



Neutral Citation Number: [2024] EWHC 1875 (Fam)

Case No: FD24P00108

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2024

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

P
- and -
S

Applicant

Respondent

Re C (1980 Hague Convention: Child Objections)

Martha Gray (instructed by **Anthony Louca, Solicitors**) for the **Applicant (father)**
The Respondent was present but not represented

Hearing dates: 18 July 2024

Approved Judgment

This judgment was delivered on 19 July 2024 and was released to the National Archives.

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THE HONOURABLE MR JUSTICE COBB

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.

The Honourable Mr Justice Cobb :

Introduction

1. The application before the court, dated 9 April 2024, is brought under the Child Abduction and Custody Act 1985 (incorporating, by Schedule 1, the 1980 Hague Convention on the Civil Aspects of International Child Abduction: the “1980 Hague Convention”). The application concerns one child, C, who will be 9 years old next week.
2. The Applicant is her father (“the father”) who is represented by Ms Gray, of counsel; the Respondent is her mother (“the mother”), who has appeared in person in this litigation assisted by her husband as her McKenzie Friend.
3. The father seeks the summary return of C to Romania. C was brought to this country by her mother from Romania in early November 2023. The mother accepts that C was habitually resident in Romania at the point of her removal. She accepts that the father had, and has, rights of custody, and that he was exercising them at the time of the removal.
4. Although the mother had initially sought to defend this application on the basis that the father had consented to the removal of C permanently to England, she conceded at the pre-trial review that she could not legitimately pursue this ‘defence’. The mother had further sought to argue that a return to Romania would expose C to “a grave risk ... [of] physical or psychological harm” or would “otherwise place the child in an intolerable situation”; this argument was also abandoned at the pre-trial review when the mother had an opportunity to consider the range of protective measures offered by the father. I have set those out in the Annex to this judgment.
5. Therefore the only issue in the case is whether C “objects” to being returned to Romania, and whether she has attained an age and degree of maturity at which it is appropriate for me to take account of her views; if I find that she does so object, then it is the mother’s case that I should exercise my discretion not to order C’s return.
6. In this regard, I have paid particularly close attention to a Cafcass report prepared by Emma Huntington (the ‘Family Court Adviser’) which specifically examines this issue; I address the report, and its conclusions more fully below.
7. For the purposes of determining this application, I have received detailed argument from Ms Gray, and from the mother. I have read the filed documents, and considered the caselaw. I heard brief oral evidence from the Family Court Adviser. This *ex tempore* judgment is given on the second day of this two-day listed hearing.

The law

8. As I have already mentioned, the focus of this enquiry is whether C objects to being returned to Romania, and whether she has attained an age and degree of maturity at which it is appropriate for me to take account of her views. It is a straightforward test, and I am conscious of the need to avoid ‘sub-tests and technicality of all sorts’ (*Re M (Republic of Ireland) (Child’s Objections) (Joinder of children as parties to appeal)* [2015] EWCA Civ 26 at paragraphs 69 – 71).

9. The seminal authorities on child objections are *Re M (Republic of Ireland: Child's Objections)* [2015] EWCA Civ 26; [2015] 2 FLR 1074, and *Re F (Abduction: Acquiescence: Child's Objections)* [2015] EWCA Civ 1022. I apply the following principles (references are to *Re M* unless otherwise stated):
- i) It is appropriate to break down the exercise into two parts – the “gateway stage” and the discretion stage (§18);
 - ii) The gateway stage itself has two parts in that it has to be established that (a) the child objects to being returned and (b) the child has attained an age and degree of maturity at which it is appropriate to take account of his or her views (§18); the gateway stage represents a fairly low threshold (§70);
 - iii) The gateway stage is confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views (§69);
 - iv) Whether a child objects to being returned is a matter of fact, as is his or her age (§35);
 - v) The degree of maturity that the child has is also a question of fact (§35); it is now recognised that children as young as 6 can be of sufficient maturity to have their objections taken into account (§67);
 - vi) The child's views have to amount to objections before they can give rise to an Article 13 exception (§38); there must be more than a mere preference expressed by the child (§39);
 - vii) The child has to object to returning to the country of habitual residence rather than to returning to particular circumstances in that country, although it is clear that there may be difficulty in separating out the two sorts of objection (§42);
 - viii) The objection must be to returning to the country, although it may be difficult to extricate that from a return to the parent; the wording of Article 13 does not inhibit a court from considering the objections of a child to returning to a parent (§44);
 - ix) The fact that a child objects to being returned does not determine the application (§46); the child's views are *not* determinative of the application or even presumptively so (§63);
 - x) The child who has suffered an abduction will very often have developed a wish to remain in the ‘bubble of respite’ that the abducting parent will have created in the requested state, however fragile the bubble may be; the expression of those wishes cannot be said to amount to an objection unless there is a strength, a conviction and a rationality that satisfies the proper interpretation of the Article (§54) (my emphasis by underlining);
 - xi) An over-prescriptive or over-intellectualised approach to what, if it is to work with proper despatch, has got to be a straightforward and robust process is to be discouraged (§77).

