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Case No: ZE20P01408 / ZE20P50086 /
FD20P00506 / FD21P00142

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2023

Before :

MR JUSTICE KEEHAN

Re T (A Child: Application to Permanently Relocate)

Between :

P
- and -
(1) K
(2) L
(3) N

Applicant

Respondents

Miss M Allman (instructed by **Judge & Priestly LLP**) for the **Applicant**
Mr M Gration KC and Mr M Basi (instructed by **MSB Solicitors**) for the **First Respondent**
The Second and Third Respondents appeared In Person

Hearing dates: 16-18 January and 8 February 2023

Approved Judgment

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MR JUSTICE KEEHAN

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 children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Keehan:

1. I am concerned with one young person, T, who was born in 2011 and is therefore 11 years of age. Her mother is P, the father is K. The paternal grandmother, L, is a party to these proceedings, as is the paternal step-grandfather, N, whom I shall refer to collectively together as the paternal grandparents.
2. There are six applications before me:
 - i) the mother's application of 8 July 2020 to discharge the child arrangements order made on 12 November 2019, which provided for T to spend regular and frequent overnight with her grandparents;
 - ii) the paternal grandparents' application of 18 June 2020 for enforcement of the child arrangements order of 12 November 2019;
 - iii) the father's application dated 27 July 2020, by which he sought an order for T to spend time with him;
 - iv) the father's application of 14 January 2021 by which he sought an order for the return of T from Estonia to this jurisdiction;
 - v) the mother's application of 12 February 2021 for leave to remove T permanently from England and Wales to Estonia; and
 - vi) the father's application made at a hearing on 7 April 2022 for an order pursuant to Articles 11(6) to 11(8) of Brussels II Revised for the return of T to England and Wales.
3. The paternal grandparents made an application for a special guardianship order on 18 January 2021, which was dismissed on 1 October 2021. The father and the paternal grandparents seek orders for T to be returned to England and Wales from Estonia, which the mother opposed. The mother pursued her application for leave to permanently remove the child from England and Wales to Estonia, which the father and the paternal grandparents opposed.
4. The mother opposes any order for contact between the father and T other than that is set out in an order of the Estonian court made on 9 January of this year. The mother was content, however, to permit the paternal grandmother to travel to Estonia from time to time to spend time with T.

The Law

5. I take full account that T's welfare best interests are the court's paramount consideration: s.1(1) of the Children Act 1989 ("the 1989 Act"). I have regard to those factors set out in the welfare checklist insofar as they are relevant to the circumstances of this case: s.1(3) of the 1989 Act. I have regard to the Article 6 and 8 rights of the parties and of T, but I bear in mind that where there is a tension between the Article 8 rights of the child on the one hand and of a parent on the other, the rights of the child prevail: *Yousef v The Netherlands* [2003] 1 FLR at [210].

Background

6. The mother is Estonian and the father is Armenian. The parents separated in 2017 and were divorced in 2018. The father relocated to live in Spain in July 2018. In the summer school holidays of that year, the paternal grandparents took T on holiday to see her father in Spain. The mother asserted, but the father denied, that he unilaterally decided to keep T for longer than had been agreed with the mother and T was returned just before the start of the new academic year.
7. In the summer of 2018, the mother issued an application for a child arrangements order and prohibited steps order. On 9 October 2018, an order was made preventing the father from removing T from the care of the mother and a child arrangements order/live with order was made in favour of the mother. The paternal grandparents had enjoyed frequent and regular staying contact with T, but difficulties arose in the relationship between the paternal grandparents and the mother in 2018/2019. The paternal grandparents made an application to the court for a child arrangements order to spend time with T. On 12 November 2019, the court made an order in their favour, which provided for T to stay with them overnight every second weekend and an overnight stay in the intervening week, plus holiday staying contact.
8. In mid-2020, all of the parties had made applications to the court. The mother sought an order to discharge the child arrangements order of 12 November 2019 in favour of the paternal grandparents. The father applied for a child arrangements order for T to spend time with him. The paternal grandparents applied for enforcement order of 12 November 2019.
9. In the course of the proceedings which have resulted in the order of November 2019, a CAFCASS s.7 report had been ordered. In the report of 12 August 2019, T spoke very positively about her father and said she would like to spend more time with him in Spain and would like to speak to him more often. In the course of the 2020/2021 proceedings, a further CAFCASS s.7 report was ordered. In the report of 12 February 2021, T once more, spoke positively and warmly of her father. She said the best thing about her father was his smile. When asked whether he had any negative attributes, T said, "I can't think of anything I don't like."
10. In December 2020, the mother took T on holiday to Estonia to visit her family. Whilst there, the mother asserted she was offered a job and decided to live permanently in Estonia with T and her partner.
11. On 14 January 2021, the father applied for an order to secure the return of T to England and Wales. In November 2022 the mother did comply with an order for T to be brought to this country, but this was solely for the purposes of T and the mother meeting with a member of the CAFCASS High Court Team, Ms Odze, to enable her to prepare a further s.7 report.
12. As I have mentioned, on 12 February 2021, the mother made an application for leave to relocate T permanently to live in Estonia.
13. There have been concurrent proceedings heard by the Estonian courts over the course of the last two years. On 17 May 2021, the Harju County Court in Tallinn ruled that

