



IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2018] EWHC 2406 (Fam)

FD18P00268

Royal Courts of Justice

Friday, 27 July 2018

Before:

MR DARREN HOWE QC

(sitting as a Deputy Judge of the High Court)

(In Private)

B E T W E E N :

YC

Applicant

- and -

AC

Respondent

MISS J PERRINS (instructed by TV Edwards LLP) appeared on behalf of the Applicant.

MISS G LINDFIELD (by Direct Access) appeared on behalf of the Respondent.

J U D G M E N T

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

MR DARREN HOWE QC:

1 I give this extempore judgment late on a Friday after hearing evidence and argument over a 2-day period. This is an application under the Hague Child Abduction Convention for the summary return to Turkey of one child (who I shall refer to as “K”). K was born in 2007 and is now 11 years old.

2 It is agreed between the parties that prior to his retention in England in late September 2018, K was habitually resident in Turkey.

THE PARTIES

3 The Applicant is K’s mother, and she seeks the immediate return of K to Turkey. The Respondent is K’s father, who opposes that application.

4 The mother is represented by Miss Perrins. Prior to this final hearing the father had been representing himself. At the pre-trial review hearing I encouraged the father to obtain legal representation by instructing solicitors or instructing a barrister on a direct access basis. The father is now represented by Miss Lindfield.

THE ISSUES

5 In his opposition to the mother’s application, the father raised the following defences:

- 1 That the mother consented to or acquiesced with the father’s retention of the child in England. It was pleaded that consent had been included within an agreement reached between the parents when they were negotiating the terms of a divorce in 2016; a divorce that did not proceed due to their reconciliation. The father also relies upon an email sent by the mother, following K’s retention in England, as further evidence of her consent, and
- 2 That K objects to a return to Turkey and has attained an age and degree of maturity at which it is appropriate to take account of his views.

6 The father argues that the court should exercise its discretion in favour of dismissing the mother’s application for K’s return to Turkey.

7 Part way through the first day of the hearing, Miss Lindfield abandoned the consent defence but maintained the defences of acquiescence and the child’s objections.

THE LAW

8 Article 1 of the Hague Convention states its objectives are:

- “(a) to secure the prompt return of children wrongfully removed to or retained in any contracting State; and
- (b) to ensure that rights of custody and of access under the law of one contracting State are effectively respected in the other contracting States”.

9 Article 2 then requires contracting States to "take all appropriate measures to secure within their territories the implementation of the objects of the Convention", for which purpose "they shall use the most expeditious procedures available".

10 By virtue of Article 3, the removal of a child is to be considered wrongful where:

- “(a) it is in breach of rights of custody attributed to a person (...) either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal (...); and
- (b) at the time of removal (...) those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal ...”

11 In *Re D (A child) (Abduction: Rights of Custody)* [2006] UKHL 51 Baroness Hale of Richmond observed at para.48:

“The whole [objective] of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their ‘home’, but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country which they have been removed.”

12 Article 12 of the Convention provides:

“Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.”

13 Article 13 provides amongst other things:

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention (...); or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”

14 It continues:

“The judicial (...) authority may also refuse to order the return of the child if it finds 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 its views.

In considering the circumstances referred to in this Article, the judicial (...) authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.”

- 15 With regard to the Article 13(a) defence of acquiescence, I have been referred to the decision of the House of Lords in *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72. Lord Browne Wilkinson summarised the approach to be taken as follows:

“To bring these strands together, in my view the applicable principles are as follows:

- 1 For the purposes of Article 13 of the Convention, the question whether the wronged parent has ‘acquiesced’ in the removal or retention of the child depends upon his actual state of mind. (...) the court is primarily concerned, not with the question of the other parent’s perception of the applicant’s conduct, but with the question whether the applicant acquiesced in fact.
- 2 The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent.
- 3 The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law.
- 4 There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced.”

- 16 At p.87 Lord Browne-Wilkinson said the question of fact to be determined, when looking at the subjective state of mind of the wronged parent, was “has he in fact consented to the continued presence of the children in the jurisdiction to which they have been abducted?”

- 17 At p.88, Lord Browne-Wilkinson found that acquiescence can be inferred from conduct but:

“... could not be inferred simply from the wronged parent having concurred in a temporary arrangement with a view to arriving at an amicable solution.”

- 18 In the case of *P v P* [1998] 1 FLR 630 Hale J, as she then was, considered whether the negotiations between the parties in the aftermath of an abduction could amount to the left behind parent ‘acquiescing’. She said, at 635:

“This case has all the hallmarks of what no doubt frequently occurs in these cases, of parents seeking to compromise a situation, allowing the abducting parent to remain in the country to which he or she has gone provided the wronged parent is satisfied as to the other matters which are in issue between them. Only if there were such a concluded agreement could it be said that there was clear and unequivocal conduct

such as to fall within the exception...it would be most unfortunate if parents in this situation were deterred from seeking to make sensible arrangements, in consequence of what is usually an acknowledged breakdown in the relationship between them, for fear that the mere fact that they are able to contemplate that the child should remain where he has been taken will count against them in these proceedings. Such negotiations are, if anything, to be encouraged. They should not therefore necessarily fall within the exception or necessarily lead to the conclusion as a matter of fact that there was a subjective state of mind that was wholly content for the child to remain here.”

