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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2021] EWHC 3725 (Fam)



No. FD21P00552

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 8 December 2021

Before:

HER HONOUR JUDGE GILLIAN MATTHEWS QC

Sitting as a Judge of the High Court

(In Private)

B E T W E E N :

WX

Applicant

- and -

YZ

Respondent

MR J. TURNER QC (instructed by Farrer & Co. LLP) appeared on behalf of the Applicant Father.

MR A. VERDAN QC and MR F. SHAMA (instructed by JMW Solicitors) appeared on behalf of the Respondent Mother.

J U D G M E N T

(Via Microsoft Teams)

JUDGE MATTHEWS QC:

- 1 This is a relatively short judgment, bearing in mind the guidance of the President of the Family Division in his “Road Ahead 2021”. I have concentrated on determining the main issues between the parties, rather than rehearsing at length extraneous detail simply to demonstrate that I am aware of it.
- 2 I have been provided with detailed written and oral submissions by leading counsel. I have prepared this judgment overnight, rather than reserving, given the international nature of this matter and the pressing time constraints for making arrangements here.
- 3 I do not rehearse the law in detail. In this jurisdiction, the law is not in dispute. I am conducting a welfare evaluation in respect of the three children subject of this application. However, the applicability and enforcement of this court’s views in the United Arab Emirates is relevant to the court’s considerations.
- 4 In July of this year, Child A, Child B and Child C - apologies if that is an inaccurate pronunciation - came to the UK to live with their mother, YZ. Child A (sixteen years of age) and Child C (eight years of age) did not know that this was a planned relocation at that time. They believed the visit to the UK was part of a holiday with their mother. However, Child B (thirteen years) had been told of the relocation plan by Mother in advance of departure from their home in Dubai.
- 5 On 9 August, Mother told the children’s father, WX, by email, that she did not intend to return the children to live in Dubai on 10 August, which was the date they were due to return from holiday. The parents divorced in 2020 and reached an agreement about the arrangements for the children, which was supposed to have settled matters between them. However, the terms of that agreement have been the subject of much discussion during the course of this hearing.
- 6 Father issued a without notice relocation application at this court on 13 August. An emergency without notice hearing took place before Knowles J late that day, at which hearing, location and passport orders were granted by the judge, and the matter was listed for a return date on 18 August of this year.
- 7 Father sought the summary return of all of the children to Dubai at the next hearing on 18 August, however, Mr David Lock QC, sitting as a Deputy High Court Judge, declined to exercise his discretion to order an immediate return. The reasons for his decision are set out in his judgment of that day, at B8 of the court bundle.
- 8 The judge directed CAFCASS to prepare a report in relation to the children’s wishes and feelings concerning their future living arrangements. This report has been skilfully compiled by Allison Baker and is dated 4 November. It is clearly apparent from that report that the children do not want to return to live in Dubai and wish to remain in the care of their mother.
- 9 They have all settled well in the United Kingdom, both socially and educationally, and the eldest two children, the girls of this sibling group, particularly Child B, have expressed some relatively strong views about the advantages to their future prospects of a life in this country. Both girls are considered by their new school, to be emotionally mature for their age. Child C is only eight years of age and he would, ideally, wish for the best of both

worlds, it seems to me, but is content to stay here and indicated that he would now find it confusing to return to live in Dubai.

- 10 It is apparent that the children have a strong relationship with their mother, who has always been their main carer and would find it hard to be parted from her. All three children love both of their parents, albeit there are differences in their individual relationships with both parents, which reflect their respective ages, attitudes and personalities. It is important that the sibling group remains together until university education plans lead to inevitable separation. It is also vital to their long-term emotional welfare that the children are given an opportunity to benefit from a good relationship with both of their parents.
- 11 Ms Baker attended the hearing on the first afternoon and listened to the opening by Father's counsel, Mr James Turner QC, but was not required for cross-examination by either parent.