the mother's removal of T from this country was not wrongful and therefore that T should not be summarily returned to this country.

14. The father appealed this decision. The appeal court decided that the removal or retention was wrongful, but nonetheless refused to order T's return on the basis of the Article 13(b) defence. The father sought to appeal this decision to the Estonian Supreme Court but he was refused permission to appeal.
15. The significance of the appeal court's decision that the mother's actions were wrongful was that it allowed the father to rely upon the provisions of Article 11(7) of Brussels II Revised. Accordingly, on 7 April 2022, the father made an application to this court for the return of T to this country pursuant to Articles 11(6) to 11(8) of Brussels II Revised.
16. Notwithstanding the father's primary position that the courts of this country had jurisdiction in respect of T, the father made an Article 21 application in Estonia to enable him to spend time with T. On 13 April 2022, the Estonia court ordered that T should have weekly video contact with her father for between 30 minutes to one hour's duration with a third person present. The order records that this person should preferably be the mother. No video contact took place.
17. I should observe that throughout the Estonian court proceedings the parents and T have been legally represented. T's lawyers are provided under state funded legal aid. The local authority, Tallinn City Government, have been represented by a senior child protection specialist. The various judges dealing with the case have met with T on at least three occasions, most recently on 8 December 2022. The court order in Estonia of 7 September 2022 repeated the previous order for video contact between T and her father and provided that from the fourth month after this order the father would, in addition, have monthly contact with T for three hours on a Friday, nine hours on a Saturday and eight hours on a Sunday. The order permitted the mother to attend these contact visits. No video contacts and no visiting contact took place.
18. The next substantive order of the Harju County Court is dated 9 January of this year. The form of the order follows the format of previous orders in that it sets out the history of the proceedings, the positions of the parents and of T, the decision of the court and the reasons for the decision. Of particular note, the following matters are referred to:
 - a) The contact ordered on 2 September 2022 did not take place.
 - b) The mother knowingly disregards the court orders and does not respect the court or the right of the father to have contact with the child by consistently alienating the child from the father.
 - c) At the meeting with the judge on 8 December 2022, T said she did not want to communicate with her father and he should leave her alone. Her mother and her maternal grandparents had tried to guide her to communicate with her father but this makes her angry and nervous. She is being forced to do something she does not want to do. She thought of herself as a happy child, but her happiness is overshadowed by her father.

- d) T's state appointed attorney maintained that the child should have a 6-month respite from court proceedings and that it may be helpful for the parents and T to engage in therapy.
 - e) There is mention of the positive CAFCASS report of February 2021 in which T said she missed her father and wanted him to know that she loved him.
 - f) The court noted that T is tired of the court proceedings and could benefit from a break. It is undisputed that the child now has a negative image of the father, contributed to by the tensions between the parents and the years of litigation, noting that the mother may have shared information about the court proceedings with T.
 - g) Although the restriction of the right of the father to contact is not determined by the child's will, that is her wishes and feelings, in this case, contact would not, at present, be in T's best interests and would be detrimental to her health and development. It is justified for the court to suspend contact for a period of time.
 - h) Indefinite suspension is not justified, but a period of 6 months to 31 May 2023 is a sufficient period for the child to be able to rest from the case.
19. In broad terms, this order provided for a suspension of contact for 6 months. During this period, the mother was to cooperate with the local authority and to engage in counselling or therapy. The father was required to undergo parenting training and to engage in counselling or therapy. If it was thought appropriate by the counsellor, T would attend those sessions. From 1 June this year, the weekly video contact set out in the order of 2 September 2022 would be reinstated and from 1 September this year the monthly visiting contact provided for in that order would also be reinstated. The father has, I am told, lodged an appeal against the order made by the Estonia court on 9 January this year.