10. In considering this issue I have had regard to the provisions of Article 12 of the UNCRC, and the fact that “courts increasingly consider it appropriate to take account of a child’s views. Taking account does not mean that those views are always determinative or even presumptively so”: Baroness Hale in *Re M and Another (Children) (Abduction: Rights of Custody)* [2007] UKHL 55; [2008] AC 1288, [2008] 1 FCR 536, [2008] 1 FLR 251.
11. Should I reach the discretion stage, I would have regard to the case of *Re M (Abduction: Zimbabwe)* [2007] UKHL 55 at §46, as to which I highlight:

“Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances”.
12. The objections of a young child would not normally be expected to prevail in the absence of other considerations which suggest that a return should not be ordered *Re W (Abduction: Child’s Objections)* [2010] EWCA Civ 520, [2010] 2 FLR 1165.

Background facts

13. The father and mother are both Romanian nationals; the father is 38, the mother is 31. The father lives in Bucharest. C is their only child; she too is a Romanian national.
14. The parents married in 2015 and separated in 2018; they were divorced in the following year. At the time of their divorce, the parties formally and unequivocally agreed that the child would live in Romania, and that the courts of Romania would have jurisdiction in respect of any issues relating to C. They further agreed that each party was entitled to exercise parental responsibility for C; they agreed a detailed schedule of contact which could only be varied by written agreement. They further agreed that any major variation in the arrangements could only be achieved by common agreement, and that:

“... they have the obligation to inform one another and in due time regarding any event or action that concerns the child, information which if they are not notified to the other parent would affect the joint exercise of parental authority...”.

And further that:

“... permanent changes of the content of the parental plan can only be made by common agreement in writing...”.

15. In accordance with this agreement, between 2018 and 2020 C lived with her mother and regularly saw her father, particularly when they lived reasonably close to one another in Bucharest. These arrangements were temporarily modified when the CV-19 pandemic swept through Europe, and were further modified by the mother's move of home (twice) within Romania, away from Bucharest. The mother contends that the father breached his obligation (under the agreement) to provide maintenance to her, and was not conscientious in adhering to the contact arrangements.
16. In 2019, the mother commenced a relationship with the man who is now her husband; she says that she told the father of this relationship although he says that he found out from seeing her Instagram posts. It is the mother's case that within the post-separation Romanian court proceedings (in particular, as I understand it, in relation to issues of financial support for the mother and/or C) the father made proposals which contemplated the mother and C moving to the UK so that she could be with her new partner. The mother says that the father proposed that the mother could move to the UK for three years, so long as C was returned to Romania during all school holidays. This was not attractive to the mother ("I felt this offer was unworkable") and it was never formally agreed. The father's evidence is that in 2022:

"... she once again brought up her desire to move abroad with [C] and we had a few discussions on how that could work. Once we even involved our solicitors and had a meeting together to discuss the legal implications of the matter. I remember my solicitor talking about international child abduction. The talks didn't go anywhere as I had no confidence she would send [C] back Romania once in the UK (e.g. the visitation periods we had initially hypothesized about kept getting shorter and shorter during our talks) and she lost interest in relocating..."
17. On 7 March 2023, the mother sent a message to the father:

"Hey. As I've mentioned before, I'm planning to move to England with [C]. I'm going through the visa application process at the end of next month. In order to include [C] in the application process I need to exercise sole parental authority. Would you agree to do this amicably, so as not to involve court costs on your part?... If you do not agree to do it out of court, it will require a trial that will drag on for several months, like last time."
18. The mother's case, which is not materially challenged by the father, is that the father's contact with C dwindled during 2023; the father accepts that in 2023 he saw C only three times in person. Following those visits, C told her mother that she was smacked by the father. The father accepts that he would "from time to time" give C "one light spank in instances of grave misbehaviour".
19. On the 13th July 2023, the father signed a notarised declaration allowing C to travel anywhere abroad for a period of six months, until the 13th January 2024, accompanied by the mother. He says that he had given such declarations previously,

in order to assist the mother to travel through borders as a single parent unchallenged. The mother used this permission to have holidays in 2023 in the UK and Greece.

