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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 08/01/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

M

Applicant;

and

F

Respondent.

IN THE MATTER OF C (A CHILD) (APPLICATION FOR INTERNATIONAL
RELOCATION)

Mr A. Magee QC, with Ms N Devlin BL (instructed by McKenzie Dorman Solicitors) for F
Ms N. McGreenera QC with Ms M Rice BL (instructed by Richard Barbour & Co
Solicitors) for M
Ms M. Connolly QC with Ms L Murphy BL (instructed by the Official Solicitor) for C

McFARLAND J

Introduction

Nothing must be published which would identify the child or his family. The cipher by which I have referred to the child does not relate to his real name.

[1] This is an emergency application brought by a mother ("M") to permit her child ("C"), on an interim basis pending the full hearing of a relocation application, to leave the jurisdiction of Northern Ireland and travel to a country in the European Union ("EUC") and to live with M. M currently resides in EUC. The father ("F") opposes the application.

[2] The hearing took place at Family Court 1 in the Royal Courts of Justice on 18th December 2020 and was convened under the provisions of the Coronavirus Act 2020. Some of the participants were present in court and others were able to participate using live video link. F and M both gave their evidence by live video link. I am satisfied that all participants were able to take part in the proceedings and that there was no prejudice to the interests of any of the parties from this mode of hearing.

[3] The judgment has been anonymised and nothing can be published which would lead to the identification of C.

[4] C is now 12 and approaching a 13th birthday, and is the child of M and F. C was conceived after a brief encounter between M and F, which M has described in her statement as a “one-night stand.” There had been no previous or subsequent romantic ties.

[5] C has remained in the care of M throughout C’s life, and F has had contact with C on a regular basis, which had included overnight stays at F’s home. As a result of low level court proceedings in the Family Proceedings Court there was a parental responsibility order in favour of F (as he was not named on the birth certificate) and a contact order in favour of F. These proceedings concluded in October 2009, and thereafter contact between C and F settled down into a very established pattern.

[6] M then married Y, and C lived with both M and Y, with Y maintaining a father like role in that family unit. Throughout this period, F maintained his relationship with C.

[7] In late 2018 Y was murdered in what could be described as a targeted killing using a firearm. The murder had all the hallmarks of a drugs “turf war” attack, although M maintains that she was not aware that Y had any connection with drugs or other organised criminal activity.

[8] In October 2019, M took C to EUC for what was a purported extended half-term holiday. When C had not returned to Northern Ireland, F reported C’s departure to the police. In due course police carried out an investigation relating to an alleged child abduction of C by M. This resulted in a domestic warrant for her arrest, and then a European arrest warrant, being issued against M. Hague Convention proceedings were also instigated for the return of C.

[9] M was arrested in EUC under the European arrest warrant, detained for 6 days, and released. Eventually the authorities in EUC declined to surrender M under that warrant, but after a ruling, and failed appeal, it was ordered that C be returned to Northern Ireland under the Hague Convention proceedings. During the course of the Hague Convention proceedings, a forged Northern Ireland High Court order, was produced to the appeal court, on behalf of M. C was then returned to

Northern Ireland in the company of a maternal uncle. M has remained in EUC and has refused to return to Northern Ireland.

[10] C is currently living with M's mother, and is declining to attend school. C has little interaction with children of a similar age, and remains in a fragile mental state, as confirmed by reports from social services and the Official Solicitor's office. C refuses to have contact with F, blaming F for the current predicament.

Interim order and finding of fact

[11] I have been only able to conduct a brief hearing, receiving evidence from M and F, and any findings of fact that I make, or appear to have made, are only preliminary findings. My mind remains open to coming to different findings after consideration of more evidence by the time of the final hearing, which it is hoped will be scheduled in March 2021.

The law

[12] The general approach to be taken in international relocation cases is best summarised in the judgment of Ryder LJ in *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882 at [29] – [31] when he stated –

"29. In Re W (Care Plans) [2013] EWCA Civ 1227, [2014] 2 FLR 431 at [76 - 78] I held that in relation to public law children proceedings the welfare analysis of realistic options that is required would be facilitated by a balancing exercise first recommended by Thorpe LJ in the different context of a medical treatment case in Re A (Male Sterilisation) [2000] 1 FLR 549 at 560. That approach had been identified by my Lord, McFarlane LJ in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670 at [54]:

"What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options."

