Neutral Citation Number: [2020] EWCA Civ 277

Case No: B4/2019/1490

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
FAMILY DIVISION
HIS HONOUR JUDGE LEVEY
ZC18P00017

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2020

Before:

LORD JUSTICE LEWISON
and
LORD JUSTICE MOYLAN
- -

M (Children)
(Non-Hague Convention State)

- -
- -

Mr C Geekie QC and Ms E Jones (instructed by Payne Hicks Beach Solicitors) for the **Appellant**
Ms D Eaton QC and Mr S Jarmain (instructed by **Charles Russell Speechlys LLP**) for the **Respondent**

Hearing date: 12th December 2019
- -

Approved Judgment

LORD JUSTICE MOYLAN:

Introduction:

1. This case provides another example of the additional difficulties which can arise when the court is making welfare decisions in respect of children when there are no international instruments which bind the respective states relevant to the court's decision. The relevant states in this case are England and Wales, where the children live, and Qatar and the United Arab Emirates, in particular Dubai.

2. The mother is a national of Qatar. The father is a national of the UAE. The children have lived in England since late 2016. Each parent sought the court's permission to take the children respectively to Qatar and Dubai for temporary visits. Each objected to the other having permission because of what they each said was the risk that the children would not be returned to England. This required the court, when making its welfare determination, to assess the risk of abduction, the consequence for the children if they were abducted, the benefits to the children of visiting each state and the efficacy of any available safeguards.

3. It is regrettable that the parents have not been able to resolve this issue because, to their credit, they have been able to agree a number of other issues and they appear otherwise to be co-operating in providing a very high level of care and support for their children.

4. In the absence of either the 1980 Hague Child Abduction Convention ("the 1980 Convention") and/or the 1996 Hague Child Protection Convention ("the 1996 Convention") applying, there is no cross-border legal framework under which the travel of the children between England and Wales and Qatar and Dubai is or can be regulated and, thereby, facilitated. The benefits for children and families when these Conventions apply are well established. As referred to above, this case provides a clear example of the additional complications and potential obstacles which arise when parents disagree about whether their children should be permitted to travel between states which do not have reciprocal legal arrangements in force.

5. The mother appeals from the order made by HHJ Levey, sitting as a Deputy High Court Judge, on 28th June 2019 by which he gave the mother and the father permission respectively to take their two young children to Qatar and Dubai for the purpose of holidays. The order contains a raft of undertakings given by each parent. In addition, the order provided that before the children would be permitted to travel to these states, written agreements must have "been lodged and made into orders of the UAE court and the Qatar court".

6. The mother contends that the judge (a) was wrong to require an order to be obtained in Qatar as a condition for her being permitted to take the children there; and (b) was wrong to permit the father to take the children to Dubai at all because of the risk of abduction and the inadequacy of the proposed order in Dubai as a safeguard against that risk. The Grounds of Appeal allege in general terms that the judge "failed sufficiently to assess

and give weight" to relevant evidence and/or to the risk of abduction and/or, in respect of travel to Dubai, to the proposed order being "uncertain as to [its] effectiveness".

Background

7. As referred to above, the mother is a national of Qatar and the father a national of the UAE. Neither are nationals of any other state. The mother is part of a very wealthy Qatari family. The father is part of a very wealthy Emirati family.

8. The parties married in 2012. They have two young children. The family home was in Dubai. They lived there until late 2016. Since then the mother and children have lived in England. This was agreed between the parents because they considered that the children's needs meant that it was in their best interests to live here. I express this in general terms; one of the children has special needs. The father remained living in Dubai, where he has extensive business interests, but travelled to England frequently.

9. The marriage broke down at the end of 2016. Divorce proceedings were subsequently issued by the father in Dubai (in December 2017) and by the mother in England (in January 2018). These were ultimately compromised with the marriage being dissolved by a decree in England and, as I understand it, a divorce in Dubai.

10. The mother and the children live in a house in London purchased for her by her father in 2016. Until 2018, the mother and the children only had visitor visas. The mother then obtained a Tier 1 investor visa which entitles her to live in England until, initially, 2021 with an option to extend for a further two years. The children obtained visas in March 2018 which also entitle them to live in England for the same period as the mother. The father travels to England on a multiple entry visa which entitles him to stay here for up to 180 days.

11. The father also has a home in England and another house provided, it appears, by his family at which the children stay when having contact with him.