The Background

- 12 Both parents are Indian nationals, as are all of the children. Mother and Father married in that country in 2002, and commenced their married life in a country in mainland Europe where the father was working at the time. Prior to her marriage, the mother moved to England in 1996, to study for her master's degree at a university in the west country. She then attended law school in London and completed a training contract with a commercial firm of solicitors. She continued to work as a solicitor until she moved to the country in mainland Europe to live with the father, whose work was there. Her siblings live in London and have been residing here for many years, along with their spouses and children, who are the subject children's only cousins. The mother also has relatives in Sheffield, an aunt and uncle, and their children are her cousins, to whom she is very close.
- 13 In addition to family members, Mother has a significant network of friends in this country upon whom she can rely for support. However, her own parents live in India.
- 14 Father does not have strong links with the UK. His parents live in Dubai, and have resided there for many years, with significant business interests being held there.
- 15 The parents moved to live in Dubai in 2009, after the birth of Child A and Child B. Child C was later born there in 2013. The marriage broke down in 2017/2018. The reasons for this are not relevant to the issues which this court has to determine.
- 16 It became clear at the time of the breakdown of the marriage that Mother wished to return to live in the UK with the three children and, in due course, the parties agreed a divorce settlement, in January 2020, which incorporated a clause which recognised the mother's intention and the father's unconditional and irrevocable consent, for her to relocate with the three children to the UK by 1 July 2021. This agreement, which was negotiated with the benefit of lawyers for each party, was embodied in a court order in Dubai. Mother was to have custodianship of the children. The document does not identify Father as the children's guardian, but this is not in dispute. The parties cannot agree, however, which written version of this agreement should be used by this court, although they are largely the same.
- 17 The divorce agreement was made into an order of the Dubai court, and that was issued in Arabic. Mother says that the court order states in Arabic the words "from or after 1 July of 2021". Father does not accept this and says that the Arabic version was translated from the English. Whichever version is relied upon, in my judgment, it is totally unsatisfactory that the parties are not *ad idem* as to the exact terms, which should be clear. However, I do not

consider that anything hangs on the word “by” for the purposes of the decisions I have to make today.

- 18 There are also substantial disputes between the parents as to what passed between them after this order was legitimised by Dubai court approval. The father states that they subsequently agreed that the relocation would not occur until “at least” 2023. The mother says that Father made it clear that he was not going to allow relocation of the children.
- 19 For the purposes of determining the remaining issues between the parents, their counsel did not consider that it was necessary for the court to hear evidence from each or either parent, nor resolve, if this was indeed possible, the factual matrix relating to the parties’ adherence or otherwise to this agreement. If the parties had wished me to hear evidence in relation to this aspect of the case, I would have been prepared to do so however, of course, as I observed, such a course was hardly likely to improve relationships between the parents, which appear to be quite toxic, at the current time. It is, however, true that they have been able to manage contact arrangements since the legal proceedings commenced in this country, however, sadly the high tone of their written evidence does not indicate a positive attitude towards one another.
- 20 The situation has evolved since the hearing on 18 August in that Father is not now seeking relocation of the children to Dubai. He has eventually accepted that, as the Family Court Advisor opines, a summary return to Dubai would prove hugely counterproductive to the children’s wellbeing, for the reasons which she sets out in her report.
- 21 There are, however, significant remaining issues between the parties which I will briefly headline before turning to consider them:
- (1) Whether there should be a new agreement or court order, drafted, lodged, registered and approved in the UAE, and whether, as part of that process, Father should lodge a separate pledge not to seek to impose a travel ban on the children, thereby preventing them from returning to the UK, after contact periods in the UAE.
 - (2) Whether Father should be limited in his international travel with the children to only Dubai and India.
 - (3) Whether it should be a condition of Father’s international travel with the children that Mother should accompany them and hold the children’s passports at all times, and if so, also be allowed to visit countries, other than Dubai and India.
 - (4) As an example of the issues which I have set out, whether Father should be able to exercise his Christmas contact this year, from 26 December 2021, in Dubai, or be required to take this contact period in the UK.
- 22 There are a number of other matters which have been agreed, such as a reapportionment of contact time for the father, who sought to vary the terms of the Dubai court agreement in respect of weekend contact. Further, it has also been agreed that Father should have a parental responsibility order in this country, recognising his status in respect of the children. The father now recognises that the children should remain living in the care of their mother in the UK, during their minority.
- 23 In respect of the positions of the parties with regard to the remaining issues which the court is to determine, the mother submits that she is now anxious about future arrangements for the children, in Dubai and internationally, as a result of the father’s attitude to these

proceedings. She says that she fears a situation in which the father will retain the children in Dubai, and she will be unable to extricate them. She is concerned that she will not have access to a fair hearing in Dubai and will not be able to achieve a relocation of the children against the wishes of the father with guardianship.

