of trust that are necessary between separated parents if their children are to benefit as fully as possible from any arrangements that may be made for them. It is apparent that the girl particularly, but also the boy,

are anxious not to let either parent down when expressing preferences, and I hope that whatever else happens after these proceedings are over the parents will reflect on ways in which they can, as much as possible, relieve their children of that anxiety. I will direct, as the parents agree, that they should attend a Separated Parents' Information Programme again, to give them some more thinking time about this. But, at all events, these are plainly very able and committed parents, who rightly feel proud of their children.

- 8 The matter now comes back before the court upon application and cross-application issued last August. The mother applies to vary the prohibited steps order so that she can take the children out of the jurisdiction, not only to holiday destinations, but also, if she chooses, to Iran. Broadly, as to that, father does not oppose such travel to Hague Convention countries, but does not agree to an extension to Iran or other non-Hague Convention countries, and he suggests certain safeguards that should be put in place.
- 9 The father's cross-application is for an increase in the time he spends with the children under the shared residence order. He suggests that the children should spend six nights a fortnight with him, while the mother accepts there should be a more modest extension to five nights a fortnight. That is the outcome advocated by Miss Sarah Coppen, the CAFCASS officer, who reported on 9th January.
- 10 I have heard from Miss Coppen, from the mother, from Mr P and from the father during the course of the hearing that took place yesterday.
- 11 There has been one significant milestone during the course of the litigation, which consisted of a hearing on 7th October before Newton J. On that occasion, I am told, the court specifically considered whether expert legal advice should be obtained about the situation in Iran, but the conclusion was reached that it would not be necessary, because the overall situation could be adequately understood in the absence of such advice. I follow that thinking and, indeed, for almost all purposes it has proved effective at this hearing. I do not discount the possibility that some more detailed assistance might have been gained from an expert in Iranian law but, in my judgment, the court has sufficient information before it to reach conclusions about the international issue here.
- 12 In practice, the children's presence in this country is enforced by the arrangement put in place in 2011 by the court, which is that each parent retains a passport of one of the children.
- 13 It is, I am afraid, the case that the parties have between them spent over £50,000 on disagreeing. I would expect that in future they will attempt to reach conclusions by agreement, that being a much more economical approach. Of course, they may wish from time to time to take advice, but I very much hope that this will be the last time they will need to litigate.

- 14 During the course of the evidence, I thought that there was really only one disputed matter that I need to reach a conclusion on. This is the father's allegation that during the course of the marriage, though not since, the mother would make statements that if the marriage broke down she would take the children to Iran and he would not see them. The mother denies ever having made any such a statement, or even a suggestion of it. It is not easy, from written evidence drafted by lawyers and brief oral evidence, to be sure where the truth lies in this respect, but for what it is worth my conclusion is that the father is probably right to say that the mother has on one, or more than one, occasion made a remark of that kind. I think it likely that such a remark was made in the heat of an argument and it may well be that the mother is not willing to accept that now because she is concerned that any acceptance would damage her case. I will consider the significance to be attached to this at a later stage.
- 15 I deal immediately with the question of the routine division of the children's time between the parents. ... [*Passage omitted*]
- 16
- 17 ... So, having looked carefully with the parties and Miss Coppen at the children's term-time diary, I do not think that they would be helped by any further extension to that which is proposed by the CAFCASS officer and accepted by the mother.
- 18 I turn then to the difficult question of overseas travel. The law in this respect is familiar. The children's welfare is paramount, but the court gains significant assistance from decisions of the Court of Appeal in particular in this field. There are two that I particularly refer to. The first is the case of *A* [2013] EWCA (Civ) 1115. This decision points to the obligation on the court to carefully assess the magnitude of a risk of retention abroad in a non-Hague Convention country, and the magnitude of the consequences of such an unlawful retention. Where there is a risk it emphasises the importance of the investigating safeguards that would be capable of having a real and tangible effect in the other jurisdiction, and suggests that, in most cases, expert evidence will be needed.
- 19 In the second case, *Re H* [2014] EWCA (Civ) 989, those injunctions were restated as was the need for a rigorous scrutiny of the risks involved. The requirement for expert evidence was, I think, set at a more case-specific level.
- 20 It is, therefore, necessary for the court to look very seriously not only at the benefits of overseas travel, which are always easy to state, but also at the risks that it might bring with it. The CAFCASS officer supports effectively a removal of the prohibited steps order in her report. However, in her oral evidence she accepted that she had not encountered a case of this kind before,