Evidence

20. The CAFCASS officer from the High Court Team, Ms Odze, had provided the court with a comprehensive and helpful report dated 6 January 2023. Ms Odze concluded that she did not support T being returned to this country for the purpose of engaging in court ordered contact with the father or with her paternal grandparents. Nevertheless, Ms Odze highlighted the importance and benefits for T of having a relationship with her father and with her paternal grandparents.
21. In her oral evidence, she confirmed her conclusion that T should not be ordered to be returned to this country. Ms Odze readily accepted that there had been a significant shift in the views expressed by T in respect of her father from being entirely positive in early 2019 and early 2021 to being very negative when she met with T on 17 November of last year. She said T had been exposed to quite a lot of influence by her mother. She had not shielded T from the litigation. Indeed, the child had had access to court documents and the mother had discussed the proceedings with her.
22. She readily accepted that the mother's conduct could not be excused and was wrong. In Ms Odze's view, the mother had not offered her daughter any encouragement and

support of contact. In the circumstances, she (Ms Odze) did not criticise the father or the paternal grandparents for making applications to the court, but two years down the line T is, to put it colloquially, fed up with this litigation, is fed up with talking to professionals and wants to be left alone. Ms Odze was clear that one must understand the toll on the child of the tensions and the long-running litigation and must take that on board. One had to, she said, work with T rather than against her. She accepted that T was only 11, but observed that she is 16, going on 25; she is very confident.

23. Ms Odze emphasised a number of points.
- a) T is aligned and very strongly wants to remain living with her mother;
 - b) she feels she is not being listened to and is resentful of the proceedings;
 - c) she wants to be heard;
 - d) she is settled in her life in Estonia and wants to be left alone;
 - e) she cannot be forced into spending time with her father or with the paternal grandparents;
 - f) she is expressing her true feelings and speaks her mind;
 - g) it is not conducive to her welfare best interests to drag her back here;
 - h) she (Ms Odze) is concerned that further litigation will make matters worse and that T will simply become more entrenched.
24. In respect of the father, Ms Odze accepted that he did not understand T's emotional needs. She agreed that the father was impulsive and frustrated and is not child focused in that he does not stop and think about T's wishes and feelings. Reassuring T that neither the father nor the paternal grandparents sought to remove her from her mother's case was, said Ms Odze, an important first step forward which needed to be taken. She was concerned, however, that the father would not be able to restrain himself because he wants to tell his side of the story which contains nothing positive about the mother. In answer to a question put on behalf of the mother, Ms Odze reiterated that she did not consider that a return to this country was conducive to T's welfare; she would resent it and it would only make matters worse. She endorsed the latest approach by the Estonia courts, who recognised that the mother had not done enough to support contact. She considered that positive engagement with counselling and/or therapy would be beneficial.
25. The father was clear in his evidence that one day T will come and live with him. He intended to tell her about the mother's lies but that he would not, in his words, "throw the mother under a bus". He denied he was seeking revenge. However, I note that when speaking to Ms Odze the father had said that the mother had taken T from him, so it was only fair that he would now take T from the mother. For much of his evidence, the father was focussed on his rights and his needs with little or no reference to T's needs and welfare best interest. If the court ordered T to be returned to this country, he would seek to move from Spain to live in this country. He was less than clear, however, about how long it would take for him to obtain a visa to come and live here or where he would live and how he would support himself and T. When

challenged on these issues by counsel for the mother, he then suggested that T could come and live with him in Spain. The father was asked if he had anything good to say about the mother. He replied, “Now? No.”