- 24 Mother does not want the father to have control of the children's passports and is prepared to travel with them at her own expense on foreign holidays arranged by the father. She would prefer him only to take the children to Dubai and India for the foreseeable future, until trust and confidence has been rebuilt, but would be prepared to consider other travel arrangements, with advance notice and agreement, so long as she controls the passports.
- 25 Father counters that this is all unnecessary and that it is Mother's behaviour which has been the cause of concern rather than his own. He wishes to exercise his Christmas contact in Dubai, where the children will be able to see their paternal grandparents, with whom the children have not had direct contact since they embarked on their "trip" in July of this year, although they have had frequent contact via video call during their absence.
- 26 Father submits that Mother has nothing to fear, as she could enforce the Dubai court order if he did retain the children. He is prepared to give advance notice of his travel plans, and he expects Mother to do so in reciprocal form. Although Mother is prepared to fund her own costs of shadow travel, he submits that this is inappropriate and sends the wrong message to the children.
- 27 The proposal that Mother holds the passports throughout foreign trips, he says is cumbersome and impracticable. Simply put, he objects to any restrictions on his travel as unnecessary and not contemplated at the time of the original agreement. To be clear, Father will consent to another agreement being put through the court in Dubai, and a pledge, if the court says that this is appropriate, but he argues that it is unnecessary.
- 28 He relies on the existence of the original agreement, which he says holds good, but will not oppose a new legal document being drawn up at Mother's expense but is opposed to anything which causes delay and might jeopardise his Christmas contact.
- 29 It is important to look at the agreement which the parties reached in 2020 to consider whether this needs to be supplemented or re-stated for future years, given the events of this year. In the light of the agreement by both parties that there was no need for the parents to give evidence to this court, or for the court to make findings of fact as to what has gone wrong here, I intend to deal with this situation as currently prevails, after the storm, as it were, and look at how it can be improved, to attempt to ensure that there is no further disharmony.
- 30 The children are all moving into important stages of their lives and can ill afford the tensions which result from simmering disputes in my judgment. They all need stability, certainty and security. The situation going forward is that they will be educated in this country and have regular contact with their father in term and holiday times. Father will have parental responsibility and he should be consulted in respect of important decisions in accordance with that status.

The 2020 Divorce Arrangements

- 31 Each party has pointed to different versions of the same agreement which I find concerning and would tend to indicate the lack of concurrence, or true concurrence, between the parties. The father points the court towards the version appended to his first statement, entitled

“Settlement Agreement”. The mother says that this was an early version of the ongoing discussion. What is common ground is that these arrangements were carefully negotiated, with the benefit of lawyers, over quite a significant period. Agreement was then embodied in an order which was presented to the Dubai court, read out in a formal process and approved. What is also common ground is that Father gave his unconditional and irrevocable consent to a relocation of Mother and all three children to the UK by 1 July 2021. It is not necessary or appropriate within the scope of this hearing to determine the parties’ respective motivations for agreeing to those arrangements; it is sufficient to remark that they were agreed, and they were set out in writing.

- 32 The father claims that, subsequent to this carefully negotiated document being presented to the court and approved, the parties later both agreed to put back the date of the relocation by at least two years, to 2023, when Child A would have completed her A-Levels, Child B would be in the final year of her GCSE course and Child C on the brink of moving up to secondary school. Mother counters in contrast to this, that the father made it clear that he would not countenance any relocation at all, seemingly having got cold feet after she had visited the children’s school to make future arrangements for the children’s education in England.
- 33 I am not in a position to determine the truth in relation to these conflicting positions. What I am in a position to say is that something which appeared to have achieved a satisfactory working solution between the parents, has not achieved its desired effect.
- 34 I consider, in common with the judge dealing with the summary return on 18 August, that the date of 1 July is not, in itself, significant, other than it is the first day of the month which was selected by the parents as a suitable time of the year to relocate, being the end of the school year.
- 35 Father’s account of changing the arrangements to 2023 still seems to refer to July as the instigating time period. I do not consider it likely that this was a time-limited removal offer. This is not indicated in either of the documents put forward nor by either of the parties; rather it seems that this alleged condition of “by 1 July” was temporarily raised to bolster a particular argument by Father.