20. On 25 September 2023, the mother re-married; her English husband lives in the north of England. The mother wrote to inform the father of her marriage after the event, by e-mail on 8 October. In the same e-mail she informed the father that she was expecting another baby and that she wished to relocate to the UK; indeed she said:

“... it is a necessity for us to relocate as soon as possible to the UK in order to be together when the baby is born”... “I hope you understand the situation and that there isn't an alternative... I'm sure that you are aware that she would have more opportunities for growth in the UK on all levels”.

21. There is no evidence that the father replied to this e-mail, though he says that he texted the mother with the word ‘No’. He adds:

“She knew full well of my disapproval and was perfectly aware of the legal implications of doing this without my or a Court’s explicit approval”.

22. On 3 November 2023, the mother travelled to this country with C.

23. On 21 November, having discovered that the mother and C had left the country, the father e-mailed the mother seeking C’s immediate return to Romania. Later the same day, the mother replied by e-mail:

“I explained it to you in a previous e-mail about the situation. I pulled her out of school in Plosiesti and enrolled her here... she has already integrated... there wasn't any other way, and she feels very good here. I could not get away and leave her in Romania.”

24. In early February 2024, the mother gave birth to her second child, J; she is now 5 months old. C has been in school in this country since 30 November 2023, and according to the Family Court Adviser, she is making good progress there: she has “settled well into the school and has made friends. She appears happy and is popular amongst pupils and staff”.

25. On 30 November 2023, the father contacted the Central Authority in Romania, and (after an unexplained delay) his application in this Court under the 1980 Hague Convention was issued on 9 April 2024.

26. If a return is ordered, the mother has confirmed that she would travel back to Romania with C, and with J and they would stay with the maternal grandparents. Her husband, who has his own business here, would remain in England.

Cafcass evidence

27. In forming a view on the asserted ‘exception’ raised in this case, I have drawn heavily from the written and oral evidence of the Family Court Adviser.

28. The first question is: does C object to returning to Romania? It seemed to me that the strongest theme to emerge from the evidence of the Family Court Adviser is that C wishes to remain living in England. The Family Court Adviser put it slightly differently; having considered all that C had to say, it was the Family Court Adviser's view (per her report) that:

“[C] expressed what is likely to constitute an objection to a return to Romania and has depicted her concern for what she portrays as a settled and happy life in the UK to be disrupted [C] conveyed a strong sense of that family unit and repeatedly expressed her wish to stay with her mum, step-father and sister in the UK. [C] expressed her strength of feeling with regards to her wish to stay in England as 10 out of 10” (emphasis by underlining added).

29. In her oral evidence, the Family Court Adviser told me that C “contrasted Romania unfavourably with life in England”, and “associated it with seeing her father compared with her life with her mother and new family in England”. Her view about her father was said by the Family Court Adviser to be “one-dimensional”; the Family Court Adviser thought that “potentially” C was reflecting her mother's “narrative” about life with her father.

30. The Family Court Adviser went on to tell me that “there was nothing [C] was overtly worried about” should she return to Romania, except that “she would miss her school, and wants to be with her family.” She added that:

“C has not said that the prospect of a return is worrying her; her school has not said this either. It does cause her some level of worry nonetheless.”

31. As to C's age and maturity, she is said (by her school) to be a “bright child”, “a sensible girl, who is thoughtful, self-contained”. According to her school (per Cafcass) “[h]er level of maturity was considered to be on a par with her peers”. The Family Court Adviser described her as “evidently an intelligent child”, adding that: “I found no indicators that would suggest that [C]'s level of maturity was not commensurate with her chronological age”.

32. That said, in her report, the Family Court Adviser said:

“It is concerning that [C] has a belief that her father does not care about her; and whether this is from her experience of him, or a narrative created about him, there is the potential for this to adversely impact [C]'s self-esteem and emotional wellbeing. It will be important, regardless of the outcome of these proceedings for [C] to feel valued in the relationship with her father and for there to be consistent and regular contact, so long as this is assessed as safe”.