It was subsequently approved by Sir James Munby P in this court in Re B-S (Children) [2013] EWCA Civ 1146, [2014] 1 FLR 1935 at [36] and at [46] where the approach was described by him in these terms:

"We emphasise the words 'global, holistic evaluation'. This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and ...

multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option"

30. *That approach is no more than a reiteration of good practice. Where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary. That is neither a new approach nor is it an option. A welfare analysis is a requirement in any decision about a child's upbringing. The sophistication of that analysis will depend on the facts of the case. Each realistic option for the welfare of a child should be validly considered on its own internal merits (i.e. an analysis of the welfare factors relating to each option should be undertaken). That prevents one option (often in a relocation case the proposals from the absent or 'left behind' parent) from being sidelined in a linear analysis. Not only is it necessary to consider both parents' proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse.*

31. *Finally, a step as significant as the relocation of a child to a foreign jurisdiction where the possibility of a fundamental interference with the relationship between one parent and a child is envisaged requires that the parents' plans be scrutinised and evaluated by reference to the proportionality of the same..."*

[13] This application is an application for an interim relocation order. Keegan J recently had to deal with an appeal in a public law matter relating to an interim care order and removal of a young baby from the care of its father in *In the matter of Stefan (A minor) (Appeal: Interim Care Order: Immediate Removal)* [2020] NIFam 22. That case, obviously, involved different issues to this case, however, Keegan J set out the legal principles in relation to interim orders generally at [20] (i) in the following terms -

"An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage."

[14] Ultimately, the court must consider the paramountcy of the welfare of C, both in relation to the making of the interim order and in consideration of the re-location.

[15] Whatever the validity of M's motivation to relocate to EUC, the rights and wrongs of her removal of C without any permission from this court, and any

potential involvement in the production of the forged High Court document to the appeal court in EUC, the approach of this court cannot be to punish M for her conduct. The welfare of C is paramount in the court's consideration. Her conduct may, however, be relevant in the context of how far the court could consider making an interim order based on assurances given by her about compliance and return of C to this jurisdiction, should that be the final conclusion that this court reaches. A more detailed analysis of M's role, if any, in the production and use of the forged order of this court, and her knowledge of the existence of the forged document, will take place during the final hearing. The court, however, at this interim stage cannot simply ignore the fact that when she was attempting to defend her alleged abduction of C before the courts in EUC, a lawyer acting on her behalf produced to that court a forged document which falsely stated that this court did not claim jurisdiction over C. At this interim stage, the relevance of the production of the forged document in proceedings relating to the return of C to Northern Ireland, is that M, and/or a lawyer in EUC instructed by her, have a record of attempting to manipulate the process of the court in EUC, and such conduct could be repeated. This impacts on the degree of trust that can be placed in assurances given by M to comply with this court's orders.

[16] The English Court of Appeal in *Arrow Nominees Inc v Blackledge* [2000] EWCA Civ 200, emphasised that a party which placed before a court forged documents is abusing the process of the court, and should be denied the remedy he seeks (see the comments of Ward LJ – “*a litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial*” (at [54])).

Consideration of the evidence

[17] No issue arises from the care that was, and is now, being provided by M and M's mother to C.

[18] There is a significant issue with regard to C's mental well-being as a result of the current arrangements. This has been identified by Jessica Gamble, social worker in the UNOCINI report of 15th October 2020 and an updating report of 15th December 2020, and reports from Emma Liddy, solicitor of the Official Solicitor's office, of 24th September 2020, 25th September 2020 and 19th October 2020.

[19] The main issue is the separation of C from M, and C's social isolation in Northern Ireland. C is refusing to return to the Northern Irish school, and is refusing to see F, or members of the wider paternal family. Social interaction generally is restricted in any event by current government regulations because of the pandemic, and these regulations are likely to remain in place for the foreseeable future in one guise or another. There is indirect contact between C and M on a reasonably regular basis, but there are major deficiencies in this type of contact with what had been C's main carer.

[20] No psychiatric or psychological evidence has been placed before the court, but it is acknowledged that the current situation will have had, and continues to have, a marked impact on the emotional wellbeing of C.

[21] C's education is also impacted, although the EUC school has provided some limited home based teaching.

[22] C has expressed a strong desire to return to EUC to live with his mother.