19 When considering whether the exception as referred to by Lord Browne-Wilkinson is established, it is in my judgment important to refer to p.89 of his judgment where he said:

“... in my judgment there are cases (...) in which the wronged parent, knowing of his rights, has so conducted himself *vis-à-vis* the other parent and the children that he cannot be heard to go back on what he has done and seek to persuade the judge that, all along, he has secretly intended to claim the summary return of the [child].”

20 Even if an exception under Article 13(a) is established, the court retains a discretion whether or not to return the child. All the circumstances of the case may be taken into consideration at that stage, as will the policy aims of the Convention.

21 Turning now to the law concerning the Article 13.1(b) ‘child’s objections’ defence, I have been referred to the judgment of the Court of Appeal in the case of *Re M & Ors (Children) (Abduction: Child Objections)* [2015] EWCA Civ 26, from which Miss Perrins distils the following propositions:

- 1 The approach of the court is first to determine whether the threshold has been crossed, namely, that the child both objects to a return and has reached an age and degree of maturity where it is appropriate to take account of his or her views.
- 2 This ‘threshold’ stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Hague 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 into account his or her views.
- 3 However, the child’s views must still amount to an ‘objection’ and not anything less, such as a mere preference. The child’s views have to amount to objections before they can give rise to an Article 13 exception. Anything less than an objection will therefore not do. This has sometimes been expressed by contrasting ‘objections’ with ‘preferences’.”
- 4 The objection must be to returning to the country of habitual residence as opposed to returning to a particular person or particular circumstances in that country, although there may sometimes be difficulty in separating out the two.
- 5 Even if the ‘threshold’ stage is satisfied, this is in no way determinative of the outcome. The court’s discretion at the second stage is ‘at large’ and there may be many other factors to be weighed in the balance when deciding whether or not to order return - see for example, para.63 of *Re M* in which

Black LJ quotes Baroness Hale at para.46 of her judgment in *Re M (Children) (Abduction: Rights of Custody)* [2008] 1 AC 1288.

6 At the ‘discretion’ stage, any number of factors may be relevant. Each case will turn on its own circumstances, but features that are likely to point towards a return of the child, despite objections, may include the child’s maturity, the nature and strength of the objections, whether there has been influence of the child by the abducting parent, and whether the children’s views are authentically their own.

22 Having carefully read the authorities relied upon by Ms Perrins, I agree and accept the distillation of the principles as set out in her written submissions.

23 In *Re M* [2015] EWCA Civ, Black LJ (as she then was) described at para.71 the factors to be taken into account in an exercise of discretion as the following:

“The court has to have regard to other welfare considerations, insofar as it is possible to take a view about them on the limited evidence that will be available as part of the summary proceedings. And importantly, it must give weight to the 1980 Convention considerations. It must at all times be borne in mind that the 1980 Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned and returned promptly. To reiterate what Baroness Hale said in *Re M*, at para.42, the ‘message should go out to potential abductors that there are no safe havens among Contracting States.’”

THE BACKGROUND

24 The mother is Turkish and the father has dual Turkish/British nationality. The parties met in Turkey in 2006 and married in 2007. K was born in Turkey.

25 The parties first separated in 2016, but there was then a reconciliation. The father relocated to England, having left Turkey in October 2016. There is some dispute as to whether the father relocated with the intention of the remaining family members joining him. For the purposes of this application it is not necessary for me to seek to determine that dispute.

26 The impression of the mother was that the marriage endured beyond the father leaving Turkey. By April 2017 it appears that the relationship between them had finally broken down. There was no direct contact between K and the father following the father’s departure from Turkey in October 2016.

27 In September 2017, the mother arranged for a paternal family member to collect K from Turkey and take him to England for an agreed holiday with his father. K flew to England on 9 September 2017 and, as I understand the evidence, was due to be with the father for a week. That was then extended for a second week and K was to return by no later than 23 September.

28 Shortly after K’s arrival in England, the mother had three telephone conversations with him. During these calls K asked his mother if she would allow him to stay in England. These telephone calls are relied upon and quoted by both the mother and father in their written evidence. It is the mother’s case, in relation to each of these three telephone calls, that she told K that he would need to come back to Turkey, and indeed in the last call told K that if his father did not send him home, she would call the police. Following the call on 16 September, the mother was then unable to speak to K.

29 I have seen WhatsApp messages that passed between the mother, and the father's then "girlfriend". It is clear from the messages that, on 16 September, the father's girlfriend informed the mother that K will not be returning to Turkey. It's also clear the mother wanted K to be returned. One message from the girlfriend reads:

"I don't see what your issue is. You are already gonna move him away. You have a new partner. You're filing for divorce. You signed K over once before and there are government signed papers so why sign him over to his dad and then say it's kidnapping? The education system here is amazing. He can do what he wants to. It's safer for him here and you know what I'm saying is true. I can bring him to Turkey. You can visit him here. He would talk to you every day."