33. She supplemented this point in her addendum report, having read the father's witness statement, in which she said this:

“However, consideration of [the father’s] statement amplifies the contrasting and conflicting depictions by each parent of [C]’s relationship with her father and reinforces the concerns set out ...[in]...my report with regards to [C]’s negative view of her father and her belief that he does not care about her. Consideration of [the father]’s statement reinforces my observation that it will be important for [C] to have a meaningful and consistent relationship with her father irrespective of the outcome of these proceedings”.

34. In her oral evidence she said:

“I am concerned that she does not have the capacity critically to think about the detriments of having only a limited relationship with her father. She is a very young child.”

35. Having regard to the evidence set out above, I am not entirely convinced that C has articulated an ‘objection’ to returning to Romania. She is plainly happy in England; the “bubble of respite” here has deeper foundations for her than it does in many cases of this kind, and no doubt C sees herself (as her mother probably sees herself) as having a secure and long-term future here. But I did not detect a “strength, rationality, or conviction” in her current opposition to return to Romania. This is, I remind myself, a question of fact. Although I note that the Family Court Adviser had considered that C does object to a return to Romania, this is nonetheless a matter for me to decide. Ms Gray conceded, or certainly came close to conceding, on behalf of her client, that the evidence reveals that C does object to a return. For present purposes, albeit only on a fine balance, I proceed on the basis that she does so object.

36. C is nearly nine years old, and her maturity is said to correspond with her chronological age; while she is said by her school to be “bright”, she is also (it seems to me) a little naïve, in a manner which is entirely commensurate with her age. Again, consistent with her developing maturity, she has been assessed by the Family Court Adviser (in evidence which I accept, although I note that the mother does not) as viewing complex issues, including her relationship with her father, in a rather one-dimensional way. This is an important issue on which the Family Court Adviser expressed the view that she does not have the capacity critically to reflect.

37. I remind myself that this “gateway” has a relatively low threshold; I am prepared, once again on a fine balance, to accept that C’s age and level of maturity is such that I should take account of her objection. This leads me to the discretionary phase.

Discretion

38. In exercising my discretion, I take into account in particular the following points:

- i) Even though I have found that C objects to a return to Romania, I do not find this to be a strong objection; she told the Family Court Adviser that she would feel “a bit awkward and sad if the judge decided that she should return to Romania”; there was nothing about a return about which she was overtly worried (see §30 above), and she confirmed that she would still want to

continue to visit Romania “for holidays”; I sensed that C merely contrasted Romania unfavourably with life in England (see §29 above);

- ii) Such worries as she does have about a return to Romania are that she would be “reluctant” “to be away from her UK school” and she has a “wish to stay with her whole family; mum, step-father and [sister]” (my emphasis by underlining added);
- iii) There is evidence that the views which she has expressed about a return are a little contrived; the Family Court Adviser reported:

“I gained the sense at times that [C] was cautious not to sound overtly positive in respect of her experiences in Romania (for example when describing her contact with her maternal grandparents or her experience of school there) to avoid detracting from her wish to positively portray her experience in the UK and thus her wish to remain here”.

The Family Court Adviser also referred to “some lack of nuance and balance in [C]’s views which is likely to be indicative of her age and lack of emotional maturity”;

- iv) C appears to link a return to Romania with the resumption of a more involved relationship with her father, yet, as mentioned above, it was the Family Court Adviser’s view which I accept that she had a somewhat “one-dimensional” view of her father. This lack of critical evaluation and balance possibly stemmed from her immaturity; it seems entirely possible that this is because she has absorbed the mother’s negative view of the father (see §(v) below). The Family Court Adviser considered that the alleged physical abuse which the mother described that C had suffered at the hands of her father (“she spoke about a smack on the bottom”) “wouldn’t usually be the basis for this level of rejection of a parent”;
- v) It was the view of the Family Court Adviser that to some extent C is mirroring her mother’s views about her father, and possibly about a return: “her views are likely to be closely enmeshed with her mother’s”. In her oral evidence, in answer to questions posed by the mother, the Family Court Adviser said: “I felt she was repeating her concerns by rote rather than answering the specific concerns I had about her contact with her father...” (emphasis by underlining added). The Family Court Adviser detected a hint that some of the negativity about her father stemmed from the adults around her (citing as an example that there was insufficient “healthy food” in her father’s home);
- vi) The mother is concerned about the risk of disruption to C by a return to Romania. I understand this, and there would indeed be disruption. But there was disruption in bringing her here in the first place. Moreover, I also note that even when C was living in Romania with her mother she was subjected to at least two moves of home; the father’s case is that the mother has moved C “five times to a different home, four times to a different city, and two schools in two different countries”;