26. L, the paternal grandmother, gave oral evidence on behalf of herself and her husband. She spoke movingly of the great love and affection that they have for T and of the very warm and close relationship that they previously enjoyed with her. It was a matter of profound distress and heartache that they had not seen her for so long and that T now says she does not want to see them.
27. Ms Odze told me that throughout the whole of her interview with the paternal grandparents they had not said a single positive word about the mother. In like vein, during the course of her evidence L was entirely negative about the mother.
28. The mother said in evidence that she accepted she had not done enough to encourage T to have contact with her father or with the paternal grandparents. She told that if the paternal grandmother visited Estonia she would try and promote contact with T. On reading Ms Odze’ report, the mother said she had realised that she had to do more and had a better understanding of the importance for T of having a positive relationship with her father and her paternal grandparents. She said she would comply with the provisions of the Estonian court order of 9 January this year.
29. In cross-examination by leading counsel for the father, Mr Gration KC, the mother sought to deflect or minimise her responsibility for the lack of contact by T with her father or her paternal grandparents. By way of one example only, in response to the question that she had influenced T against the father she accepted she had but added, “unconsciously.” She did accept it was solely her fault for not providing information about T and her progress to the father or to the paternal grandparents. The mother also accepted that when she took T to Estonia she was not supportive of her having contact with her father or with the paternal grandparents. The mother now accepted, she said, that it was not in T’s interest not to have a relationship with the father or with the paternal grandparents. She now realised, she repeated, that she had not tried hard enough to promote T’s relationships with her paternal family. There is a need now, she said, for a collaborative approach to be taken by all concerned.

Analysis

30. I am wholly satisfied that the mother, the father and the paternal grandparents all deeply love T and to that extent she is a very lucky girl. There has, however, sadly, been a total breakdown of trust and mutual respect between the mother and the father on one hand, and the mother and the paternal grandparents on the other. I regret to find that none of the adults emerge from these proceedings with much, if any, credit. Sadly, the principal victim of this acrimony and long-running litigation is T.
31. I remind myself that, when making decisions about the outcome of these proceedings, my paramount consideration of the welfare best interests of T. She must not be allowed to suffer or to continue to suffer emotional and psychological harm because of the wrongful or inadvisable actions of the adults in her life.
32. A number of factors in the background history of this matter are either agreed or, on the basis of the evidence, I consider to be clear and obvious:

- a) Prior to T's removal to Estonia in late 2020, she had a positive image of her father, she loved him and she missed seeing him.
 - b) Prior to that time, she had a warm and positive relationship with her paternal grandparents, although the growing tensions between the mother and the paternal grandparents plainly had an adverse impact on T.
 - c) After the summer holiday in Spain with her father in 2018, her main contact with her father was by telephone contact, principally when she was staying with her paternal grandparents.
 - d) Shortly after her move to Estonia there was a significant and increasingly negative shift in T's feelings for and attitude towards her father and her paternal grandparents, so when she was seen for the purposes of the s.7 report in February 2021 she spoke entirely positively about her father; when she was seen the following month by an equivalent officer in Estonia she was almost entirely negative about her father.
 - e) The ongoing litigation plainly had a negative impact on T but this would undoubtedly have been less so and more manageable if the mother had not so openly and frequently discussed the ongoing proceedings here and in Estonia with T and if she had prevented T from seeing and/or having access to court documents.
 - f) The mother took T to Estonia or, at least, kept her there to thwart contact between the child and her father and the paternal grandparents. Whether it was the sole or one of a number of reasons for the move to Estonia is, for the purposes of this judgment, immaterial.
 - g) The mother has disobeyed at least two orders of the Estonian court for the father to have contact with the mother. The mother now says that she recognises the errors she has made, her failure to promote contact with the father and with the paternal grandparents and the importance of T having a positive relationship with all three of them.
33. I regret, given the mother's actions over the last two years or so, her words alone engender little confidence in this court in respect of her future conduct. She must demonstrate those matters by her future conduct in promoting a relationship between T and her father and T and the paternal grandparents.
34. The father's evidence was characterised by his needs, the injustice he had suffered at the hands of the mother, his need to tell T the truth and his desire for revenge. In saying he would tell T the truth as he saw it or that it was a viable or secondary option for him to live in Spain with T, the father did not evince him having any regard to the harm such actions would cause T, nor to him having any regard to the welfare best interests of T as opposed to what he considered to be his best interests. I found, like Ms Odze, that the father is an impulsive man who is focused on his needs to the exclusion of his daughter's needs. In many ways, I have considerable sympathy for the position of the paternal grandparents. They fear they have lost their close relationship with T, to whom they are devoted. Their distress is so great, however, that they now exhibit total antipathy towards the mother. If T were to be exposed to

these negative feelings about her mother, which I fear would be inevitable, it would cause her great distress and emotional harm. There is little doubt that T's negative views about the father and the paternal grandparents stems solely, or at least in very large measure, from the influence and actions of the mother.