30 That is a message from the father's then girlfriend to the mother. It is perhaps of note that she refers to safety in Turkey within that message. It is also of note that she refers to the mother's allegation that K had been "kidnapped".

31 The message from the mother at 18.01 reads:

"Who says I have a boyfriend? I have no-one. I don't live with anyone either. It is [the father] that has moved on.. The papers were signed last year so it's past. And the father didn't want a divorce and made up with me two days before court. I cannot live without K. He is my baby. I love him to death. I will never give up on him".

32 Then on 20 September, at 15.32, the mother says:

"I can't live without him. He is the only one in my life to hold on for."

33 At 15.34 she says:

"He is still like a baby to me. I can't even imagine life without him. Trust me. I don't even want to go home now, because when I go home I start crying. He is not here."

34 There are then further messages where the mother pleads for K to be sent home and makes offers for him to be returned to England in his school holidays.

35 The messages from the mother, asking to be permitted to speak with K, continued on 21 and 22 September. On 23 September the mother sends a message to the girlfriend complaining she has not spoken to her son for six days.

36 On 23 September at 19.37, the mother emailed the father asking if he minded if she called him. He replied saying:

"Anything you have to say to me I would rather you said over email."

37 The mother sent the following email at 19.48:

"To be honest I'm very happy for you that you have moved on and are doing well. I wanted to talk to K first, but I will tell you that if he really wants to stay there he can. But I didn't even get to say goodbye to him. I will ask one thing from you

only. Come to Turkey and divorce me and so I can move on with my life. We can make the arrangements like we did last year and I will allow you to take K.”

38 At 21.18 father wrote:

“K’s doing really well here. He loves school. He loves England. At the moment, at this moment in time, K really doesn’t want to talk with you. You really scared him when you told him you were getting me arrested. Believe me, I ask K every day does he want to talk to you, and he just says, ‘Not right now’. We’re going to have to give him time. He wants you to be happy with him and happy that he wants to be here. You know in yourself that K would have a much better life and a much better education here in England. In future he will have so many job opportunities. When K is ready to talk to you, he will.”

I note that in father’s message he is referring to education and employment.

39 At 21.58, the father said:

“I’m not coming back to Turkey. If you want to divorce me then get the paperwork sorted out and post it to me. I have no problems signing and sending it back.”

40 At 22.06 the mother replied:

“I will send you the paperwork but it will take a long time to end this marriage and I need to see K for one last time and say goodbye to him properly. I thought you would come here with K. I don’t mind paying for his flight. Just want to spend some quality time with him, then I will be out of both of your lives. Please don’t object my last wish.”

41 In her written evidence the mother says this:

“I accept that on 21 September I stated to the father that, ‘If he really wants to stay there, he can’. However, this was followed by my saying, ‘I didn’t even get to say goodbye to him. I will ask one thing from you only. Come to Turkey and divorce me and so I can move on with my life. We can make the same arrangements we did last year, and I will allow you to take K’.

This was not me giving clear consent for K to remain in England. As stated I wanted the father to travel to Turkey with K so that we can make arrangements in respect of K. This was no way meant that I had indicated that I was happy for K to remain in England, as I would not have spoken about making arrangements in respect of K in Turkey. I just wanted the father to think that I was open to the possibility of K being in England in the future. I said this out of desperation in an attempt to get the father to bring K back to Turkey. I did not know what else to do as I was put in a very awkward position as if I didn’t appear to agree then I would not be allowed to speak to K.”

42 The agreement referred to by the father is a divorce agreement that had been entered into by the parties in 2016 when they had anticipated separating. As I have already indicated, that agreement was never executed because no divorce took place.

43 It is right to say the parties, on the face of the document that appears at p.C161, agreed that K would live in his father’s “residence”. However, it goes on to say “We would share our son’s custody”. As I understand the evidence of the parties, it is not disputed that the

mother worked long hours when they co-cohabited in Turkey. The father's employment was not so time-consuming, and he provided care for his son when the mother was at work.

44 In the mother's written evidence she says, at p.C84:

"I continued to try to see, try and seek K's return, as can be seen from messages I sent on 23 September where I stated I would pay for his flight. I was desperate for K to return and thought, out of desperation, the only way that the father might allow K to return is if he also came to Turkey. This is why on 24 September I continued to ask the father to send K to Turkey. My intention was ... that once K returned to Turkey, his home and place of habitual residence, that he would stay there."

45 On 16 September, the mother says that she contacted the Turkish Consulate in London to ask for assistance. The mother also sent an email to the Consulate on 23 September. It is the mother's case, made out by that email, that she was given no assistance, was not informed of the Hague Convention and was simply told to find herself a lawyer.

46 In her written evidence, the mother says that she contacted the local authority close to where the father was living as she was concerned about the father's use of cannabis and his use of alcohol. I observe that this did not appear to be sufficient concern for the mother to stop her sending her son for, what turned out to be, a two week holiday with his father.