12. The mother commenced proceedings in London in January 2018 relating to the children. I deal with the history of these proceedings further below.

13. One of the matters relied on by the mother is the extent to which she has travelled with the children, in particular to Qatar, since the marriage broke down. The first was in December 2017 when she and the children went to Qatar with the father's agreement. The second was in March 2018 when, pursuant to a consent order made in the English proceedings, the mother and the children again travelled to Qatar, principally for the purposes of applying for UK residence visas for the children as the applications had to be made when the children were not in the UK. The third was, again to Qatar, in May/June 2018 following another consent order made in May 2018. The mother and children have also travelled to other countries.

14. One other background feature which I should mention is, what has been referred to as, the "blockade" of Qatar by other states including Dubai. This is relevant in particular because of the impact it might have on each parent's ability to travel to and take steps in the other jurisdiction.

15. Mr Edge, an expert on Middle East law, provided four written reports and also gave oral evidence. He had initially provided advice to the mother but the parties then agreed that he should be instructed jointly for the purposes of these proceedings.

16. The clear evidence of Mr Edge was that an English court order dealing with "family or personal status matters", including in particular in respect of the children, would be neither recognised nor enforced in a court in the UAE or Qatar. The position was the same in respect of "[a]ssurances and undertakings" which would not be applied or enforced. There is also "nothing … that is the equivalent to a 'mirror procedure'". The only mechanism available is "for foreign parties to submit an agreement to a court … which could be confirmed by that court so as to be enforceable locally as a judgment". This would be available in both Dubai and Qatar. Mr Edge was aware of this procedure having been used in "many cases involving children split between the UK and Middle East jurisdictions since [1998] including the UAE". This followed the decisions in *Re T (Staying Contact in Non-Convention Country)* [1999] 1 FLR 262 and *Re A (Security for Return to Jurisdiction) (Note)* [1999] 2 FLR 1. I return to his evidence on this proposed mechanism below.

17. Although Mr Edge dealt with the legal framework as it applies in Dubai and in Qatar, I propose to deal principally with the former because, for present purposes, it has broadly the same effect as the law in the latter.

18. The law distinguishes between guardianship (*wilaya*) and custody (*hadana*). The "rules of guardianship and custody" are set out in the Federal Personal Status Law 2005 ("the PSL"). The PSL is "based upon the principles of Islamic (Shari'a) law" with a "number of important amendments and reforms to some of those traditional principles".

19. The "guardian (*wali*) exercises full authority over the way a child is brought up, particularly as to his or her religious and educational upbringing; whereas the custodian (*haadina*) has day to day care of the children". Following divorce, in what Mr Edge describes as "a normal situation", the father will continue to act as guardian until marriage (in the case of a daughter) and until majority (in the case of a son). A guardian has a number of rights including that a child cannot travel outside the UAE without his written consent. Relocation out of the UAE would also require the express consent of the guardian and "a court would only overrule a guardian's refusal to permit relocation in the most exceptional circumstances".

20. In "a normal situation" the mother will be the custodian, in the case of a son until they reach the age of 11 (or 13 in Qatar). This can be extended by the court; this being "an instance of the court considering the best interests of the child which is not otherwise an overriding principle in the PSL".

21. In his written reports, Mr Edge expressed his opinion about the likely efficacy of the "mechanism" of an agreed order being made in Dubai in a number of different ways. In his first report he said that: "The success of the mechanism ultimately lies in the integrity of the parents and the parents' families and the English court's willingness to accept that all the relevant persons will comply with the agreement". If one of the parents later sought to challenge the order "it is not entirely certain how a Middle East court would react" although he also said that if an agreement had been "confirmed by a local court judgment then it should prove difficult for either party to undo the provisions". There had been "very few cases in the UAE where breach of such agreements/consent judgments have been challenged or even considered by the courts to my knowledge".

22. This uncertainty led Mr Edge to suggest, again in his first report, that the court would need to "consider the credibility of the parties and whether in all the circumstances the parties are likely to adhere to the agreement and particularly whether the party resident in the UAE will adhere to it". Indeed, it was Mr Edge's understanding that "this route has only ever been used where the English court surmises from all the circumstances that the parties will adhere to the agreement".