The Expert Evidence of Ian Edge, the Single Joint Expert

- 36 The court has the benefit of the written evidence of Ian Edge, who provided an expert opinion on certain aspects of Islamic and United Arab Emirates [UAE] law, which arise in this case in the light of Father’s application for a summary return of the children. This witness was not required for cross-examination for the purposes of the issues which remain to be determined by the court. He was instructed on 3 November by a letter set out at E1 and, at E3 and following, the terms of reference for his report were rehearsed. His report begins at E7.
- 37 It is important to record that both parents are non-Muslims, and also that certain major legal changes have been recently brought into force in the UAE, which have not yet been tested in the courts there, and so there is a level of uncertainty as to how those courts will ultimately interpret and apply those changes. The United Arab Emirates has its own system of courts, which includes a first instance court. However, all courts are ultimately bound to follow the decisions of the Federal Supreme Court in Abu Dhabi.
- 38 Within the month preceding Mr Edge’s report, Abu Dhabi promulgated a special law which applied to non-UAE citizens, and was a dramatic change, he stated, from the previous

provisions. It (inaudible - break in recording) divorce by both parties to a marriage and joint custody of the children. However, Mr Edge doubts whether that change was constitutional, and he said it remains to be seen how this will be implemented. The new law does not apply to the instant case, but he indicates that what Abu Dhabi does, Dubai generally follows and so he would not be surprised to see a change in the (inaudible - break in recording).

- 39 I will deal only with the most relevant features of Mr Edge's report in this judgment. A child who is present in the UAE, even though not a national, will be treated as resident, and so if these children were present in the UAE, the court there would consider that they had jurisdiction in relation to them, in respect of any application brought by Mother, or indeed Father there. The changes in the law do not give solid grounds for confidence as to different treatment for non-Muslim non-nationals. That may happen, but it is not simply clear at the current time.
- 40 Mr Edge opines that there is a clear trend to suggest that ex-patriot foreigners may be governed by different foreign laws (inaudible - break in recording) should be subject to challenge by local public policy or Sharia laws, but this is far from certain. The changes could mean that the UAE courts should more readily apply a non-UAE law when faced with two foreigners, however, Mr Edge has doubts about this. In this case, the parties did not seek to apply, for example, Indian law, but used the local law in the UAE, hence an application, for enforcement of the familial agreement should be interpreted under UAE law. Those laws are likely to be the default standard by which the local courts will approach a dispute if the children are in the country.
- 41 Under UAE law, Father is guardian of a daughter until she marries and in the case of a son, until he attains his majority. I do not consider that either of the girls subject to this application would welcome that approach toward them on the basis of what they have stated thus far. They have now passed the age at which their mother's custodianship rights end, and so custody would pass to Father. Child C is still within Mother's custody. Guardianship means determining how the child is raised, educated and married, and all major decisions on welfare and upbringing are for the guardian, whereas, of course, under the Children Act 1989, the parties in this jurisdiction would share parental responsibility and should consult with one another.
- 42 As guardian, the father is entitled to hold the passports of the children. They cannot travel out of the UAE without his written consent. However, a judge in the UAE may overrule his refusal to consent. Once in the UAE, travel or relocation requires the express consent of the guardian and overruling that would only take place in the most exceptional of circumstances. The parties may give prior consent, in the form of continuing approval, to the other party, to travel out of the UAE with the children. A travel ban can be sought but is not automatic. The child's rights should have priority over the right of the parent.
- 43 I note that Dubai is said to be less conservative than Abu Dhabi, but there are potential issues, according to Mr Edge, if the mother were, for example, to re-marry or was considered to be not a fit and proper person to exercise her custodianship.
- 44 The UAE is not a party to the Hague Convention, and so foreign family court orders are not recognised under the Convention. Their courts will not accept that, in the case of a child retained in the UAE, the courts of the country in which there is habitual residence should be the sole court to determine the child's future.
- 45 Mr Edge is clear at para.52 that no order or judgment of a foreign court in a family matter will be recognised or enforced in the UAE court. This means that the potential for recent

changes still remains unclear. There is no equivalent to mirror orders in the UAE, which is what both parties agree here, would be necessary for travel to India in due course.