47 In her statement, the mother says the father became aware of the complaint she had made to the local authority and informed her that he would not allow her to speak to K.

48 On 18 October 2017, the father's then girlfriend sent a message to the mother complaining about the mother's emails to the father. The girlfriend's message is aggressive and disparaging about the mother for not making contact with K, which is a surprising message for her to send given that so much time had been taken up by the father and his girlfriend telling the mother that K would not speak to her.

49 The message, at 20.20, reads as follows (this is from the father's then girlfriend):

"You haven't once asked about school or how he's getting on. You haven't asked if he needs anything. You've made no effort towards him at all. As a mother myself this worries me. I would move heaven and earth for my kids. You won't even pick up the phone for yours. You're a poor excuse for a mother."

50 It's fair to say the messages that precede that message are more abusive. The two women were clearly engaging in an argument via WhatsApp.

51 The mother then replies, at 20.48, in the following terms:

"Do not dare to speak to me again, you whore. You are with someone who is married. Who are you to judge me? ...Ask K what sort of mother I am. He will give you the answer. God knows me and what I have been going through. I said to K you can stay and go to school there. Even then you all do not let me speak, let him speak to me. Last time I am telling you, do not dare to write to me again, as you are not entitled to speak to me, especially about K."

52 The WhatsApp argument then continues, with other abusive and offensive messages sent by the then girlfriend. Indeed, the girlfriend's messages remain insulting and abusive for the rest of that day.

- 53 The messages continued with mother asking to speak to K, but this was not achieved. In her written evidence the mother says the girlfriend blocked her on WhatsApp on 10 November. The mother had filed divorce proceedings on 6 November. There is no evidence before me that demonstrates that the father received the petition, but in that petition the mother refers to K having been kept by the father after a holiday. In the prayer at the foot of the petition, as it is translated, there is a request that the court orders her son to be returned to her.
- 54 The mother says in her written evidence that she found out where K was attending school, as she had seen photographs on Facebook. The mother sent emails to school asking for assistance but it replied saying that they were not permitted to share information, and advised that the mother contact the father.
- 55 It is the mother's case that she did not learn of the Hague Convention until 5 January 2018, when told by guests at the hotel where she is employed. The mother describes in her statement that she called the central authority in London, who then gave her details of the central authority in Turkey. The mother signed her application for K's return on 26 March 2018. Throughout this period the mother had no contact or telephone conversations with K.

THE PROCEEDINGS

- 56 A location order was made by Mrs Justice Roberts on 8 May 2018. On 17 May Mr Justice Hayden adjourned the proceedings for the mother and father to attend mediation, but this did not take place.
- 57 On 15 June Mr Justice Baker listed the matter for final hearing, the father then having pleaded the defences of consent, acquiescence and child objections. Mr Justice Baker directed that an officer of the CAFCASS High Court team be appointed. The directions given to the CAFCASS officer were to report on the issues of:
- (a) K's views, wishes and feelings in respect of a return to Turkey; and
 - (b) K's maturity.
- 58 The proceedings then came before me for a pre-trial hearing on 20 July. The father applied for the mother to give oral evidence on issues of consent and acquiescence. I expressed my reservations concerning the need for oral evidence, but I was persuaded by both parties, particularly by counsel representing the mother, that this was necessary.
- 59 When meeting with the CAFCASS officer, Miss Ionescu, K expressed a wish to meet with the judge. I met with him briefly on the morning of the first day of this hearing and in the company of Miss Ionescu. K was told that I knew what he wanted as I had read the report of his meeting with the CAFCASS officer. He understood that his meeting with me was simply to meet the judge who would make the decision about him. I told him that I had read very carefully what he had said to the CAFCASS officer and would listen very carefully to what both his parents said. He was told that I would think carefully about my decision. A note of my meeting with K has been provided to the parties by Miss Ionescu.
- 60 On the morning of the first day of this hearing, solicitor and counsel on behalf of K attended court and made an application for him to be joined as a party. An application was also made for an adjournment of the hearing, so that K's representatives could 'get up to speed' with the case and then represent his position at an adjourned final hearing. For the reasons I gave in a judgment yesterday, that application was refused.

THE ORAL EVIDENCE

61 Despite the summary nature of these proceedings, given the defences raised it was necessary to hear some oral evidence. The first witness that I heard was Miss Ionescu, the CAF/CASS officer who met with K on 3 July. She had provided a detailed and helpful report. She is an experienced officer of the High Court team who frequently interviews children in relation to their objections in Hague applications.

62 She described K as understanding the purpose of their meeting and why the court was involved. K knew that he was meeting Miss Ionescu to express his views about a possible return to Turkey. When asked to describe himself, K said the following:

“I like my friends, and if I hurt them I will feel sorry. My school is going great. I am making loads of friends really quickly. I’m getting better at my education. My maths is getting better each time, but I am bad at times tables. I am quite happy that I am living with my whole family in England and everyone lives here, so I would rather be here if I’m being honest.”