23. Mr Edge clarified that he has been "involved in many 10s of cases since" the decisions of *Re T* and *Re A* (supra) in which "the mechanism has been suggested". Of these, "about 10" related specifically to Qatar. He was aware that this had been "used and accepted" by the courts in the UAE but was "not aware" of whether orders had been made by the court in Qatar. He could only say that he had not "heard that a Qatari court has refused to apply the mechanism" although, because of his more limited experience, he acknowledged that there was "an element of conjecture involved". He also said more generally that, although he had never been "told of a case in which the local court had refused to accept" an agreement, "this does not mean it has never happened". He was, however, aware of cases in the UAE in which the wording had had to be changed before the court would agree to make the order.

24. In his oral evidence, Mr Edge was asked a number of questions concerning the efficacy of agreements. He repeated that he was aware of cases in which the proposed mechanism had been used in the UAE but made clear that he was not aware of any case in which the agreed order had later been challenged. His evidence was similar in respect of Qatar in that he "hasn't seen a case … involving such an agreement" which had later been challenged in court.

25. Mr Edge again expressed his opinion as to what would happen in such a situation in a number of different ways but he was clear that he was not saying that they *would* be effective. There "must be a question mark as to how the local court would" respond to a challenge; it was "difficult to decide what exactly will happen". He also said that if "goodwill dissolves we enter territory of some uncertainty". In a more positive vein, he said that "in normal circumstances [the court] would be expected to enforce it" but he could not "pinpoint a case where such an agreement has been made, challenged, gone to [court] and enforced". In answer to Ms Eaton, he said that, "once the court has accepted

it and turned it into a local court order, I think one has quite a certainty that that should then be enforceable". Additionally, in respect of Dubai, Mr Edge said, if contested proceedings took place and the mother was unable to enter Dubai, she would be in a "severely compromised position in defending a case in court".

26. Mr Edge gave more details of his direct experience of agreements and agreed orders in both Qatar and the UAE. He has experience of 12 or "possibly" a few more in Qatar and many more in Dubai. He had given advice in 100/200 cases and had drafted agreements in, "certainly", 20/30 cases. He repeated that he had never been informed of an agreement and order not being effective but, again, accepted that this did not mean that they had not.

English Proceedings

27. On 5th January 2018 the mother made an urgent application for a prohibited steps order following the father making threats to remove the children from England. An interim order was made on 5th January in the absence of the father who had only been given very short notice.

28. At the next hearing on 12th January 2018 both parties were represented by counsel. The order records the parties' agreement that the children "are habitually resident" in England. A number of other agreements are recorded including that the parties accepted "the sole and exclusive jurisdiction of this court to deal with all matters relating to the children's welfare". A child arrangements order was made and the order provided that neither party was to remove the children from England without the written agreement of the other or order of the court.

29. Extensive directions were given on 1st March 2018 including for a report from an independent social worker and a report from Mr Edge, both as single joint experts.

30. A consent order was made on 20th March 2018 under which, as referred to above, the mother was permitted to take the children to Qatar. The prohibited steps order was repeated but no conditions were imposed in respect of the agreed travel to Qatar.

31. On 8th May 2018 an order was again made by consent permitting the mother to take the children to Qatar for a holiday.

32. On 11th July 2018 a detailed consent order was made which dealt with arrangements for the children and travel abroad. The mother was given specific permission to travel with the children to the USA, France and Spain. Both parties were given permission to travel to EU Member States subject, in respect of the father, to provisions requiring the children's passports to be held by an independent agent.

33. A substantive hearing took place before Her Honour Judge Singleton QC in November 2018. She heard evidence from the mother, the father and the independent social worker. Her comprehensive judgment of 22nd November 2018 resolved nearly all of the issues

between the parties save for the issue of whether the children should be permitted to travel to Qatar and Dubai. The judge concluded that she could not determine this last question largely because she considered that additional expert evidence was required.

34. HHJ Singleton's judgment contained a detailed analysis of the background history, the parties and the children. She describes the children as being "fiercely loved" by the parents and that love "being reciprocated by both children". She found the mother to be "an extremely impressive person who is utterly dedicated to" the children. The mother is "highly distrustful of the father" and "genuinely utterly terrified of the possibility that the children may be taken from her". This was based on the father having "always threatened" that he would take the children if "they were to disagree and separate" and on how the father responded to the service of the English divorce proceedings as referred to in the next paragraph.