[23] C refuses to have any contact with F. F is blamed because C perceives that it was F who created the problem in the first place. This reasoning is, of course, flawed and irrational, as it fails to take into account the role of M, but it reflects the current state of C's mind. I am not making any finding in relation to her conduct as the domestic and European arrest warrants are still outstanding and she may have to face charges in a Northern Ireland criminal court. I am, however, content to find that C is habitually resident in Northern Ireland and subject to Northern Irish court orders. M was aware of this and knowingly removed C from this jurisdiction. The date when she made the decision to relocate will be a matter for a future hearing, as will be the reason for her refusal to identify to F the address where she was living in EUC with C.

[24] At some stage, C will have to be told that the root cause of the predicament is not the conduct of F, but was the conduct of M. That, in itself, will be a potentially additional trauma for C, who so far, has only received and digested, a very one-sided narrative as to how events have unfolded.

[25] M maintains that she, and C, are at risk of bodily harm or death should she return to Northern Ireland. C also appears to allude to this perceived threat in various conversations. The evidence in relation to this threat is very sparse. Apart from what is referred to in (d) below, the police in Northern Ireland or in EUC have not given any formal notice indicating that there is relevant intelligence to suggest that there is a threat against M. M has relied on certain events that she says have occurred and which she has reported to police, although apart from her reports there is no other evidence produced by her, or obtained by police as a result of her reports. These events have also to be considered in the context that M asserts that Y was a legitimate businessman with no links to drugs or criminal activity. These events have been detailed by a police note dated 26th October 2020 -

- (a) 3rd December 2015, a report to police by Y that M's car had been damaged by liquid being thrown over it. This incident was recorded on CCTV.
- (b) 11th October 2019 (a year after Y's death), M reported that a male associate of Y was outside her house.
- (c) 22nd November 2019, M telephoned police in Northern Ireland stating that she was being threatened by the people involved in Y's murder. She also

reported that friends and family had been contacted with threats that the friends and family would be harmed if M did not contact the unnamed individuals.

- (d) 25th November 2019, police in Northern Ireland advised M of a threat against her “relating to the fallout from the murder of her husband.” The police did not expand on this matter.
- (e) 8th June 2020, M reported that she had received threats, via third parties, from Y’s brothers in November 2019. She reported there were no further matters until 7th June 2020 when she received 3 ‘missed’ calls and a text message stating “we haven’t forgotten what you done, we know your son is coming back to see his dad, if we can’t get you we will get him.”

[26] There is no evidence of any actual harm coming to M or C, either in Northern Ireland or EUC. C has lived in Northern Ireland since 20th September 2020 with no adverse incident reported.

[27] I do not consider that there is sufficient reliable evidence, at this stage, to suggest that there is a real and tangible threat to either M or C. A final decision will be made about this later, but on the balance of probabilities, I do not consider that she has any legitimate concerns about her wellbeing, either in Northern Ireland or EUC, and certainly not at a level that would prevent her from returning to Northern Ireland. This conclusion is supported by the decision of the appellate court in EUC of the 30th July 2020. The English translation of its judgment (page 61 of the trial bundle) states as follows –

“The harassment and the threats that the recurrent reports in her appeal have not been proved because, while it is true that the murder of her husband made the news in the media of her country, there is no evidence at all of the existence of the situation that she alleges” (my emphasis)

[28] She does have a legitimate concern concerning her liberty, because there is a live domestic arrest warrant and should she arrive in any part of the United Kingdom she may be subject to arrest at the point of entry. The current evidence before the court is that F has withdrawn his initial complaint given the remedy afforded by the Hague Convention proceedings. Police have also indicated that a caution is a likely disposal, although ultimately that is a matter for the PPSNI, and not the police. Arrest may be avoided if her solicitor were to make contact with the police and the PPSNI, indicating an intention to return and if possible, open up preliminary discussions about the ultimate disposal of the case. Alternatively, an arrest, and immediate production before the Magistrates’ Court could occur, with a strong likelihood of immediate release on bail. This is speculation at this stage and it has to be recognised that M’s liberty is at risk should she return to Northern Ireland, although she has not taken any steps, to date, to reduce, or eliminate, that risk.