63 K was asked about where he was born. He said that he was born in Turkey. He said he lived there for a while “in my early life, then moved on”. K was asked questions about family, he described that his dad, his paternal grandparents and three cousins were in his family but did not mention his mother. He was asked about this by Miss Ionescu and said:

“I don’t know. She’s not my family any more. I don’t feel like, if I count my Mum she will not be my family, and there’s also another grandfather – dada – and nanna.”

64 When K was asked to describe his mother, he described her as being “quite nice” and “good at drawing”. He was asked if he had memories of the time he lived with her and he remembered doing fun activities with his mother on the weekends, going out to restaurants, to the cinema, calling in on his best friends and having sleepovers on the weekends.

65 K was asked to describe his father. He said his dad was amazing, “He makes me laugh”, and he then said:

“My Mum used to always work hard in a hotel. She used to come back really late”.

His father used to be there to look after him. He said his father:

“... shows me more love than my Mum.”

66 The CAF/CASS officer asked K why he believed that dad showed him more love than mum. He said “because she works late and I’m always with him”. K went on to say:

“My dad has a new girlfriend. I think they will get married.”

67 Miss Ionescu asked K about his life in Turkey. He described it in positive terms. He said:

“My life in Turkey was adventurous. Me and my friend used to go to the forest and look for animals, and climb trees, and used to have a house and had a book with animals, and we used to take them off the book as we found them in the forest.”

68 He was asked if he missed his friends in Turkey. He said:

“Sort of. I would speak to them on the phone, but I don’t have their numbers.”

69 He spoke in complimentary terms about Turkish food and particularly a Turkish breakfast. He was asked about his school in Turkey, and he said that “school was going quite well for me”. He said he had lots of friends, and friends who did the same sports with him. He said he used to play football, basketball and rugby, although he was not good at rugby.

70 He was asked about his extended family. He said that his father has a brother and sister. I asked him if he felt Turkey was home, and he said, “Not any more”.

71 The CAFCASS officer spoke to K about the move to the United Kingdom and invited K to tell her how he had arrived here. K said:

“I thought I was here for a week or two, but then I ended up staying here. My Mum went to see a judge in Turkey then contacted an English judge.”

Ms Ionescu asked K how he knew that and he said, “My Dad told me”.

72 He described coming to the UK by plane. He described England as:

“Quite nice – better as it’s not as hot as Turkey.”

73 Importantly, he was asked by the CAFCASS officer how he knew he was going to stay in the UK. K said:

“I don’t know, I was shocked. My Dad’s girlfriend phoned my Mum and told her I was staying here.”

The messages I have referred to demonstrate that it was indeed the father’s girlfriend who gave that information to the mother.

74 K was then asked why he thought the UK was better than Turkey. He said, “Because of the weather”. He said he felt safer. He said:

“We are getting bombed there. This new president is quite mean. He started to kill Muslim countries.”

75 Because of the reference to bombs, the CAFCASS officer asked K what he meant and he said, “Countries like Syria”. The CAFCASS officer asked K if the bombs were near the place where he used to live, if he was living in a conflict zone or near the border. K said, “It’s hard to tell”.

76 K was also asked if his concern about bombing arose out of a particular incident or suicide attack. He said he wasn’t sure. He then said:

“I feel more protected by my family in England. They did a good job to keep me healthy.”

77 He was asked if he missed his mother. He said he did not. He was asked if he was talking to his mother on the telephone and K said

“She tells me to come to Turkey. It’s not my fault. I want to stay in England and she should want me to stay here as it’s a lot safer here. Plus I’ll get a better paid job here and the schools are much better. We have more lessons here. There we used to have only maths, English and science.”

78 K was asked, if he had a magic wand, what he would want. He said he would want to live in England with his mother and father being together. He was asked what decision he would like the judge to make. He said that he would like the judge to say that he should stay in England.

79 K was asked what his parents wanted. K said his mum wants him to be happy and said:

“When I first spoke to her she said, ‘whatever’s best for you’ but she wants me to go back because she misses me, but I don’t miss her.”

80 When asked what his dad would want, K said:

“My dad wants same as my mum. If I was being sent back to Turkey he wouldn’t like it but he wouldn’t mind.”

81 K was asked if he could name three good things about Turkey. He said he liked the food and had some good memories; but then went on to say:

“There are not many good things about Turkey.”

82 In the ‘professional judgment’ section of her report, Miss Ionescu sets out her interpretation of her interview with K. She says that he gave her some reasons for wanting to stay in England but these related to schools and opportunities for finding a job, as well as having a large family. She said there were few negative things he had to say against his mother. She was of the view that what K said about the political situation in Turkey seemed unfounded, as K was living some distance away from the Turkish border with Syria.

83 Miss Ionescu said the following:

“K’s views were probably influenced by what his father would want for him, to live permanently in the UK with him and he was unable to detach from those views. K is still young emotionally to be able to form a totally independent mature view from one of his parents, so such influence is also age appropriate.”

