



Neutral Citation Number: [2025] EWHC 500 (Fam)

Case No: FD24P00543

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2025

Before :

THE HONOURABLE MRS JUSTICE JUDD

Between :

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- and -
O

Applicant

Respondent

Natasha Miller (instructed by **Charles Strachan Solicitors**) for the **Applicant**
Jennifer Perrins (instructed by **Hodge Jones & Allen Solicitors**) for the **Respondent**

Hearing dates: 4th-5th March 2025

Approved Judgment

This judgment was handed down in Court 47 at 2pm on 5th March 2025.

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THE HONOURABLE MRS JUSTICE JUDD
This judgment was delivered in private.

Mrs Justice Judd :

1. This is an application for a summary return order to China in relation to a little girl (I) who is aged almost three. The applicant is the mother, and the respondent the father.

Background

2. The father, a British National, is in his late 50's and the mother, a Chinese National, in her late 30's. They met about 15 years ago in China and married in Guam in 2020. Their daughter was born in 2022. Both parties worked in professional jobs.
3. After I was born the relationship between the parties became strained. The father changed jobs and the family moved away from the major city where they had been living. The mother remained in her previous job (which included night shift work) which meant she had a very lengthy commute. In 2024 the father became suspicious that the mother was having an affair, and, one night when the mother was working, removed I clandestinely from their home and flew with her back to England. It was only when the mother looked at the baby camera in the morning that she discovered that I was not there. She asked a friend to go to the home, and the friend told her that nobody was in. The car rental company used by the family were able to track the family car to the airport, and the mother then discovered what had happened. The mother said that she found out from the father's employers that he had suddenly left his job, and that apart from one message to her saying that I was safe, he turned his phone off.
4. In time the mother did manage to contact the father through mutual friends and flew over to England to see I. She had some contact with her with the father present, but (according to the mother) the father did not even allow her to know the name of I's nursery.
5. The mother consulted solicitors and commenced these proceedings by seeking, in the first instance, a location order which was granted on 7th November. A number of other orders were made directed at the DWP, NHS, DVLA and HMRC to disclose the father's address to the mother's solicitors. The case returned to court again at the end of November and then before me on 19th December when, by agreement, I ordered that an expert in Chinese law be instructed, and the matter was set down for hearing. On that day there was also a contested hearing with respect to contact in which I made orders that the mother should have unsupervised contact for up to five days at a time with I in this country pending the determination of her application.

The legal framework

6. The leading case so far as applications for summary return orders to non-Hague Convention countries is still *Re J (A Child)(Custody Rights: Jurisdiction)* [2005] UKHL 40. More recently those principles were summarised by Cobb J in *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412 (Fam). The first principle is that the welfare of the child is the paramount consideration and that there is no warrant for the principles of the 1980 Hague Convention to be extended to countries which are not parties to it.
7. In all non-Convention cases the courts must act in accordance with the welfare of the individual child. If the court returns the child, that is because it is in her best interests

to do so, not because the welfare principle has been superseded by some other consideration.

8. The court does have the power, in accordance with the welfare principle, to order the immediate return of the child to a foreign jurisdiction without conducting a full investigation of the merits. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child. The focus must be on the individual child in the particular circumstances of the case.
9. The judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against her doing so must be made. But the weight given to that will vary from case to case. What may be best for the child in the long run may be different from what will be best for him in the short run. It should not be assumed that allowing a child to remain here while his future is decided will inevitably mean that he will remain here forever.
10. Other matters to be taken into account are the degree of connection of the child with each country (nationality, where he has lived, language, race, ethnicity, religion, culture, education), the time spent in each country and whether he has been suddenly or clandestinely uprooted.
11. In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems are relevant, albeit the extent to which that is so will vary from case to case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is being returned. The effect of the decision upon the child's primary carer will also be relevant, depending on the facts of the case.
12. In addition to the paramountcy principle the court should also have regard to the welfare checklist in s1(3) Children Act 1989 (*Re NY (A Child)* [2019] UKSC 49 and *IN v DK* [2020] EWFC 35).
13. In *Re NY* guidance was also given as to the issues that the court may need to consider before making a summary return order. This includes whether there is sufficient up to date evidence about the child's circumstances, whether the court can make sufficient findings to justify a summary return order, including whether there should be an investigation into habitual residence, whether an inquiry needs to be conducted into some or all of the s1(3) CA 1989 welfare checklist, and if so, how extensively, whether there should be an inquiry into any disputed allegations of domestic abuse, whether there should be oral evidence or a Cafcass report, and whether there is a need to compare the relative abilities of the English and foreign court to reach a swift resolution of the substantive issues (including a power to authorise relocation back to England).
14. PD 12J applies to summary return proceedings. PD 12F, Part 3 states:

“The extent of the court’s inquiry into the child’s welfare will depend on the circumstances of the case; in some cases the child’s welfare will be best served by a summary hearing and, if

necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary”.