and I think she will forgive me for saying that, in the end, she was not able to provide as much assistance on this issue as she was on the domestic issue. The parties have set out competing positions in somewhat more detail, in particular with regard to safeguards for overseas travel, although they do not agree what that travel should include. I will not labour this judgment by reciting their positions which appear very largely in their written documents.

- 21 My assessment is this: first, as to the level of harm if these children were unlawfully taken and kept in Iran, that would be very high indeed. This is not disputed. It would involve taking children born in England, completely assimilated into London life, dedicated to their education at the school which they attend, children for whom their relationship with their father is precious, and requiring them, against their wishes, to leave all that behind and live under very different conditions. So, there is no difficulty in seeing just how harmful wrongful removal would be.
- 22 The other part of the equation is what is the level of the risk of harm of that magnitude? In my view, the level of this is low. I reach the same conclusion, as it happens, as Miss Coppen about that. I do not accept the submission made on the mother's behalf that it is, in effect, non-existent, for reasons that I will explain.
- 23 In reaching my conclusion about the level of risk, I take into account a range of considerations that I will set out using numbered paragraphs.
 - (i) Despite her established situation in England, the mother naturally retains significant ties in Iran, where she lived for 20 years, and where her family of birth remains. It is important to remember that one is not looking just at the current position, but also at future possibilities if circumstances should change, namely, if the mother's ties in England, for some reason, should weaken, or if her ties or attraction to her home country of origin should, for some reason, strengthen, e.g. because of some family crisis in Iran.
 - (ii) While there is no expert evidence, the parties are specifically agreed on the following propositions. Under the Iranian system there are very limited processes for reliably securing the return of the children if they were kept. Such systems as might exist could in all likelihood be frustrated by determined opposition from the abducting parent. In that regard, it is worthy of note that the mother's family is comfortably off and established in Teheran. It is not, I think, necessary to reach any conclusion on the father's more extensive anxieties about behind-the-scenes influence, necessary or possible. It is further common ground between the parties that the father would be at a severe disadvantage in seeking remedies in Iran because of his sexual orientation and his known campaigning stance in the human rights field. It is common ground that if the father was himself to go to Iran he would be at personal risk

because of the attitude of the regime in Iran to homosexuality and matters of that kind. So, there could be no confidence that a retention could reliably be undone.

- (iii) In considering the children's welfare, note must be taken of the father's anxieties and the state of the relationship between him and the mother because that rubs off on the children. So, an otherwise suitable trip might cause such tension as to be inadvisable in terms of the overall effect on the children's welfare.
- (iv) The mother and children are solidly established in the United Kingdom. They were all born here and are citizens. The children's schooling is exceptionally important to them and to each of their parents. The mother has a home of her own here of significant value, together with a share in an even more valuable home with her husband. The mother has married someone who is a European citizen. The children have a stepbrother here of whom they are naturally extremely fond. The mother, having studied here, works here in a rewarding occupation.
- (v) Having considered my conclusion about any statements made by the mother that she would remove the children to Iran during the marriage I find that they are of no real significance in calculating risk. I attach more importance to the features that are clearly established in regard to the ties both here and also in Iran than on statements that are probably made in heat. I also note that the mother has neither said anything of this kind, nor done anything in the past five years to seek to take the children to Iran, indeed, the relationship with her family has been sustained by them doing the travelling throughout that period.
- (vi) There was nothing in the mother's evidence to suggest that in respects other than her account of any previous statements about removing the children, she was not being sincere. My assessment of her is that she gave evidence in a broadly truthful manner, but I remind myself that I am not only concerned with her current intentions but with her future intentions.
- (vii) There are a number of protective factors tying the mother and children to this jurisdiction. I have already mentioned a number of them – Mr P, and A, and the schools. I further attach significance to the level of contact that the mother has supported with the father ever since the separation that must have been a particularly difficult one. The levels of contact that have taken place have been child-centred. I am more than aware of conflicts between parents, the behaviour on the part of Mr P that led to a caution, angry, abusive voicemail on one or more occasions from the father to the mother, but these are, in my view, peripheral when compared to the commitment of both parents to the children's relationships with each other. These incidents are unfortunate, they