35. The judge found the father "an impressive and measured" witness although there were occasions when he "displayed an unassailable firmness of view". However, he did not dispute that "his texts and actions" in January 2018, after he had been served with the English divorce proceedings, "amounted to threats to remove the children from the jurisdiction and to refuse to accept the jurisdiction of the English court". The father said that "this response was prompted by his anger in the immediate aftermath of the service of those documents and that the threats do not represent his true position". The father also sent someone "apparently to remove them from her", about which he "expressed his regret".

36. The judgment also referred to the regrettable fracturing of the trust which had previously existed between the parents' respective families. The reasons for this are not clear but it clearly does not assist the children that this has developed.

37. While not deciding the issue, the judgment also addressed the question of travel to the GCC countries. The judge decided that it would be "catastrophic" for the children if they were retained either in Qatar or Dubai.

The Judgment

38. The judge heard oral evidence from the mother, the father and Mr Edge. He summarised their evidence and also summarised in some detail the judgment of HHJ Singleton. He set out the key issues he had to decide by reference to paragraph 23 of the judgment in *Re A (Prohibited Steps Order)* [2014] 1 FLR 643 (see below) adding that he agreed with Ms Eaton's submission that "where travel to a non-Convention country is envisaged, the court does not proceed on the basis of trust, but acts to put in place such safeguards as are available, commensurate with the risk in case such trust turns out to be misplaced".

39. It was "obvious" to the judge that "there is no trust between" the parents although he noted that it was "to their credit" that they appeared to "have been able to work together from time to time to make what appear to have been successful arrangements for the children".

40. The judgment was based in part on the findings made by HHJ Singleton which included, as referred to above, that the consequences for the children if they were not returned to England would be "catastrophic".

41. The judge summarised Mr Edge's evidence on the efficacy of the proposed safeguards, namely a consent order made by the courts of Dubai and Qatar as follows:

> "If the parties reach an agreement, such an agreement may be lodged with the local court and, if approved and made into an order, the parties would be bound by it. If completed correctly, such agreements would be enforced by the courts and would apply to cases involving non-nationals as well as nationals. He was not able to say '100%' that such an agreement would work and could not say that they will always be enforced, but he said that they had been used and as far as he was aware had not been challenged. It was his view that provided the court was satisfied that the parties entered into the agreement voluntarily "in my view the court would assist in making it into an order and in normal circumstances would be expected to enforce it. … I can't think of a single case where such an order has not been enforced".

In respect of Qatar, the judge summarised Mr Edge's evidence as follows: "Again, he said that he has not been told that challenges have been successful with agreements which have been entered into in order to ensure the return of children in local courts".

42. Dealing with one aspect of the judge's summary of this evidence, it is clear from an analysis of Mr Edge's evidence, including with the benefit of the transcript of his oral evidence, that he did not say he was unaware of a "single case where such an order has not been enforced". His evidence, in respect of both Dubai and Qatar, was that he was not aware of any case in which an agreed order had later been challenged.

43. The judge dealt with "the risk of breach", namely that the children would not be returned. He considered that "the fact that both parents agree that the children would be worse if in not in the UK lowers the risk". It appeared to the judge that both the mother and the father accepted that the UK "can offer facilities and assistance which would not be available in either party's own country" and that both "express a wish for the children to remain" in the UK.

44. As for the mother, he accepted that she "has committed herself to the United Kingdom, financially and for the sake of the children": he "had no reason to doubt the evidence she gave about that". He also referred to her involvement in making specific arrangements for the children and to her having property here and as having "invested here". He determined that the "risk posed by her is low".

45. The father's position was "more complicated". He had "threatened to remove the children from the mother in the past and his commitment to the UK both financially and emotionally is much less". The judge also referred to other factors, including the father's "commitment to the UK both financially and emotionally [being] much less" than the mother's and to his having struggled "to come to terms with the idea that his children would grow up in the UK". Taking these matters into account, the judge determined that the father "poses a greater risk".

46. One feature which applied to both parents was that both of their families "exert a particular influence upon the parents". This included a "not inappropriate dependence upon their wider families". This was the feature mentioned by the judge when explaining why he had decided that there was "still a risk" that the children might not be returned from Qatar.