84 She goes on to say (at para.56):

“K was clear in his views in relation to potential return to Turkey, although there was little force attached to his objections. He wished to meet the judge and appeared to question the court’s authority to decide against his wishes, although he was willing to comply with this.”

85 When I heard oral evidence from Miss Ionescu, she said that K spoke to her comfortably. He was relaxed. She said they established a good rapport and that he was very confident. She said she gave him an opportunity to speak about life in Turkey, but nothing very negative was said.

- 86 In the statement that was provided by the solicitor who had sought to act on K's behalf in these proceedings, it is recorded that, when the solicitor met with K, K referred to being smacked by his mother when in Turkey. Miss Ionescu said that K had given no such indication when she interviewed him, and indeed his only criticism of his mother was that she worked long hours. Miss Ionescu described K as "slightly anxious", but she said that was not unusual when she interviews children in this situation. She said she saw no more anxiety than she does in other children.
- 87 She said she is mindful of parental influence, and trained and experienced in looking for it. She said at the time of her interview the only negative things that K referred to were the political situation, and he thought the schools were better in England.
- 88 K said to Ms Ionescu that he wished to stay here because he might get a better job. Ms Ionescu was of the view that this was not usually a consideration for a 10 year old boy and was more likely to be as a result of adult influence.
- 89 Miss Ionescu described the mother's working hours as being K's primary concern, as the mother was not able to spend much time with him. K did say that the mother had taken K swimming at the hotel where she works, but clearly, given the views expressed by K, those swimming trips were no compensation for her absence from him for the long periods of time while she was working.
- 90 When asked questions about K's reference to the political situation in Turkey, Miss Ionescu told me that she thought K's answers were muddled, he wasn't able to provide her with any examples and she was of the view that this was also likely to have come from influence by an adult. She went on to say that influence can be overt, or it can simply arise from the circumstances in which the child lives. She said, if a child resides with one parent, the child can internalise the views of the parent with whom they live. She said that K had a fairly black and white approach when he expressed his views. However, she said he was not as opposed as other children she interviews and said felt he was not really opposed at all. She said he was not opposed to his mother and such objections as he did recite were very mild.
- 91 K was able to give positive views about his mother when he spoke with Ms Ionescu. She said he was a bit resistant in acknowledging good times with her. Ms Ionescu said:
- "I didn't get the clear picture from K about how much contact he'd had with his mother. He was not happy about the pressure."
- 92 On the evidence before me, there hadn't been any contact between K and his mother until the commencement of these proceedings.
- 93 Miss Ionescu described K as "emotionally intelligent". She said he senses that his father does not approve of the calls the mother makes, which is why he doesn't want to engage in those calls. She said she didn't get the sense from K that this is a father who is on the phone trying to facilitate contact.
- 94 When cross-examined on behalf of the father, Miss Ionescu was challenged on her view that K would only have known about the political situation in Turkey by way of adult influence. It was put to her that the attempted coup in 2016 was widely reported on television. It was put to her that the town where the coup started was just 80 miles away from where the family was living and it would be perfectly natural for K to have learned about it.

95 I accept, as I said during the course of closing submissions, that K, at the age he was, would have been aware from the television news, and from other media, that an attempted coup had taken place.

96 Miss Ionescu's conclusions were challenged as she was not aware that the paternal grandparents had lived close by to the mother during the time when K was living in Turkey. Her response was that she wasn't aware of this when she met with K, and indeed K's information to her was that his care had been provided mostly by the father. He had not mentioned the paternal grandparents. That is, in my judgment, surprising given that he was in the care of his mother for an 11 month period following his father's departure from Turkey, when he had received a great deal of care from his paternal grandparents.

97 Miss Ionescu was also challenged on her interpretation of K's views not amounting to anything forceful. She was asked on a number of occasions about her interpretation of the words that K used, and she was challenged in relation to the issue of paternal influence. She said to me, "I put the paternal influence quite mildly", but she went on to say:

"talking about jobs is not an average statement from an 11 year old",

She repeated her previous answers, that he had difficulty progressing with his conversation about the political situation. She maintained her view that that is most likely to have arisen by way of adult influence.

98 She said she had received very strong objections from other children in Hague cases, but she said that K was very calm and content when he answered her questions and there was no strong feeling that he would not comply with an order for return. It was put to Miss Ionescu, that compliance by K to the court's order if a return order is made, did not necessarily indicate that he was not objecting. She said:

"His message to me was not an objection to return. It was not an objection to going back to Turkey. It was an objection to Mum working long hours."

She said the way K put things was very mild, accepting the outcome and respecting authority. She said this was an indication that he'd previously had good parenting.

99 At the end of her evidence, she said:

"My impression is that he did not have a bad experience living in Turkey. He was easily led into sharing positive views of Turkey."

100 Ms Ionescu said that K presents as an average 10 or 11 year old boy, but there is pressure on him and his views are subject to some tensions due to the conflicts that have arisen.

