

Neutral Citation No: [2022] NIFam 39

Ref: ROO12010

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

ICOS No:

Delivered: 24/11/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND)
ORDER 1995

Between:

F

Applicant

- and -

M

Respondent

ROONEY J

Anonymity

[1] In order to protect the identity of the children referred to in this judgment, I direct that no report of this matter should reveal the names of the children or the adult members of their family. The anonymity of the children must be strictly preserved.

Issue for Determination

[2] The applicant father (hereinafter 'F') and the respondent mother (hereinafter 'M') are the parents of 'E' and 'R.' The respondent mother is in the process of renewing the children's Dutch passports. R's passport expires on 30 November 2022 and E's passport expires on 3 March 2023. The Dutch embassy and passport office has advised the respondent mother that since the applicant father's name appears on the birth certificates of the children, the father is required to sign their passport applications. The applicant father has refused to do so. The respondent submits that the refusal to sign the applications is unreasonable and accordingly seeks a court order dispensing with the need for the applicant to sign the passport applications. If such an order is granted, the passports would be issued without the need for the applicant's signature.

[3] The children have dual UK and Dutch citizenship at present. The respondent wants to retain and preserve dual citizenship for the children due to the benefits that can potentially derive from such status. Also, the respondent argues that since the UK left the European Union (EU) on 1 January 2020, retaining Dutch citizenship would preserve and maintain the rights and privileges of EU membership for both children.

[4] The respondent is concerned that if the Dutch passports are not renewed prior to the said expiry dates, the children's entitlement to Dutch nationality could potentially be lost to their detriment. The children have been Dutch nationals and have held Dutch passports since their birth.

[5] The children were also granted UK citizenship on 21 June 2021. The registration process for the purpose of obtaining UK citizenship and the UK passports for the children was funded by the respondent at a cost of over two thousand pounds. This caused financial hardship for the respondent and the children. The court was advised that the applicant makes no financial contribution whatsoever for the upkeep, maintenance and provision of the children. Nor, despite the applicant's ongoing demand that the children must not be removed from the jurisdiction of Northern Ireland, did he make any financial contribution to the cost of the children's application for UK citizenship.

[6] The respondent submits in support of her application that, as a consequence of Brexit, if the children reside outside Netherlands for a period of 10 years or more, they could potentially suffer the loss of their Dutch nationality. The respondent submits that renewals of the children's passports will mitigate against that loss of their Dutch nationality since it is unlikely that the children and respondent mother will live in the Netherlands. The benefits that attach from maintaining their Dutch nationality would be, for example, the ability to attend universities in Scotland with subsidised fees as an EU citizen and also universities in the Netherlands with the subsidised fees paid by the Dutch government to Dutch nationals.

[7] The respondent further submits that the applicant's objections to the renewal of the children's Dutch passports is motivated by an attempt to maintain control over the children and either an indifference or a steadfast refusal to give any consideration to the benefits to the children of dual nationality. Moreover, the respondent relies on the assertion that the children are similar to many other citizens living in this jurisdiction who benefit from having both a British and Irish passport/EU passport.

[8] The applicant argues that the respondent has no ties to Northern Ireland. He maintains that the respondent has no family here and she does not work in Northern Ireland. The applicant claims that the respondent's familial connections are abroad and, given the fact that the respondent's heritage is Dutch-Algerian, the applicant remains very concerned that the respondent will remove the children from Northern Ireland without his knowledge. If the children were to be taken to Algeria, the applicant contends there would be no prospect of this Court securing their return to Northern Ireland.

[9] The respondent counter argues that the alleged risk that she will remove the children from Northern Ireland and reside outside the jurisdiction of the United Kingdom is totally without foundation. Significantly, the respondent submits that the children consider Northern Ireland to be their home and the respondent enjoys living in Northern Ireland. The children have always attended school in Northern Ireland. The respondent last visited Algeria in 2011. She left Algeria when she was 24 years old and is now 40. The respondent has settled status (permanent residency) under the EU settlement scheme. For these reasons, she seeks to argue that the court should disregard the applicant's allegations relating to the risk of her removing the children from the jurisdiction of Northern Ireland on a permanent basis.

[10] The surname on the children's Dutch and British passports is the same as the applicant father. The court was advised that this is relevant regarding any potential to travel to Algeria. The respondent emphasises that any travel to Algeria would require a visa. This would not be straightforward. The children previously had Algerian passports but those passports have now expired and notably referred only to the respondent's surname.

[11] The court was advised that when the children were born, at the applicant's insistence, they were initially given the respondent's last name. For this reason, as stated above, the respondent's surname appeared on the children's now expired Algerian passports. Later, at the applicant's insistence and when the parties were still married and in a relationship, the surnames of the children were changed to the applicant's last name. The surnames of the children on their Dutch and UK passports are accordingly the same as the applicant. So, if an application was made to renew and change the name on the children's Algerian documentation, the respondent would be required to employ a lawyer to engage in formal name change in Algeria. Such an application, according to the respondent, is not realistic.

[12] The respondent had previously sought to obtain Irish passports for the children. A court order dated 17 October 2020, granted by Keegan J (as she then was) dispensed with the requirement for the father's signature. To date, the respondent has not made an application for the Irish passports because of the requirement that a parent (respondent) must prove residence in Ireland for three years before the children were born in 2013 and 2016. The respondent is currently attempting to gather necessary documentary evidence from 2010. The process has not been completed.

[13] Having carefully considered the above arguments, I am persuaded that the children will benefit from having a Dutch /EU passport and I therefore grant an order dispensing with the requirement of the applicant father's signature for the Dutch passport renewal applications for child 'E' and 'child 'R.' I am not persuaded by the argument that the underlying purpose behind the applications to renew the Dutch passports is to remove the children from this jurisdiction to the Netherlands or Algeria.

[14] The terms of the final order are as follows:

“The court orders:

1. The children’s Dutch passports shall be released to the respondent’s solicitor, where the passports will be held at the respondent’s solicitor’s office for the purposes of making renewal applications for the said Dutch passports in respect of child ‘E’ and in respect of child ‘R’;

2. The court also makes an agreed Specific Issue Order in the following terms:

“The requirement for the applicant’s father’s signature on making renewal applications for the said Dutch passports in respect of child ‘E’ and in respect of child ‘R’ is dispensed with. The respondent mother can apply forthwith for the renewal of the passports using her signature only.

3. No costs save the costs of the applicant and respondent, assisted persons, be taxed in accordance with the provisions of Schedule 2 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.”