- 46 Therefore, the recommended best course by Mr Edge is for the parties to submit an agreement to the UAE court for confirmation, so that it can be enforceable there, and the provisions of the foreign court order could be incorporated into an agreed document. This, of course, as Mr Edge points out, relies upon the integrity of the parties and the English court's willingness to accept that all will comply with the agreement. Problems may occur if there is a change of circumstances from the agreement. Irrevocable clauses are important, such as consent to reside in the foreign state, and also that previous behaviour, or indeed alleged behaviour, cannot be raised in future. I would suggest that this is what should apply here. It is important in my judgment that there is no *ex post facto* attempt to litigate the features which caused disagreement between the parties leading to this hearing. If all is tied up and clear in an agreement embodied in a court order, it should be difficult for either party to undo those provisions.
- 47 Mr Edge identifies potential problems at para.67. In this current situation, I am going to endorse contact in Dubai, but **only** if sufficient safeguards are firstly put in place. The parties will be tasked with ensuring that these are appropriately drafted, and indeed that the spirit and nature of the arrangements are adhered to. I am expecting both parents, but especially the father, to accept the "new normal" here, as I would call it, which is that the children's base is now in England. If the parties register an agreement with the court in Dubai as to what is to happen, and if the agreement clearly provides for relocation, then Mr Edge would expect the courts in the UAE to enforce this and, by extension, a return after a contact period.
- 48 Mr Turner relies upon para.73 with regard to the current agreement embodied in the Dubai order, which was of course read out in the Dubai court. Only the provisions of the Arabic text would be relevant, Mr Edge says, to the Dubai court if there was a dispute as to its provisions. Mr Edge remarks that the bilingual document produced is probably an earlier draft. The use of the word "by" is odd in his view but seems an accurate translation.
- 49 At para.78, Mr Edge indicates what action Father could take against Mother in respect of the removal. I consider it vital that Father promises in writing not to invoke a travel ban **and also** not to take any action in respect of what he perceives as past wrongs by Mother, either in specific or general terms.
- 50 In general, Mr Edge advises a cautious approach to the changes in the law and how they might be applied in practice, and the potential enforcement of any English court judgment. The only possible way, he says, is to provide security for a visit or stay in the UAE is by virtue of a consent judgment. I do not consider in this case that financial bonds are of much incentive and indeed the parties both have considerable means of their disposal. I intend to approach this case in the cautious manner suggested by Mr Edge. It is vital, in my judgment, that the children are not subject to further international custody battles, irrespective of how easily the parties may fund this. It would be very emotionally damaging to them to suffer such events, and potentially to their relationships with their parents.

Analysis

- 51 I have concluded that the previous agreement is no longer capable of providing a solid basis for the future arrangements for the children. Even on the father's case, it was rapidly superseded by what I consider to be a subsequent major variation in the relocation timing. Father has subsequently sought summary return of the children in direct contravention of the

only written agreement between the parents upon which he now heavily relies. I am surprised that Father cannot see the contradiction between his heavy reliance upon this agreement during the hearing and his own conduct. In addition, he has now sought to vary the weekend contact arrangements. I am not being critical of this approach, as I understand the onerous nature of fortnightly trips from Dubai to London; however, this is a change in what is recorded, and presumably Father must have taken the logistical implications into consideration when he agreed the terms which were put through court.