47. Although the risk of breach was different, the judge decided that the parents should be "treated equally". This was in part for the reasons given by HHJ Singleton, namely that the parents should be "treated equally" and that treating the parents differently would "communicate a difference in approach to the children"; there would be an "overt impact upon the children's perceptions of the decision" as they would be likely to ask why they could travel to one country but not the other. In addition, the judge made clear that it was because the risk of retention in both Qatar and Dubai was "significant".

48. The judge also balanced "the benefits [to the children] of being able to travel to their parents' home states, visiting their family at home and experiencing their culture". He considered: "It is not in accordance with their welfare if they are never able to travel and so it is necessary for ways to be found to enable this". The judge then turned to address the issue of safeguards.

49. He summarised the position as it would be in Qatar and Dubai if there were no agreements and orders. Orders made in England would not be enforceable and, in particular, it "would be extremely difficult if not impossible for" the mother to "take steps to recover [the children] in the UAE courts".

50. The judge then set out his conclusions as follows:

> [52] Dr Edge was clear that provided that agreements are reached between the parties along the lines of the agreements that he has drafted, and that those are made subject to orders in local courts in the UAE and Qatar respectively then these would amount to the best possible safeguards. He is not aware that these have been challenged in local courts (which I accept is not the same as saying that there has never been any challenge) but his evidence was such that orders should be enforceable and binding. This seems to me to be a reasonable safeguarding process, and in my view it would be reasonable for both parents to enter into agreements as recommended by Dr Edge and for those agreements to be made into orders in the

> local courts. This approach is a proportionate response to the risk posed on both sides of retaining the children.
>
> [53] In my judgment the order should confirm the status of the children in this jurisdiction, to the extent that this has not already been ruled upon. The prohibited steps order will remain in place on its current term until such time as the agreements drafted by Dr Edge have been signed by both parties and both have been approved by local courts in the UAE and Qatar. Dr Edge suggested that the father should give assurance to the mother of his willingness to sponsor her in the UAE and confirming her right to travel. This would be appropriate in my view."

Legal Framework

51. As the court is determining a "question with respect to … the upbringing of a child", welfare is the court's paramount consideration: s. 1 of the Children Act 1989 ("the 1989 Act").

52. Section 13(1) of the 1989 Act provides that where "a child arrangements order to which subsection (4) applies is in force in respect of a child … no person may … (b) remove him from the United Kingdom … without either the written consent of every person with parental responsibility for the child or leave of the court". Subsection (4) applies to a child arrangements order which regulates "(a) with whom the child concerned is to live; and (b) when the child is to live with any person". Subsection (2) provides that subsection (1)(b) "does not prevent the removal of a child, for a period of less than one month, by a person named in the child arrangements order as a person with whom the child is to live".

53. Guidance has been given in a number of cases about how the court should approach the specific question of whether a child should be permitted to travel outside England and Wales in particular when the intended country is not a party to the 1980 Convention and/or the 1996 Convention. These include *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084; *Re M (Removal from Jurisdiction: Adjournment)* [2011] 1 FLR 1943; and *Re A (Prohibited Steps Order)* [2014] 1 FLR 643.

54. In *Re K*, relied on by Mr Geekie, Thorpe LJ referred, at p.1086 G/H, to applications of this "character" as requiring "careful and thorough preparation". It is relevant to note that the focus in that case was on the absence of any oral evidence and the absence of any consideration of possible safeguards. As Thorpe LJ explained: "It is customary, if there is to be an evaluation of the applicant's trust, for oral evidence to be led so that the judge has an opportunity of assessing credibility and reliability from exposure in the witness box". He then addressed the absence of any safeguards in more detail, commenting that this had been a "fundamental deficiency", at p.1088 B.

55. In *Re A*, in the judgment of the court given by Patten LJ, it was said:

> [23] The overriding consideration for the court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the chart's return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. …
>
> [25] [After referring to what Thorpe LJ had said in *Re K*] … applications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements:
>
> > (a) the magnitude of the risk of breach of the order if permission is given;
> > (b) the magnitude of the consequences of breach if it occurs; and
> > (c) the level of security that may be achieved by building into the arrangements all of the available safeguards. It is necessary for the judge considering such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave."

56. We were also referred to *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 in which Baroness Hale, at [10]-[12], criticised the Court of Appeal for having intervened in the judge's "assessment of the risk" because it was based on "findings of credibility and primary fact with which … an appeal court is not entitled to interfere". The Court of Appeal was also criticised for having interfered on the basis that the judge had given "too much weight" to his conclusion about risk "in his overall conclusion". This was because "the evaluation and balancing of" the relevant factors "is also a matter for the trial judge". It is only "if his decision is so plainly wrong that he must have given far too much weight to a particular factor [that] the appellate court [is] entitled to interfere".

