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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION



[2023] EWHC 3407 (Fam)

No. FA-2023-000133

ZW21P01867

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday, 13 December 2023

Before:

SIR JONATHAN COHEN  
(Sitting as a Judge of the High Court)

(In Public)

B E T W E E N :

ZR

Appellant

- and -

TP

Respondent

MR M GRATION KC and MR M MACDONALD (instructed by Dawson Cornwell) appeared on behalf of the Appellant.

THE RESPONDENT appeared In Person.

J U D G M E N T

SIR JONATHAN COHEN:

- 1 This is an appeal, brought with permission granted by Hayden J, against the order of the Recorder made in the Family Court sitting at West London on 3 May 2023 when she dismissed the mother's application to relocate with the one child of the family to Germany.
- 2 The parties to this appeal are the mother and the father. They are both aged 30 years of age. They each came to work in London, the father, according to the chronology I have been given, in 2015 and the mother in September 2018. They met and started a relationship, and their one child, whose name I shall abbreviate to G to keep his confidentiality, was born on 30 May 2021, so he is now aged two and a half.
- 3 The relationship between the parents broke down some four months or so after G's birth, and G remained living with his mother. There was contact between the father and G which was interrupted by concerns about the father's alcohol consumption. It is fair to say that both parents had been part of what I saw referred to as "the party scene" and all that goes with it. There is no suggestion that the mother has continued that lifestyle since G's birth. Contact between the father and G was deemed to be of good quality, but because of the anxieties about his consumption of drugs and/or alcohol, it took place weekly under supervision.
- 4 The mother is German and the father is French, and on 6 December 2021 the mother applied for permission to relocate. The mother, with the father's permission, took G to Germany on holiday on a couple of occasions in the second half of 2022 and returned as expected.
- 5 The application took a dispiritingly long time to come on for hearing and eventually took place by way of a remote hearing on 20 and 21 March 2023. At the end of it, the parties sent in written submissions, and the Recorder produced a lengthy judgment on 3 April. The thrust of her judgment in refusing permission to the mother to relocate can be seen at paras.114 onwards of the judgment.
- 6 The Recorder recited that she had the advice of the Cafcass reporter in mind but came to a different conclusion to her on the basis of what she heard during the course of the final hearing. In particular, the judge had the benefit of hearing from both parties at length. The judge gave her reasons as to why she differed from the reporter and concluded that a move to Germany would result in disruption to G's relationship with his father, and that would have been a major change to his life.
- 7 The judge considered the financial position of the mother and G, and decided that it was not as poor as the mother was suggesting. She also thought that the mother was at best equivocal about contact and that her father – that is, the maternal grandfather with whom the mother and G would live in Germany if the application succeeded – was antipathetic to the concept of contact. She described the father's relationship with G as "positive but fragile", and said that if G went to Germany, G would "grow up without knowing his father". This rather dramatic description arose from the combination of the judge's view of the mother and maternal grandfather, but I think also from a misunderstanding by the judge that a contact order made in England would not be enforceable in Germany. That was wrong, as Germany is a signatory to the 1996 Hague Convention.

- 8 The judge took the view that the mother's financial difficulties in England could be overcome and that if the mother applied for settled status, she would be able to access benefits that she was not currently receiving; further, that her bank statements did not support the hardship that she alleged to be the case. She said that whilst she understood the mother's desire to return home, she had family support in England.
- 9 The judge dismissed the mother's application but was unable to deal with the issue of contact. That came about because of (i) lack of time, and (ii) lack of information as to the father's consumption of alcohol or drugs. Mr Gratton KC, who did not appear below, is critical of the judge. He says that the need for a holistic exercise meant that the judge should not have dealt with the issue of relocation without at the same time considering the issue of contact and coming to a conclusion about it, and that in any event the judge was wrong to place any emphasis on unenforceability.
- 10 The matter came back before the judge on 3 May when, amongst other matters, it was anticipated that contact might be dealt with. Counsel for the mother, Mr MacDonald, who appears again today, asked for reconsideration by the judge of her judgment, and for the admission of fresh evidence. The judge admitted fresh evidence from the mother only as to her finances, which, amongst other matters, revealed that she was to be made homeless the following day when the local authority was to collect the keys of her home and repossess it.
- 11 On 3 April, the judge had encouraged the father to obtain hair strand tests, but by 3 May, that had not been done. Accordingly, the judge felt that she had no choice but to order that the contact was to remain supervised. Although the judge did not revisit her decision to refuse relocation, she allowed the mother to take G to Germany for three weeks, as I understand it, because the mother was about to be made homeless. That permission has been extended by subsequent orders up until 3 October 2023. The mother at the end of September applied for a further extension, but that has not yet been adjudicated upon. There is, as I understand it, a hearing fixed for tomorrow in the Family Court at West London when this might be on the agenda, albeit that the father has asked that that hearing be vacated, so I do not know whether it is still in the list or not.
- 12 The mother and G therefore still remain in Germany and have been there since late May 2023. That is six and a half months ago. They live with the maternal grandfather in the family home. The mother has many members of her family living in the vicinity, which is a town on the western edge of Germany, close to the Belgian border. G attends a playgroup. The father has frequent video contact, to which I will return, but has had no face-to-face contact. As a matter of principle, he will not go to Germany, at least until the appeal has been dealt with. The father's point of principle is that G should be in England.
- 13 The mother has attended this hearing remotely, notwithstanding the order made by Hayden J on 26 October that she should attend in person. She obtained on 16 November a letter from a doctor, described as a specialist in psychiatry and psychotherapy, amongst other interests, indicating that the mother was undergoing psychiatric treatment and was suffering from panic disorder and acute stress reaction, and that she was advised against coming to England, which could lead to re-traumatisation. Since the mother told me that the treatment that she is apparently undertaking takes place in the absence of G, as one would expect, I cannot understand the basis on which the doctor thought it appropriate to express a view about how well the child is being looked after. It was a very inadequate medical report, and I am critical of an application being made only a few days ago for the mother's attendance

to be dispensed with, it having been left by her solicitors so late that effectively the court was presented with a *fait accompli*.