The submissions of the parties

15. On behalf of the father, Ms. Perrins submits first that the court must give strong weight to the relevant legal differences in Chinese and English law. In his report, the single joint expert, Mr. Tian, states that he does not believe any court in China will make an order permitting a parent to remove a child from that country unless the parents agree. Chinese courts cannot order joint custody or shared care, it is not possible in practice for cross border contact to be enforced by the Chinese court and an English order cannot be recognised in China. There is one example of a case where a Chinese court sanctioned international relocation, but this was where the parties had agreed.
16. Ms. Perrins also submits there is evidence that the attitude of the courts to fathers is discriminatory, which is something that engages the father’s Article 8 and Article 14 rights in this court.
17. She also argues that pending any welfare decision of the Chinese court there is no ability to recognise English orders so that there can be no legally enforceable safeguards as to her care, in a situation where welfare proceedings might take 6 to 12 months.
18. Ms. Perrins also submits that I has now been in this country for just over 6 months, and that she is thriving and attending nursery. She has a routine with which she is now familiar. She is a British national. The father states that he is concerned about his position should he return to China, in that it would be open for him to be the subject of proceedings for abduction. He argues that his immigration position would be insecure, in that he may not get a visa to stay for any material length of time or possibly even a tourist visa. He avows that in the circumstances he cannot accompany I back to China if a return is ordered.
19. Ms. Perrins criticises the mother for not making any proposals in the event that I and the father were to return, so far as where they should live, what the living arrangements should be, and how the father could participate in proceedings. She also says that there is a lack of a credible plan as to the mother’s arrangements for I. There are no photographs of the mother’s property, there is no explanation as to how I will be looked after whilst the mother works, and what the routines would be. She says that the evidence about the arrangements on return is wholly inadequate.
20. Finally the father states that the mother has behaved at times in ways that are inappropriate, in that she has shouted at I, been aggressive and abusive and lacking in empathy for how that affects her. Those are issues which he says need to be determined by the court.
21. On behalf of the mother Ms. Miller submits that the starting point for the court should be that it is likely to be better for I to return to China for any disputes about her future to be decided there. This proposition should be given particular weight given the clandestine and deceitful way in which the father removed I, and the way he behaved afterwards too.

22. She submits that I has lived in China all her life, having only visited the UK once before being abducted there last year. She was totally settled in China, attending nursery, seeing family and friends, and having her mother as her primary carer. She has a much loved family pet, a cat. The father is not attempting to enable I to keep up her Chinese language.
23. If a return is not ordered, I's relationship with her mother will continue to suffer, and the father has not particularly promoted it. He may now offer daily video contact, but he resisted unsupervised contact for some time and was reluctant to agree to the more extensive arrangements that were ultimately ordered by me in December. This puts I at risk of suffering further emotional harm. Added to this the father has moved home with her several times and it is the mother who has had to ensure that I's medical and other needs have been met.
24. It has cost the mother a substantial amount of money and time to come to see I once a month and to continue to do so. Her employer has been very good to her but there is a limit to how long this can go on. The change in circumstances for I if a summary return is ordered will not be too difficult because I is familiar with the country, most particularly it would be to her mother, and also there are family members who are well known to her.
25. Ms. Miller also submits that the Chinese legal system operates a system where the welfare of the child is paramount, and that it cannot be the case that the lack of a relocation jurisdiction in the foreign court must be decisive of any application for a summary return. That would mean that summary return could never be ordered in such a scenario.
26. Here the mother has shown herself to be reasonable in the way she dealt with the father. In her statement she has offered holiday contact to the father for every holiday. Also, the other factors in favour of a return are so powerful that they should outweigh the other matters. Ms. Miller and Ms. Perrins point to a number of examples of cases where children have or have not been summarily returned to non-Hague countries, including those where there is not a similar welfare jurisdiction (or any relocation jurisdiction) to ours.
27. It is simply not right, says Ms. Miller, for there to be any suggestion that there is no detriment to I for her to stay here in order for wider welfare proceedings to take place. The mother is prepared to undertake not to take any proceedings against the father if he was to return, and she will assist him to obtain a family visa. He has lived in China for many years and he will not find it difficult to return. In the event that he chooses not to return with I, she will manage, given the strength of her relationships with her mother and family.