57. Finally, Ms Eaton relied on *Re F (Children)* [2016] 3 FCR 255, in which Sir James Munby P observed, at [22], that a judge did not have "to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide

sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable".

Submissions

58. I am grateful to the parties for their respective submissions which can be summarised as follows.

59. Mr Geekie submitted that the judge failed properly to address the key factors involved in deciding whether each parent should have permission to take the children, respectively to Qatar and Dubai, when he had determined that there would be "significant detriments to their welfare" if they were not returned to England. These were: (a) the magnitude of the risk that the children would not be returned; and (b) the need for and efficacy of the proposed safeguards to address that risk. In addressing these factors, the judge had failed to take all the relevant material into account and had also given inadequate reasons for his decision. Both the risk involved and the efficacy of the proposed safeguards needed "detailed and careful testing" and evaluation which, he submitted, the judge had not undertaken.

60. In respect of the mother under (a), Mr Geekie submitted that the judge had failed to carry out any proper evaluation of the risk that the mother might fail to return the children from Qatar. If he had done so, he would have determined that it was so low that, as proposed by the mother, a suitably structured order made by the English court, which would include undertakings by the mother, would be sufficient to address that risk. Mr Geekie relied on a number of points in support of his submission that the judge's analysis of the evidence and his reasoning were deficient with the result that his conclusions in respect of travel to Qatar were flawed.

61. These included a list of 10 evidential matters which, it was submitted, should have been specifically referred to by the judge and which should have been brought "together for overall review". These related to what the mother had done to establish herself and the children in England and other matters which were relied on as demonstrating her commitment to living here with the children. The judge had also "almost entirely ignored", when explaining his decision, that there had been no significant challenge to the mother's case that she was not a flight risk; only one question in cross-examination had been directed to the risk of abduction. Nor was there any analysis of, for example, the relevance of her having travelled to and returned from Qatar on a number of occasions since the parties had separated or of the steps she had taken to invoke the jurisdiction of the courts in England.

62. The failure by the judge sufficiently to assess and give weight to relevant aspects of the evidence meant that his conclusion, that the risk of the mother abducting the children "is low", was insufficiently reasoned and "did not reflect the depth of her commitment" to the UK.

63. In respect of the father under (a), Mr Geekie likewise relied on a number of points in support of his submission that the judge's analysis of the evidence and his reasoning were deficient with the result that his conclusion, that the father "poses a greater risk" and "more of a risk" than the mother, was inadequate. These included a list of 15 matters comprising "financial, immigration, emotional and legal reasons indicating risk" such as the quality of the father's connections respectively with England and Dubai; threats he had made in the past about the children and his ambivalence about the children's "status from a long-term point of view"; and the prospect of travel bans and arrest warrants in Dubai. The evidence "taken together" demonstrated "a very real risk of abduction or retention" which was not properly reflected in the judge's assessment that the father "poses a greater risk".

64. On the issue of safeguards under (b), Mr Geekie submitted that the judge was wrong not to differentiate between the parents when considering what safeguards should be put in place. There was no justification for treating the parents "equally" when the magnitude of the risk of abduction was not the same. Mr Geekie criticised the judge's description, in this context, of the risk of the children being retained in both the UAE and Qatar as "significant".

65. In respect of the mother's position, Mr Geekie submitted that the judge had failed to consider whether the English order, as put forward on behalf of the mother, would be sufficient to address the risk of her not returning the children from Qatar. In his submission, the judge should have decided that the undertakings and recitals contained in the proposed order would provide adequate safeguards in themselves without the need for any further provision, especially when there was a degree of uncertainty as to whether an order could be obtained in Qatar.

66. Mr Geekie also criticised elements within the judgment which, he submitted, demonstrated that the judge had failed to undertake a proper welfare analysis and had failed properly to address the "real question" of whether the proposed consent order was sufficient, in particular, to address the risk of non-return by the father as to justify taking that risk. In support of this submission, he pointed to the judge saying that "it is necessary for ways to be found to enable" the children to travel to Qatar and Dubai and that the proposed orders "would amount to the best possible safeguards". He also questioned how the proposed orders could be "proportionate" in respect of both countries when the level of risk was very different.