- 52 It is pleasing that the parties have reached an agreement about varying the weekend contact in line with Mother's compromise suggestion. Father's proposal of twenty days compensation in holiday periods was, in my judgment, far too high, and was not, as Mr Verdan QC, on behalf Mother says, comparing like with like, or apples with pears (sic). It is important that Father has regular and meaningful contact with the children, but he will have to accept, however, that he is not going to have the daily contact which he says he enjoyed while the children were living in the UAE. However, he knew this would come to an end because he had agreed to relocation and, after that, things were obviously never going to be the same again.
- 53 In addition, of course, the children are growing up and finding their own way in the world. This is particularly pertinent in respect of Child A who, in approximately eighteen months, will have finished her secondary education and be looking to move to university, either here or indeed in the US. She is not a child but a young woman now, and will have her own life to lead, the life which she chooses, which may well not have space for multiple phone calls per day from either parent.
- 54 The children have coped with the breakdown of their parents' marriage and a major relocation and change of schools and friends in the last few years. They have survived relatively well considering the rancour which currently pervades the parental relationship. However, the stability of their emotional welfare should not be taken for granted, and it is important that arrangements are now made clear, with as little scope for argument, as possible. These parents need to return to co-parenting in a supportive and positive way. I consider that it is important for the court to attempt to place a fire blanket over what has occurred to lead the parents to this court and to look to the future. I do not consider that it is possible to move forward positively after such a significant meltdown in the parental relationship without drawing a line in relation to the past and starting afresh. As the Family Court Advisor said, the fact that the parents now have such diverging positions has left their co-parenting in jeopardy. It is important to try and get back on track.
- 55 Mr Turner, for Father, has repeatedly said that there is no need to have a new agreement, and yet the father directly contradicted this written agreement by asking for the children to be returned. Even without resolving the factual background which led to the current situation, it is still clear, albeit putting it as neutrally as I can, that there has been a major breakdown in trust on both sides here. It is rather strange, in my judgment, to suggest that nothing has changed whilst making a barrage of criticisms. I agree with Mr Verdan that if not everything has changed, certainly a great deal has been thrown into dispute. Father has been described as "annoyed" with mother by Mr Turner. He seems, in my judgment, to be very unhappy with her indeed.
- 56 Mother has been repeatedly accused of dishonesty during the submissions made to the court on behalf of Father in a highly critical attack. She admits misleading the father in respect of her trip with the children; however, the context in which she made the decision to act in that way has not been sought to be determined. I am not prepared to make a finding that she has behaved egregiously, as Mr Turner suggests; however, nor do I make a finding that her

conduct was justified, as Mr Verdan would argue; neither do I make a finding that Father has manufactured the subsequent variation of the date of relocation, as Mother submits; nor do I find that this variation actually happened. I cannot do so because I have not heard evidence tested from the parties. The parties have asked me to determine this matter on submissions alone, and therefore I consider that the court should review the current situation and how to go forward in a child-centred way.

- 57 I have read all of the evidence filed in addition to the skeleton arguments and position statements and listened to careful submissions. This is not unusual. My role in such a hearing is to plot a course between the more florid arguments raised on behalf of the parties to attempt to find a workable solution in the best interests of the children. I do not take into consideration what each party may or may not have given up in order to reach terms on the divorce agreement. I am working with reference to that written agreement and the situation which currently prevails and attempting to devise a future strategy given that the parties cannot agree these terms. Any solution which the court has to impose is likely to be imperfect and/or not meet the wishes of one or other of the parties, which is why it is preferable for them to reach an agreement with some give and take. The parents and the children, of course, have to live the arrangement.
- 58 It is, in my judgment, most unfortunate that Father failed to properly review his position after the receipt of the CAFCASS report in early November. This would have been an appropriate and child-centred approach. Instead, the father seemed to have concentrated on being tactical. Father's position with regard to the Home Office was admitted by Mr Turner during his oral submissions to be a tactical position. This was most unattractive. This is not a financial remedy case but a welfare-focused determination in respect of children. The CAFCASS officer was quite clear that, in her considered opinion, a summary return would not be in their best interests.
- 59 For Child A, this would jeopardise her ability to achieve her full academic potential with her A-Level studies. Her progress at her current school has been striking, and she is at a critical stage of her studies, as both parents would accept. Child B has strong views about a return, and her relationship with her father could be adversely impacted by a return if he sought to force that. Both girls felt that the move to the UK improved their longer-term life chances. A separation between Mother and Child C was likely to be emotionally intolerable to him in the view of the Family Court Advisor.
- 60 Father should have taken all of that into consideration and, in addition, the fact that he had, at least previously, agreed that a relocation should take place in July 2021. It is rather ironic to criticise the mother for not agreeing to mediation, when Father was not prepared to withdraw his threat to potentially undermine the children's immigration position. He still maintained this position even after reading about the children's wishes and feelings in Ms Baker's report. Father knew then, if not even in advance of the report being circulated, of the hopes and dreams of his daughters with regard to their future career prospects in the UK.
- 61 Child A, the daughter to whom he is closest, told Ms Baker that she wanted to stay in England and obtain a British passport, or at least permanent residency. Child B told the Family Court Advisor that she regarded England as a lot more of a free country. She wrote in her letter to the court that Dubai was a sexist country which, "as a girl, isn't a good place to grow up". She wanted to live in the UK, with a passport, without the fear of being asked to leave.
- 62 The girls' wishes, in the light of their age and understanding and maturity, should be taken significantly into account by the court and indeed the parents. Any report to the Home