Discussion and conclusions

28. In coming to my decision it is important to record that the decision for the court is as to whether it is in I's best interests for her to remain here for her future to be decided in substantive welfare proceedings, or for her to return to China for that same purpose. In coming to that decision, her welfare is my paramount consideration.

29. Despite the powerful arguments put forward by Ms. Miller on behalf of the mother, and my considerable concern at the way in which this little girl of only two was removed from her home and mother, I have come to the conclusion that it is not in her best interests to be returned to China on a summary basis for welfare decisions to be taken there. I realise that this will not be easy for the mother, who has spent a great deal of money and time engaging in these proceedings and coming to see her daughter.
30. In the circumstances of this particular case, I am particularly concerned about the expert evidence that the courts in China do not appear to make decisions allowing relocation back to this country in the absence of agreement, and also as to their ability to enforce cross border contact.
31. I have asked myself about the strength of the father's case for I to be brought up by him in England. He is a man of 57, who has some health problems (although I do not know the extent of them). He makes allegations about the mother, but on one reading of his statement they do not appear particularly serious. What he is describing could be no more than a very common state of affairs where a parent becomes frustrated with a toddler and grabs an arm without causing any mark, or indeed when parents speak sharply to each other from time to time, or 'storm off' in the course of an argument. No parent can be expected to be perfect.
32. He makes allegations that she is controlling. They may not stand up to scrutiny in a situation where he is 20 years older than her and earned more during the course of their relationship (which also included the family moving close to the father's work leaving the mother with a very long commute indeed to work). Additionally it was he who removed I from her mother, and from all that was familiar to her. This sort of behaviour may indicate an inability to put the child's emotional needs before his own.
33. Nonetheless, this is only one reading of the evidence in this case, and there are others. I am acutely conscious that I have heard no evidence from the parents and know little about them. I have no evidence about the relative strength of the relationship that they each have with the child, their abilities as parents, or how likely it is that the mother would honour promises to allow the father the contact in England in the event of a return to China. I do not know how easy it would be for the father to return to live in China in order to care for I if that turns out to be in her best interests, or at least have regular contact with her. These are genuine and important issues which need to be tried if the parents cannot agree.
34. The problem is that should I make an order for summary return, it seems it will be decisive as to where I will be brought up. It may be decisive as to whether or not she has contact with her father in England, and, if he is not able to settle permanently again in China, it may be decisive as to whether I lives with her mother or her father.
35. I do not assume for one minute that there is no detriment to I by staying here for longer, being kept away from her mother and what is familiar to her, but at least she has become accustomed to living with her father in the home where she has been for four months and she does appear to be doing reasonably well at home and in nursery. If the ultimate welfare decision is that she should return to live with her mother in China, she will be able to resume her life there without too much disruption to her education, language development and culture. I note that she is clingy to her mother at the end of contact, which is a significant concern but the advantage to her of the court being able to fully

consider all the options for her future outweighs this, in my judgement. She is very young and cannot easily express her wishes and feelings, save to say that she obviously loves being with her parents together, and she does not like to leave her mother. I do not think that a change in circumstances now to go back to China will be so detrimental to her because she is familiar with her mother, family and China but her physical, emotional and educational needs will need to be decided for the long term, and I am concerned that a decision needs to be made about this with the full range of options, something which is ultimately in her best interests because of the importance to her of both of her parents. She will have suffered harm by being removed by her father in that way and kept away from her mother for so long (something which is likely to be highly relevant in welfare proceedings), but ultimately I do not know enough about the capability of each of her parents to meet her emotional needs in the short, medium and long term (they each appear to be able to meet her physical needs) to make a decision which would have long term repercussions.

36. In the circumstances of this case I do not place much weight on the submissions about the mother's accommodation for I in China, or the arrangements for I. She is in a professional job and she is in her country of origin. There is nothing in the evidence to suggest that she would fail to make proper arrangements for I's needs for a home and suitable childcare. Likewise it seems unlikely the father would not be able to return on a tourist visa and make suitable arrangements to stay and see I for periods of time and to engage in proceedings there. I recognise there is a risk of civil action against him but this is a relatively new process and there is little evidence as to how this would play out.
37. I hope that the welfare proceedings can get underway as soon as possible, and I am prepared to make directions for a Cafcass report and the filing of more evidence. I note that the father has expressed a willingness to pay half of the mother's expenses in coming here for contact and I am prepared to make orders for staying contact if that is not agreed.