101 I next heard oral evidence from the mother. On the issue of her alleged acquiescence to father's wrongful retention of K, her evidence was, as I directed, very brief. She said that when K came to England, and was not returned, she asked the paternal grandparents for help. They had lived in Turkey for many years, and lived very close to the mother and provided care for K. They didn't leave Turkey until December 2017.

102 The mother described, in persuasive and emotional terms, that she had been to the paternal grandparents' home, pleading with them for their assistance to make contact with K as she had not been able to speak to him. She described going to their home and banging on the

door. She said that they did not invite her inside. She said that the grandmother did not come outside to talk to her.

103 She also described approaching the Consulate when she was told that K would not be returning. She repeated what she said in her written evidence, that she was not told about the Hague Convention. She said she asked for government assistance to instruct lawyers in Turkey, but as she was working that assistance was not available. She told me, again in clear and emotional terms, that she simply didn't know what to do, and she was upset that the Consulate had not advised her of the provisions of the Hague Convention. She was clearly expressing her disappointment as, had she known of the Hague Convention earlier, she said she would have issued an application under the Hague Convention much sooner.

104 When the father gave his evidence, he was asked a number of questions about practical arrangements and why he had let his girlfriend communicate with K's mother. He was challenged about why he hadn't promoted contact. His answers were, in the great majority, concerning. He told me very clearly that when K asked if he could stay, he told K to ask his mother and did not to take any responsibility himself for that negotiation. Once it had been decided that K was not to be returned, he then let his girlfriend speak to the mother, again not taking responsibility for that negotiation.

105 It took some time in the questioning of father before he accepted that he had avoided talking to the mother. He said:

“All we did was argue, so there was not much point having a conversation when we couldn't agree with each other.”

106 When he was asked why he had not spoken to the mother after her email of 23 September, he said he didn't need to speak to her because he took the view that she had agreed to him keeping K in England. If that was the case, I would have expected him to have had further discussions with her concerning how K's belongings would be delivered and how he would maintain his relationship with his mother by way of contact.

107 He admitted that he'd blocked the mother on social media and on Skype. He accepted that he was refusing to speak to her. He said that K would not speak to his mother because the mother had threatened him with the police and that was the reason why it was acceptable to the father not to encourage K to speak to his mother or, indeed, to take the steps to ensure that communication took place.

108 The father was asked about returning to Turkey with K if I order that K is to return. The father said that he owed people money in Turkey, would be arrested and be sent to prison if he returned.

109 When asked about the visit that the mother said she had made to his parents following K's retention in England, the father denied that he had learned of the mother attending at his parents' address. He said that he had had an argument with his father. He was evasive about the cause of that argument. He accepted he was still speaking to his mother, but he denied that his parents had told him that the mother had been round to their address pleading to have her son returned.

DISCUSSION AND DECISION

- 110 The father accepts that K was habitually resident in Turkey prior to 23 September 2017. The father accepts his retention of K in England was wrongful within the meaning of the Convention. I am therefore required to make an order requiring that K be returned to Turkey forthwith unless one of the defences pleaded is established.
- 111 Dealing firstly with the child's objections defence, it is accepted by both parties that K has reached an age and degree of maturity at which it is appropriate to take account of his views. Miss Lindfield submits that I should not accept the evidence of Miss Ionescu concerning K's views, as she conducted an incomplete investigation. It was submitted that she should have spoken to a school staff member who had discussed K's views with him when he became inconsolable at school (which is referred to at D5, para.15). It's an event that is not given a date, but the school recalled K saying that his parents were separated, his mum calls every night and he doesn't want to talk to her as she always talks about him going to live there, and he wants to be here, with Dad.
- 112 I do not agree with Miss Lindfield's criticism of Miss Ionescu. The order made by Mr Justice Baker required her to establish K's views at the time he presented them to her in her interview on 3 July. These are summary proceedings and Ms Ionescu had a fixed and short timescale for providing her report. She is an experienced officer, from a specialist team, who is used to interviewing children in these circumstances.
- 113 Miss Lindfield also criticised Miss Ionescu for not having appreciated that the paternal grandparents used to provide a great deal of care for K and she criticized Ms Ionescu's failure to apprise their absence from Turkey since December 2017 and its effect on K's views about living in Turkey. Miss Lindfield argues that it may be a reason why K does not want to return to Turkey because care by his mother alone would be a new experience for him. If that was a reason, I would have expected K to have raised this with Miss Ionescu. He did tell her that the mother worked long hours but it was Miss Ionescu's very clear evidence that he raised this when he was asked to describe his mother, and not when asked to describe why he did not want to return to Turkey.
- 114 As I have described, Ms Ionescu expressed her concern over the reasons given by K for not wanting to return, namely the political situation, that he would get a better job in England and the schools were better here. She said that these were matters that were likely to have come from K being influenced by his father. I accept Ms Ionescu's reasoning on these matters as being persuasive. However, the influence of father would be something for me to assess should I be persuaded that K has expressed objections to a return within the meaning of *Re M*. In my judgment, K's presentation of his wishes amounts to no more than a preference or a wish, and does not reach the threshold of an objection.
- 115 I agree with Miss Perrins when she refers me to P.D6 in the CAFCASS report, a part I've already read but deserves reading again, where he said:
- "I am quite happy that I am living with my whole family in England and everyone lives here, so I would rather be here, if I'm being honest."
- 116 Those are hardly the words of an objection to a return to Turkey. None of the words used by K, as described very carefully by Ms Ionescu in her written and oral evidence, come near to being an objection to a return to Turkey. K gave limited reasons, that were mildly expressed, that, in my judgment describe his wish or a preference to remain in England but do not amount to objection to a return to Turkey. I accept the evidence of Ms Ionescu and