Office could potentially prejudice their situation for the longer term. I note the comments of Child B to the Family Court Advisor, that Child A was put under pressure by her father to return during the October half-term holiday. She said, “He definitely pushed my sister and I to do it. At the beginning, he was definitely pushing my sister a lot to go back. He didn’t really try with me much, and my brother, but he was really consistent with her.” Father had made it “really clear” that he doesn’t like it here and that he wants them to go back to Dubai. I bear in mind, of course, that Child A did not give the same account to the Family Court Advisor.

- 63 Child A is the child who appears much more guarded, and indeed more reserved, according to her sister, Child B. Child A is closer to her father, and yet was clear that she knew that her mother had always wanted to move here, and that a move was meant to happen before her exams rather than after, as Father has said. She was, however, unaware that, when they embarked upon their holiday in July, that this was a permanent relocation. She was clear to the Family Court Advisor that, as she was sixteen years of age, it was her choice and that her mother had told her that it was her choice and said that she could go back to Father, but she did not want to do that.
- 64 In response to a question about whether pressure had been applied to her by either of the parents, Child A said that Mother had explained the choices that were open to her. She would not call it “pressure”. Her father had done so “maybe in the beginning, not really that much, more than my mum, but even then, not that much”. Child A was prepared to be joined to the proceedings as a party, as she saw the benefit, that her father had a belief that Mother had influenced her to stay, and she wanted that to be disproved.
- 65 The children, on the whole, in my judgment, spoke openly and clearly to the Family Court Advisor. Child A volunteered that they had been able to check an email that Mother was sending to Father about their wishes, ensuring that Mother had not misrepresented their views. Ms Baker notably commented that she had concluded that Child A was keen to avoid portraying either of her parents negatively, which was entirely understandable.
- 66 Child B is the less guarded and more forthright child. She is very articulate and noticeably has a less close relationship with her father. She seems to speak her mind to others, including to her father. Apparently, she argues with him a lot, she says, because she questions him more than her siblings. However, she does clearly care about their life in Dubai, and she keeps in touch with her paternal grandparents. Notably, she says that she had read her parents’ divorce agreement, as she wanted to know what was going to happen to them as children. She, in common with Child A, does not mention a relocation being postponed to 2023.
- 67 Child C, the youngest child, clearly felt torn when he found out that his mother’s plans were to remain in the UK, not having been told in advance of the trip. He was confused, but said he was fine now, and had adjusted to his new life and did not wish to return to Dubai, as he would find that also confusing. He wanted to stay here, ideally with his father also moving to the UK and seeing a lot of him. It is clear that he has a strong relationship with each of his parents and did not want to live on a different continent from his mother, despite missing his home in Dubai. The girls were clear that Child C would be missing his father.
- 68 The CAFCASS report reveals children of whom the parents can be proud. They are exceptionally well behaved, bright and charming. This must be a tribute to both parents. Unfortunately, despite all of that, and what is recorded in the report, Father would not give a categorical assurance to withdraw the summary return application and had to be pressed by the court to confirm that this application for relocation was actually being withdrawn after

his counsel's lengthy opening. The impression given to the court, was of a father who did not want to relinquish his leverage over the mother, rather than seeking to resolve arrangements for the benefit of the children, which is what he had told the Family Court Advisor he wanted to do. The court could have been entrusted to resolve the future contact arrangements without the need to maintain his application to force the children, against their wishes, to return to Dubai.