should not happen, and for the children, particularly as they get older it must be incredibly embarrassing to see your parents behaving in this way. But the core of this is the dependable level of contact that there has been.

- (viii) What I would most like to emphasise as a protective factor, as the children get older, is the standpoint of the children themselves. They have a point of view in this, and their very clear point of view is that they want to continue living in England, leading a life that they know and enjoy. If it was suggested to them that they should go and live in Iran full-time they would be appalled, however fond they are of their grandparents, cousins, uncle and aunt. These being the parents that, they are I find that they both, and in particular the mother, would give very considerable weight to the children's perspective.
- (ix) I take into account the benefit of travel generally. The children will enjoy school trips, indeed they have had one. They enjoyed a holiday with their father overseas, which the mother agreed to – she did not have to – but that was something that they really look back on with pleasure. Both parents agree that that sort of travel should continue.
- (x) The benefits of travel to Iran are more particular. These children are British/Iranian in their backgrounds, so it must be considered that a visit to the parents' homeland, the home of their relatives on both sides would be a matter of real enlightenment for them.
- (xi) A very distinctive feature of this case is that the father accepts, having listened to the children in particular, that there should be some travel abroad despite the risks. He accepted that during 2016, subject to some conditions, and he now accepts that the mother and children should be able to travel, subject to conditions, to Hague Convention countries. It is, in my view, of some significance that the father himself, although being very anxious about this issue, finds that the balance falls in favour of this form of overseas travel.
- (xii) Some safeguards are available in the form of arrangements which would require travel abroad to be in the presence of Mr P, or in the absence of A. The significance of Mr P, which is why the father puts him forward, is that a family holiday with him would be an outward sign that the mother's current life in London was continuing, whereas a trip without Mr P might arise in circumstances where difficulties had arisen in that marriage. The significance of travel in A's absence is obvious. I discount the possibility that the mother would take two children to Iran and leave one behind on anything other than a very short term basis. There is, on the mother's side, the availability of sufficient funds to finance a bond to give the father a fighting fund if things went wrong. There is the possibility of a document being created that would

strengthen the father's legal position in Iran by granting him and his family custody of the children while they were there, and there is the possibility which would arise whatever my decision of the mother giving a solemn undertaking on her holy book that she would return the children at the end of any holiday.

(xiii) I mentioned the children's wishes and feelings, those are to travel and also to travel to Iran at some point. In circumstances of this sort I cannot attach very much weight to the views of the children, even of this age, but nevertheless I bear in mind that my decision will either be with, or against, the grain of the children's wishes.

(xiv) The father's suggestion that one solution might be for the mother to take the children to Iran one at a time does not seem to me to be an answer because such a trip would be very peculiar in the overall family context.

24 In the end, as in all of these cases, it comes down to a question of trust. Every case must be considered on its own facts within the legal framework that I have described.