- 14 The mother briefly addressed the court. I am pleased that she did so because she demonstrated no obvious signs of distress and appeared entirely engaged and unaffected by her involvement in the proceedings. The father has attended in person. He had been represented before by a Direct Access barrister who he told me has apparently gone abroad. He said he would like an adjournment but would go ahead if so required. I took the view that since this appeal has taken so long to get on, and since the father has had a significant number of weeks to arrange alternative representation if he had wished, this case should continue.
- 15 The father put in written submissions to the court and addressed the court. His position is that to separate him from G is strongly against G's interests. He believes that the mother's so-called health difficulties are simply a ruse to try and prevent a return to England. If they were to be correct, then he would say that he was the better equipped to look after G. He plainly loves G dearly, and I have no doubt of his wish to be involved in G's life in the future.
- 16 It will be apparent from what I have said that I am dealing with a case in significantly different circumstances to those that existed before the Recorder. In no particular order:
- (1) The mother and G have now been in Germany for six and a half months. They are settled there, and G is attending a playgroup;
  - (2) in that period, there has been no direct contact between the father and G;
  - (3) the mother would be homeless if she came back to England. The best she could hope for is temporary accommodation from the local authority, but where that would be and what it would comprise is entirely unknown;
  - (4) she would have to obtain benefits here. Although the father is paying £270 a month by way of maintenance for G, for which he deserves credit, he says that he is unable to assist to any greater extent;
  - (5) contrary to what the Recorder understood to be the case, neither the mother's aunt nor godmother are able to assist in terms of accommodation. The godmother did provide a home for about two months at the end of 2021 as the parental relationship was coming to an end, but that is apparently no longer available. I therefore agree with Mr Gratton that in those circumstances, I could not simply order the mother to return in complete ignorance of any available accommodation;
  - (6) whatever the Recorder's fears were about contact afforded by the maternal family to the father in the event that the family were to return to Germany, that has actually not turned out to be the case. I suspect that it is the fact of the return to Germany of the mother and child which has made the mother and, to the extent that he is involved, her father more amenable to contact than what was the case at trial. The father has video contact twice a week. The mother sends to the father every two or three days photographs, videos and WhatsApp messages about G and his activities, and she is content to continue to do that. The mother is happy for the father to have contact if he were to come to Germany. That

contact, she says, would be supervised by her sister, someone whom the father has today said that if contact is to be supervised in Germany, would be the appropriate person to do so.

- 17 The father did eventually produce one hair strand test. It was taken on 11 May 2023, and the report is dated 22 May. It showed “chronic and excessive alcohol use”. He has not provided any tests since then because, he says, of the prohibitive cost of those tests. All these are new events which are material and have arisen over the many months since the Recorder gave her judgment.
- 18 I do not agree with Mr Gration’s submission that the failure to deal with contact at the same time as the Recorder dealt with leave to relocate makes what she did a linear rather than a holistic exercise. The Recorder’s judgment needs to be read as a whole. But it seems to me there was a misunderstanding at least as to two material matters, first being the effect of the 1996 Hague Convention on a contact order made here, and secondly, the reality of the mother’s financial circumstances and as to her available accommodation. Material to that was that she did not have settled status to live in England.
- 19 In those circumstances therefore, I allow the appeal, and the choice that I have to make is whether I should remit the matter for a further hearing, or whether I should deal with the matter myself. In my view, the way forward is clear and that therefore I should deal with the matter myself.
- 20 The order prohibiting relocation must be set aside. In the light of the very different circumstances that now pertain, it would be in the interests of G to continue to live in Germany with his mother, and permission to relocate is accordingly given. In Germany, G is within minutes of the extended maternal family and amongst many friends. The mother there has the kind of support that many, particularly single parents, need, and this significantly alleviates the pressures on the mother and the ability for her to be a good mother to G.
- 21 I make by consent a contact order. That will be for virtual contact not less than twice a week, and face-to-face contact to the father to be supervised by the mother’s sister, unless either a different supervisor is agreed, or it is agreed that there should be no supervisor, that contact to take place on consecutive days once a month and to be for not less than two hours on each day. This is exactly what the Cafcass reporter recommended in her report in supporting the mother’s application. I make it clear the parties can agree to the removal of supervision. I see no reason why contact should not be in the community, and it need not be at a centre.
- 22 I order by consent the mother to give the father the details of any playgroup, nursery or school that G attends, and I give the father permission to ask for progress reports direct from that institution. The mother should provide full details of G’s progress and of any health treatment that G might require, and also I require her to inform the father as soon as possible of any event which makes her unable to care for G. I am not suggesting for a moment that such an event is going to happen, but the father should be the first to know if it does.