67. In respect of Dubai, Mr Geekie submitted that the judge's reasons for deciding that a consent order in Dubai would provide a sufficient safeguard in this case were inadequate. During the hearing, in response to a question from Lewison LJ, Mr Geekie made clear that he was not submitting that the judge had misunderstood Mr Edge's evidence but was submitting that the judge's reasoning was insufficient in that it did not explain why he had decided that a consent order was a sufficient safeguard against the risk of the father abducting the children.

68. Although this was his stated position, it seemed to me that his submissions came very close to the former because he argued that the judge should have set out the "different formulations" in Mr Edge's evidence as to the likely efficacy of a consent order because the "preponderance of his evidence" was of "uncertainty" as to its efficacy rather than that it "should be enforceable and binding", as set out by the judge in paragraph 52 of his judgment (see paragraph 50 above).

69. Mr Geekie took us through both the written and the oral evidence of Mr Edge in detail in support of this submission. He highlighted references, for example, to the need for "continuing consent and cooperation", to "[y]ou are relying on cooperation and goodwill between both parties at all times", and that if "goodwill dissolves we enter territory of some uncertainty"; to the need to evaluate whether the parties are "likely to adhere to the agreement"; to it being "difficult to decide what exactly will happen" if the order were subsequently challenged; and to his evidence that the mother would be "in a severely compromised position in defending a case in the court" if she was unable to enter Dubai. He also relied on the judge having misstated part of Mr Edge's evidence as being that he could not "think of a single case where such an order has not been enforced". As referred to above, Mr Edge's evidence had, in fact, been that he was not aware of any challenge ever having been made to a consent order in any similar circumstances.

70. Mr Geekie invited us to set the judge's order aside and to make an order in the form sought by the mother to permit her to travel to Qatar and an order prohibiting the father from taking the children to Dubai. Alternatively, he submitted that the matter should be sent back for a rehearing.

71. Ms Eaton made a number of general submissions about the limited circumstances in which the Court of Appeal will interfere with a trial judge's assessment of the evidence or evaluation of risk. She relied on *In re J* in support of her submission that matters of weight are for the trial judge and on *Re F (Children)* in support of her submission that a judge need not "prepare a detailed legal or factual analysis of all the evidence and submissions he has heard".

72. She also submitted that the judge's analysis of the law is not and could not be criticised. In particular, he had set out the relevant parts of paragraphs 23 and 24 from the judgment in *Re A.*

73. On the issue of risk of non-return, Ms Eaton submitted that the judge carried out a sufficient analysis of the risk in respect of each parent. He had considered the background and the evidence in some detail and, she submitted, cannot be shown to have failed to take into account any material matter.

74. In respect of the mother, Ms Eaton submitted that the judge referred to the key factors referred to by Mr Geekie including the mother's commitment to the UK for herself and the children; her previous visits to Qatar; and her having initiated proceedings in England.

75. In respect of the father, Ms Eaton likewise submitted that the judge referred to almost all of the matters relied on by Mr Geekie including the contrast between the father's connections with the UK and with Dubai; the threats he had made; the position of his family; and the potential for the father to be subject to travel bans and arrest warrants in Dubai.

76. As to the issue of the proposed orders as safeguards, Ms Eaton submitted that the judge was entitled to conclude from Mr Edge's evidence that the proposed orders "should be enforceable and binding" and was equally entitled to conclude that they provided a sufficient safeguard to permit the children to travel to Qatar and Dubai.

Determination

77. It is clear from the judgment that the judge did consider the relevant issues when deciding whether the children should be permitted to travel to Qatar and/or Dubai. He expressly referred to welfare being the court's paramount consideration and to the three factors set out in *Re A*. He accepted the submission that the court should "not proceed on the basis of trust" but should "put in place such safeguards as are available commensurate with the risk".

78. The judge's determination, that there would be "significant detriments to their welfare" if they wrongfully retained in those jurisdictions, is not challenged.