25 My conclusion, having balanced up all the above matters, is that the mother can, in all the circumstances, including the existence of some safeguards, be trusted to bring the children back to England, whether they have travelled to a Hague Convention country, or a non-Hague Convention country, and specifically Iran. I do not believe that, even if circumstances changed, she would inflict such harm on the children by keeping them in Iran, in particular, when they have such a strong relationship with their father. If the mother, for whatever reason, was to reverse her long-term support for that relationship I doubt that the children would ever forgive her. I do not, while understanding the father's position and wish to compromise to some significant extent, see any logic in trusting the mother to take the children to a Hague Convention country when it would be so easy for her to use that to travel onwards to Iran if she was determined to do so.

26 I accept that there may be unknowns in the future that would alter the calculation of risk, but no solution in this type of situation is absolutely risk-free, and I have also to factor in the great detriment to such intelligent children of not having the opportunity that travel to their parents' country of origin would give them. I do not think that the father, strongly though he feels about this, lacks the ability to manage his concerns and anxieties. I consider that the degree of integration that the mother has in her family life is genuine and deep, and that the safeguards bring some added protection. I make it clear that if I did not repose that degree of trust in the mother, I would not consider that safeguards would be of any value at all. I see them as being additional, not a substitute for the need for trust.

27 I will indicate some of the components of the order in a moment, but first say

that as far as travelling to Iran is concerned, it will come into effect next year, 2018, and not this year, to allow time for proper preparation and also because by then the girl will be either 13½ or 14, and the boy 12½ or 13, so they will be even more able to fight their own corner than they are today.

28 My order will, first, provide the necessary variation of the shared residence order by the addition of a day at the weekend on alternate weeks. It will vary the prohibited steps order made in 2011 to allow the children, first, overseas travel, with the written consent of both parents in any circumstances. The parents should be able to agree whatever they want provided it is written down. Secondly, regardless of consent, travel for up to 14 days by both parents, on the following conditions, which will be subject to any different agreements that they may reach as to the details:

- (a) that each parent is to give the other not less than a month's notice of any proposed travel, with details and proof of who will be travelling and to where; what the contact details are; and copies of the travel documents.
- (b) so far as the mother is concerned, travel will be either in the presence of Mr P, as proved by the travel documents, or in the absence of A, as proved by the lodging of his passport (so one will have to be obtained), or by demonstrating that his passport is being used for another purpose such as, for example, a holiday with his father.
- (c) I will receive the mother's sworn undertaking today which will be recorded.
- (d) In addition to the above conditions, in the case of travel to Iran or another non-Hague Convention country:
 - (i) The travel will not be before 2018.
 - (ii) Before each trip the mother is to provide a bond in the sum of £25,000 to cover the father's legal costs in Iran and/or the United Kingdom, but that is to be provided a month in advance along with the other proofs. I will not engage in the business of charges on the mother's property. The mother and her family are capable of raising this money in the form of a bond which is, of course, to be held in some agreed manner, possibly by the father's solicitor and, naturally, returned at the end of each visit. I consider that the sum is proportionate, although it falls some way from the competing contentions.
 - (iii) In respect of this form of travel, before each occasion of travel the mother is to provide the father, at her expense, with a declaration notarised in Iran, agreeing that while the children are in Iran they are to be considered to be in the custody of the father and his parents,

and the father is to co-operate with that process. I prefer that to a suggestion made on the mother's behalf, which is that custody would only pass if the children were kept after the due date, first, because it requires the dates to be known when getting the document and, secondly, because I do not attach any weight to the possibility that the document might be used against the mother during any permitted time. It may be that the situation can be dealt by the declaration being held alongside the bond by a trusted third party so that it would only fall to be used if there was a default.

- (iv) As far as I am concerned, the order will need to say that passports are to be given to the travelling parent not less than two weeks ahead of the date of travel.

I know that there will be other matters that the parties will have discussed for inclusion in the order and I will hear them about those in a minute, together with any requests for further clarification of my decision.

29 Subject to those matters, that is my judgment.