- 69 In my judgment, therefore, the father has squandered a precious month in tactical posturing, rather than concentrating on attempting to properly resolve the outstanding issues with Mother. If he had focused on the remaining issues between them, being future international contact, it might have been possible, with that additional time, to prepare, submit and have legitimised a new comprehensive and relevant agreement within the UAE system. Unfortunately, it may now be too late to do this in advance of Father's Christmas contact, due to take place from 26 December.
- 70 In my judgment, a formalised new agreement and a separate pledge is required prior to any contact taking place internationally. If this can be carried out and put through a local court in the UAE prior to Boxing Day, then contact can go ahead at that time. However, if it cannot, then Father's contact must take place in the UK. I do, of course, take into consideration that the paternal grandparents have not had direct contact with the children since early July. However, they will have direct contact again, but this will have to be slightly delayed until the appropriate safeguards which I have identified have been put into place.
- 71 The mother has offered to accompany the children on all foreign travel and hold their passports during such trips. This is not necessarily forever, but until the tensions raised by these proceedings have calmed, and working relationships are on a more even keel.
- 72 I am satisfied, on the basis of all I have heard and read, that Mother will not seek to interfere in or control Father's contact. There is no evidential basis for such a fear. Father had regular contact whilst everyone was living in the UAE, and he has had regular contact since the removal to London, despite relationships being very fraught. The children, in any event, particularly the girls, are quite capable of determining that they will, or indeed will not, see their father. I have no evidence upon which to conclude that Mother would restrict Father's contact to Child C. It is noticeable that Father's contact with the girls was rather cut short by them at October half-term, but this appears to have had nothing to do with the mother; rather that it seems, from what the girls have said, that Father seemed to have been pressing his suit too hard for a return to the UAE. Child C, however, took up the full time, as I understand it.
- 73 It is, of course, unusual for a mother to shadow contact and to also hold the passports. I accept that. Nevertheless, in this case, after the major disruption to the co-parenting relationship this year, and with the lack of trust which is clearly apparent, it is, in my view, necessary. Dubai has a different legal system, and a different basis upon which to approach family disputes to that which prevails in this country, as I have already set out. The bedrock of the children's lives is now in the UK. Sadly, I am not yet satisfied that Father is completely reconciled to that. He seems to hold considerable bitterness towards the mother, judging by the way his case has been put, and that bitterness seems unlikely to dissipate quickly.
- 74 Father's approach to the litigation has been disappointing. He needs to focus less on his perceived rights and more on the welfare interests of the children in my view. An example of this, which is characteristic in my view, was raised towards the end of the hearing, when I

enquired about the children's belongings in Dubai, and whether this topic had been discussed between the parents. The children, of course, left for a holiday rather than a permanent relocation. The father's response, through counsel, was that there were probably just some books. I understand that Father did not want to release the belongings whilst he was still fighting to have the children returned, but he has had a month to accustom himself to the prospect of the children remaining here, something, of course, that he had previously agreed. It would be surprising if the children did not have belongings, clothes and mementos, which they would wish to have returned to them for use on a day to day basis, which are still in Dubai. I do bear in mind, of course, that travelling to Dubai in the future will enable them to have access to some of those items, but I would expect a Father, who had made an open and honest acceptance of the future pattern of their lives, to understand that they need the material which they would have taken with them if it had been a planned removal.

- 75 I consider that I have to approach this matter cautiously because of all that has gone wrong despite what seemed to be a good level of agreement in January 2020. I require a new agreement to be put through the Dubai courts and a separate pledge made by Father not to seek to impose a travel ban and not to raise any past wrongs; it can either be in the agreement or in a separate pledge. The fact that there was not a full trial here, with the parties giving evidence and findings being made in relation to what went wrong, was a choice that the parties both made. I do not want to think that that these issues might be tactically re-opened or re-litigated in Dubai.
- 76 Mother will hold the passports, and she will travel with the children for the foreseeable future. She is prepared to fund this, which is also unusual. Father can, of course, re-apply to this court in due course if such an arrangement is becoming unduly onerous but, on the basis of what seems his likely travel with the children, and the current restrictions of Covid, this does not seem unduly onerous at present.
- 77 I appreciate what Mr Turner said about the potential views of the children in relation to Mother's presence on holidays with Father, but I consider, from all I know from the detailed CAFCASS report, that these children will accept the arrangement, as they have clearly accepted recent changes. Certainly the girls, at their age, are fully aware of their parents' views, albeit less so Child C.
- 78 I do not propose to say anything more about the Home Office. I do not encourage anyone to mislead a Government department, but the benefit to the children of raising such issues is not apparent to this court, and the attempt to argue this seemed more of a tactical bargaining tool.
- 79 That is the judgment of this court.
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