79. The judge determined that the risk of the mother not returning the children was low. Although Mr Geekie sought to challenge this assessment, he accepted during the course of the hearing that the risk was "not zero". In my view, once it is accepted that the judge was entitled to find that there was *a* risk, it is difficult to challenge his quantification of that risk as "low". In this respect, I am not persuaded that the judge failed to take relevant material into account, as submitted by Mr Geekie. Of the factors identified by Mr Geekie as being insufficiently analysed by the judge, many are expressly referred to in the course of the judgment. For example, he referred to the mother as having "committed herself to the United Kingdom, financially and for the sake of the children"; adding that he "had no reason to doubt the evidence that she gave about that". The judge was also plainly aware of the history of the mother's visits to Qatar and of the litigation between the parties as he referred to both of these in his judgment.

80. The judge went on to explain why he, nevertheless, considered that there was a risk that the children would not return from Qatar. He referred to the influence of the mother's family as leading him to conclude that, although he had "no reason to doubt what she says about her wishes for the children remaining in the United Kingdom", there was "still a risk". In my view the judge was entitled to come to this conclusion and has sufficiently explained why he did. In particular, I do not consider that he had to refer, again, to the matters previously set out in his judgment as part of an "overall review" as submitted by Mr Geekie.

81. In respect of the father, Mr Geekie is entitled to submit that the judge's assessment of the magnitude of the risk is not as clear as it might have been. However, in stating that he "poses a greater risk" and "more of a risk" than the mother, the judge clearly had in mind that he had to evaluate the level of the risk when deciding whether the proposed safeguard of an agreement and order sufficiently ameliorated that risk to support an order permitting the father to take the children to Dubai. Although Mr Geekie criticises the judge appearing to treat the risk of retention by the mother and the father as equivalent, the judge does describe the risk of retention as "significant". It is also right to point out that the judge identified factors which reduced the risk that the father would not return the children from Dubai.

82. Further, as with Mr Geekie's case in respect of the mother, I am not persuaded that the judge failed to take any relevant material into account. In her written submissions, Ms Eaton set out where the judge had referred to the matters relied on by Mr Geekie. These included the nature and quality of the father's connections with England and Dubai; the threats made by the father; the influence of the father's family; and the risk of both travel bans and arrest warrants. I also do not consider that the judge had to refer, again, to these matters as part of an "overall review". The judge has sufficiently explained why he determined that the risk was "significant".

83. Mr Geekie also questioned whether the judge's analysis was undermined because he approached the issue of whether travel should be permitted from a flawed perspective. I acknowledge that the judge did say that it was "necessary for ways to be found to enable" the children to travel to Qatar and Dubai. However, he said this because he did not consider it "in accordance with their welfare if they are never able to travel" there. I also consider that Mr Geekie's criticism of the use of the word "necessary" and of the judge's reference to "the best possible safeguards" is descending into too detailed a forensic dissection of the judgment. In stating his conclusion that the proposed consent orders were "a reasonable safeguarding process" the judge was clearly balancing the risk of retention with his conclusions in respect of the need for and the effectiveness of the consent orders in ameliorating that risk. In my view, the judge's decision that this was a "proportionate response to the risk posed on both sides" shows that, contrary to Mr Geekie's submission, the judge was determining whether the proposed safeguards were required and were "sufficient" and concluded that, in respect of both Qatar and Dubai, they were.

84. The aspect of the appeal which has caused me the most concern is whether the judge was entitled to conclude that an order in Dubai was a sufficient safeguard. It has caused me the most concern because, in my view, Mr Geekie is entitled to question whether the judge's succinct summary, namely that "such orders should be enforceable and binding", accurately reflected the effect of Mr Edge's evidence. However, having spent some time considering the detail of Mr Edge's evidence, I have concluded that the judge was entitled to reach this conclusion. There are, clearly, elements within Mr Edge's evidence which would support a different conclusion. But this is not the question. The question is whether the judge's conclusion was open to him of the evidence. It was for him to consider all of Mr Edge's evidence, which the judge clearly did, and determine its effect.

There are also elements in his evidence, such as when he said that "it should prove difficult for either party to undo the provisions" and "one has quite a certainty that [a local court order] should then be enforceable", which support the judge's conclusion. On balance, therefore, I am not persuaded that this conclusion was not open to the judge.

85. I have, therefore, decided that this appeal should be dismissed for the reasons set out above. In dismissing the appeal, the responsibility for ensuring that the effect of the court's order is implemented falls on the parents and, I would add in this case, on their respective families with the expectation that the structure put in place by the court will be respected.

LORD JUSTICE LEWISON:

86. I agree.