- vii) C's parents had agreed some time ago that the courts of Romania should determine any disputed welfare issues concerning her; this is an important factor;
 - viii) C has maternal grandparents, aunts and uncles in Romania, who she mentioned in her interview with the Family Court Adviser; it is apparent that C lived close to her maternal grandparents for a period in Ploiesti (where she also attended school for 2 years), and where she has a close friend "with whom she had a familial like relationship". C described "the best thing about Romania", as "visiting her maternal grandparents", "which she enjoyed"; C would be living temporarily with her maternal grandparents and with her mother and J if returned;
 - ix) I have borne in mind that if ordering a return of C to Romania, at least in part to promote the prospect of C re-establishing a meaningful and consistent relationship with her father (see §33 above), this may, ironically, in fact have the contrary effect; C may be angry with her father for disrupting her current arrangement, and may resist efforts to rekindle their bond; this factor would militate against a return;
 - x) In the event of a return, C will undoubtedly miss the daily contact with her step-father with whom she is close and whom she now refers to as 'dad'; she will miss her school (which she prefers to her school in Romania);
 - xi) A return would nonetheless be consistent with the objectives of the 1980 Hague Convention which is to mitigate the harmful effects of wrongful removal by establishing procedure to ensure the child's prompt return to the state of her habitual residence.
39. Finally, I am told that in the event of a return order, the mother will return with C to Romania together with J and will then issue proceedings within that jurisdiction seeking for C to live permanently in the UK. The decision which I make today does not decide in any sense the long-term arrangements for C. Far from it.

Conclusion

40. I am satisfied, for the reasons set out at §38-39 above, that the asserted 'exception' to a return relied on by the mother has not been established, and I should make an order returning C to Romania, in accordance with the essential philosophy of the 1980 Hague Convention. The factors which I have set out at §38(i)-(xi), when taken cumulatively, strongly inform the exercise of my broad discretion in this regard.
41. It is clear to me that the mother was aware of the need for her to secure formal agreement from the father, alternatively court authorisation, to relocate C permanently to the UK. She has plainly had this permanent move in contemplation for some considerable time but she made, it seems to me, only half-hearted attempts to secure the father's agreement; when he did not provide it (either directly or by avoidance), she took no formal steps to obtain the courts approval. Instead, she took a gamble; I find that she hoped or expected that, in presenting the father with a *fait accompli* once she was here, he would not protest. But he did. I know that the mother and C will be

deeply disappointed by my decision, as will the mother's husband, but I regret that the gamble has not paid off.

42. C is a Romanian child, born to Romanian parents. Her future should be decided by the Romanian court, as her parents had originally contemplated. She needs a meaningful and consistent relationship with her father provided that this can be achieved safely, and this needs to be considered carefully as part of an overall welfare assessment about her long-term future which should be taken by a judge in the home court of these parties.
43. I shall accept the undertakings offered by the father, reflected by the protective measures which I set out in the Annex to this order, and these will form part of the final order which I make in this case. I will direct, subject to any extension agreed by the father, that C will return to Romania during the next 28 days so that she can be enrolled in school for the start of the next academic year in Romania; whether she returns to live in this country permanently during the academic year, or at all, will of course be a matter for the Romanian court.
44. That is my judgement.

Annex: Protective measures offered and accepted

- A. The father will not seek to prosecute, or support any prosecution, whether civil or criminal, of the Respondent mother in respect of the unlawful retention of C from Romania;
- B. He will pay the one-way economy fares by air for the respondent mother and C to Romania;
- C. He will not meet the mother and C (on the assumption that the mother accompanies C) at the port of entry should she return to Romania nor instruct any other person to attend on his behalf;
- D. He will not seek to remove C from the care of the respondent mother unless and until there is a further order of the family court in Romania directing that C should reside or otherwise spend time with the father;
- E. He will not telephone or communicate with the mother unless it is to make arrangements for contact with C;
- F. He will not harass or pester or molest or use or threaten violence against the mother, nor instruct nor encourage any other person to do so;
- G. He will pay lei 1000 a month directly to the mother's account and the rest to be paid in kind through expenses he will incur with C (e.g. travel, clothing, toys, services, food, etc.), without the need for these expenses to be proven with tax receipts.