Consideration of the 'welfare test' (Article 3 of the Children (NI) Order 1995)

[29] The 'welfare test' means that C's welfare is the paramount consideration. This is an interim decision, so the court is attempting to regulate matters pending the final consideration of the issue. M has only recently issued her application for a re-location on 10th November 2020, over one year after she had decided to relocate. She has yet to put forward evidence as to how she will manage the practical issues relating to relocation, such as her and C's legal right to reside in EUC and the financing of their new lifestyle in EUC. Critically, she needs to show how she plans to maintain contact between C and F, particularly as the relationship has been severed largely, if not exclusively, because of her own conduct in removing C without notice and by not providing details of where C was living.

[30] Certain draft undertakings are offered, but the court is concerned that given M's conduct both in removing C, and then defending the Hague Convention proceedings, with a potential involvement in creating and promulgating a false document in an attempt to mislead the court in EUC, her proposed undertakings do not carry much weight.

[31] As for the 'checklist' the court recognises a very strong and overwhelming desire on the part of C to go to live with M in EUC. C is nearly 13 and the wishes of C need to be afforded significant weight. The court recognises that C's approach to this case has been largely based on a potential false narrative fed to C by M, but it is nevertheless a significant factor.

[32] C's emotional state is declining and C's educational needs remain either on hold or are declining.

[33] The change in C's circumstances in permitting the move to EUC on an interim basis, are likely to have a short-term positive impact, as it will result in a reunification with M. The court must however consider the, not unrealistic, possibility of a final order, likely to be made in March 2021, ordering his return. Whether this is a likelihood is entirely speculative at this stage, but the mother has not provided any evidence about her present, and future, finances or her right, and the right of C, to reside in EUC, particularly after the United Kingdom's cessation of membership of the European Union, and in light of the terms of the recent Trade and Cooperation Agreement.

[34] The court also notes the current degree of uncertainty concerning travel to EUC in the context of both the pandemic and the United Kingdom's cessation of membership of the European Union.

[35] There is a risk of emotional suffering due to separation from M, particularly in light of the trauma resulting from Y's death.

[36] Considering all issues in this case, there is a strong, if not compelling, case that C be reunited with M. The location of that reunification is perhaps less important, in this interim phase, than the reunification itself. Should that be achieved in the interim, it will have a very positive impact on C's wellbeing.

[37] M is however unwilling to facilitate that reunification except on her terms, which are that it occurs in EUC. The court has already expressed its views on the threats, if any, that M faces should she return to Northern Ireland. M refuses to travel. That is her right, but she cannot attempt to engineer a position which forces the hand of the court, at this interim stage, without a full investigation of the merits, or otherwise, of the relocation to EUC. When the court makes that final decision, it will do so in light of all the available evidence. The forced return of C to Northern Ireland for a second time, could not be countenanced. M's conduct to date in removing C without notice, restricting F's contact and then contesting the Hague Convention proceedings as far as the appellate courts in EUC, shows a level of resourcefulness and determination, with access to potential financial resources.

Decision

[38] In all the circumstances, notwithstanding the wishes and feelings of C, I consider that C's welfare is best served, at this stage, in C remaining in Northern Ireland. I specifically reject the opinion of Jessica Gamble, social worker, that there is "no positive benefit in C remaining in Northern Ireland pending a resolution to the current issues" (report 15th December 2020). That conclusion is based on an acceptance that M is refusing to travel to facilitate a reunification. The benefit of C remaining in Northern Ireland is that it maintains a status quo, albeit a poor one, and it avoids a potential for further emotional harm being inflicted on C, if C is either required to return to Northern Ireland by virtue of a court order, by financial pressures, or by administrative action by EUC.

[39] The strong suggestion of the court is that M should return to Northern Ireland so that she can provide the support of a mother to C in a physical and emotional sense. Ultimately, it is for M to decide what she will do, although it is clear and obvious that her returning to Northern Ireland would have an extremely positive impact on C.

Final Hearing

[40] I will hear counsel in respect of the planning for a final hearing, including the obtaining of relevant evidence to assist the court.

[41] In the interim, everything that is feasible should be done in an attempt to re-establish contact, albeit on an indirect basis, between F and C. This will be very much driven by C, and it would assist if M would have an honest discussion with C about why this current situation has arisen, and in particular an explanation in relation to her role.

[42] The affidavit and exhibits of M's solicitors in EUC (sworn on 19th November 2020) will be referred to the court in EUC to enable that court to take such action in relation to the solicitor as it considers appropriate.