35. So what is to be done to remedy this position in the welfare best interests of T? Albeit only 11, nearly 12, T is a confident and mature young person who wants her voice to be heard and her wishes and feelings to be respected. She does not want to be separated from her mother. She is happy and settled and stable now in her life in Estonia. The mother is engaged to her boyfriend and they plan to marry this summer. Both are employed in Estonia, where the maternal family live, and they have their own home. The mother is adamant that she would not come to live in this country again, even if T was ordered to return here.
36. I hear what the mother says, albeit I am not persuaded that she would allow her daughter to be separated from her. Even if it was in T's best interests to return to live in this country, how could an order in this court be enforced and how long would it take to give effect to a return order? The Estonian courts have already refused to effect a summary return of T to this country. Given (i) the length of time T has now been living in Estonia and (ii) the extensive welfare proceedings which have been brought before the Estonia courts for two years and (iii) the consistently expressed wishes and feelings of T in those proceedings, what are the prospects of the Estonian courts given effect to a return order made by this court? In my judgment, the prospects are so low that they are minimal. Even so, how long would contested proceedings take to reach a final conclusion and at what cost to T's wellbeing? In my view, they would take far too long and would be at the expense of a substantial and potentially irreparable toll on T's wellbeing.
37. In any event, I am wholly satisfied on the basis of Ms Odze' evidence, which I unreservedly accept, and the totality of the evidence before me that it would be wholly contrary to the welfare best interests of T for this court to order her return to this jurisdiction. She is happy and settled in her new life in Estonia and she desperately wishes to remain living in her mother's care. If she was returned here against her will, it would greatly worsen the prospects of repairing her relationship with her father and with her paternal grandparents.
38. Given the determined and embedded negative views that the father and the paternal grandparents have towards the mother, it would be wholly contrary to T's welfare best interests for her to live with either of them in the foreseeable future.
39. None of the foregoing undermines or calls into question the importance for T's immediate and long-term welfare of restoring a positive relationship between her and her father and her and her paternal grandparents. If that cannot be done by agreement between the adults which, as matters stand, is highly unlikely, the Estonian courts are, it appears to me, exceedingly well-placed to make welfare decisions about T's future. There are ongoing proceedings dealing with the father's applications. I am in no doubt the father could assist his parents in making their own applications to the Estonian court to spend time with T. There is no doubt, from the orders made last year and this year by the Harju County Court, that in making decisions about T, her welfare best interests are first and foremost and her wishes and feelings are accorded proper respect.

Conclusion

40. In light of my analysis of this case, I am wholly satisfied it would be contrary to T's welfare best interests to order her to be returned from Estonia to this country:
- i) it would be contrary to her clearly and firmly expressed wishes and feelings;
 - ii) it is clear that she is happy and settled in Estonia, she has many friends and is well-engaged with her education in her school; and
 - iii) very much third in the order of priority, given her mother's firm stance that she would not return to live in this country, an order for T's return would carry a very real risk that she would be separated from her mother, which is most assuredly contrary to her wishes and feelings and her welfare best interests.
41. The issues of T's residence and her contact with her father are before the courts of Estonia. She has her own lawyers to represent her in those proceedings and she has met with the judges dealing with her case. The father is engaged with those proceedings. I am in no doubt that welfare decisions about T are now best made by the court in Estonia rather than this court. If the paternal grandparents wish to seek orders in respect of contact with T, they are well-able to make an application to the Estonian court. Given that T's is undoubtedly now habitually resident in Estonia and will not be returning to live in this country and the Estonia courts are seized of her welfare, what is the benefit of any proceedings or applications being progressed in this court? The answer is, plainly, "none".
42. Accordingly, I will dismiss the father's applications of 27 July 2020 for T to spend time with him and of 14 January 2021 for an order that T be returned to this country. I will dismiss his application made at the hearing on 7 April 2022 for her to be returned to this country pursuant to Articles 11(6) and 11(8) of Brussels II Revised. I will discharge the child arrangements order made on 12 November 2019 in favour of the paternal grandparents and I will dismiss their application of 18 June 2020 for enforcement of that order.
43. The mother's application of 12 February 2021 for leave permanently to remove T is refused and dismissed. I will not make such an order when the application was made after the mother had wrongfully retained the child in Estonia. In my judgment, it would be quite wrong for this court to make an order which would, in effect, endorse the wrongful retention. Furthermore, had I heard that application closer in time to when it was made, I would undoubtedly have refused it. As it is, we are now almost 2 years on and T has plainly become settled in her life in Estonia.