agree with her conclusions. Given that finding, the defence of child's objections therefore fails, and I move on to the father's argument that the mother has acquiesced.

117 I return to the law, as described earlier. My function is to look at the words and conduct of the mother, and determine whether I can infer from those words and conduct that she actually agreed to K staying in England.

118 The father relies very heavily on the email of 23 September. This is an email where the mother refers to being pleased that the father had moved on. She then says that she wanted to talk to K first, but she says, if he really wants to stay, then he can. I read that email as the mother wanting to satisfy herself, by speaking to K, that he really wanted to stay. It was not a consent to him staying of itself in the absence of M speaking to K.

119 The mother then goes on, in the same email, to invite the father to travel to Turkey with K so that they can make the same arrangements they had made the previous year. She then says:

“I will allow you to take K.”

120 In my judgment, that expression of giving permission to take K is attached to the arrangements to be made had the father travelled to Turkey. It is a statement that permission would be given if K was brought back to Turkey, which he was not. I do not accept the interpretation given to that email by the father, firstly, when he sought to plead that the mother had actually consented or now where he relies on it in relation to her acquiescence. In my judgment it is neither.

121 The next communication relied upon as indicating a consent to stay in the United Kingdom is the WhatsApp message of 18 October of 2017, when at 20.48 within a lengthy and unpleasant WhatsApp argument between the mother and the father's girlfriend, there is one sentence where the mother says:

“I said to K, ‘You can stay and go to school there’. Even then you all do not let me speak to him.”

122 In my judgment, I must take into account the context within which that message was sent. K had not been returned. The mother had been repeatedly sending messages requesting to speak to her son on the telephone. Those messages were all responded to by negativity and a refusal to ensure that she had telephone contact with her child. She then faced, bizarrely in my judgment, criticism for not making contact with K when that contact had been blocked by the father and the father's girlfriend. Does that one sentence then amount to an expression of the mother's consent to the child remaining in the United Kingdom? I remind myself of the words of Hale J (as she then was) in *P v P*. Only if there were a concluded agreement could it be said that there was a clear and unequivocal conduct such as to fall within the exception as described by Lord Browne-Wilkinson.

123 It has been submitted on behalf of the father that the exception arises because these are clear words by the mother agreeing to K staying, that the father then relied upon, so I should look at the effect of that conduct and the father's, and indeed K's, reliance upon it rather than the subjective test of looking at the mother's intention.

124 I do not agree that either of these communications fall within the exception. In my judgment, here was absolutely no concluded agreement. The mother, as is clear from these messages, was desperate to have some contact by telephone with her son and was making

various offers of different kinds trying to achieve this. I've already read her offer for K to return to Turkey and then to return to the UK in school holidays and her offer of paying for flights. These were a number of different strategies that were attempted by this mother to get some contact with her son. In my judgment there was never a concluded agreement because there was never any contact. She was never able to speak to K to satisfy herself that he wanted to stay. In my judgment, the exception certainly does not apply in the circumstances of this case.

- 125 When I look at the chronology, as I set out earlier, the measures the mother then took herself to try to secure K's return, including issuing a divorce petition on 6 November with a prayer seeking an order that her son be returned to this jurisdiction, very clearly demonstrates that she had not consented to K's retention in England.
- 126 The mother said very clearly and very emotionally when she gave her oral evidence, that she knew nothing of the Hague Convention. I accept that evidence and it is of significance in relation to the allegation of acquiescence. The conduct of the wronged parent has to be looked at in the context of the wronged parent knowing his or her rights. This mother, in my finding, did not know of her rights. She did not know of the Hague Convention until January of this year.
- 127 I find no evidence that the mother had at any time acquiesced, and by that I mean had come to the view that she agreed to K remaining in this jurisdiction. I therefore dismiss that defence as I have dismissed the previous defence.
- 128 On that basis, for the reasons set out earlier, I am required by the terms of the Convention to make an order directing that K is returned to Turkey forthwith.
- 129 Clearly, the parties will need to have discussions as to how that return is to be effected.
130 That is my judgment.

CERTIFICATE

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

Transcribed by Opus 2 International Ltd.

(Incorporating Beverley F. Nunnery & Co.)

Official Court Reporters and Audio Transcribers

5 New Street Square, London EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

civil@opus2.digital

This transcript has been approved by the Judge