



Neutral Citation Number: [2023] EWHC 891 (Fam)

Case No: FD22P00711

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/02/2023

Before :

MR JUSTICE KEEHAN

Re DQ (A Child) (Abduction: Defence of Consent)

Mr M Basi (instructed by Dawson Cornwell) for the Applicant
The Respondent appeared in person

Hearing dates: 23 February 2023

Approved Judgment

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MR JUSTICE KEEHAN

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.

MR JUSTICE KEEHAN :

1. This is a Hague Abduction Convention application for the summary return to the Kingdom of Spain of one child, DQ, who is eight years of age.
2. The applicant in these proceedings is the child's mother, JQ, and the respondent is her father, JH. JH appears at this hearing in person.
3. The mother sought the return of DQ to Spain. She alleged that the father had wrongfully retained DQ in this country after the conclusion of one year when she had consented to him having DQ to live with him in this country for one year maximum and no more.
4. The father opposed that application on the grounds that he asserted that the mother had, in fact, ultimately consented to DQ being permanently removed from Spain to live with him here in England, or at least until she had completed her full-time secondary education.
5. In my judgment, the essential question is whether the mother consented or not, and only if she did not consent would I need to go on and consider other submissions made helpfully by Mr Basi both in writing and/orally in relation to habitual residence, and the issue of the child's objection to a return.

Evidence

6. Unusually, in this case I heard oral evidence from the CAFCASS officer who interviewed DQ on 13 February of this year, Miss Ashton, from the father, from the paternal grandmother, the paternal grandfather and the mother. The evidence given and the cross-examination helpfully focused on the issue of consent.
7. The background to this matter is that the parties were in a relationship. DQ was born, as I have said, in 2014 and the parents separated in 2016. In March or April 2016, with the agreement of the father, the mother returned to her native Kingdom of Spain with DQ on the basis that they would permanently reside in Spain. It was clear from the evidence of both parties that in the years that followed there was regular contact between the father and his family and DQ, with DQ frequently travelling to this country to stay with her father, his partner, and the wider paternal family.
8. It was agreed between the parties that in August 2021 the mother had a telephone conversation with the father where she asked him to care for DQ for a period of one year because, principally, of her complex and dire financial circumstances, and in part because of family difficulties with the maternal family, including the very sad and tragic death of a young child.
9. The father was clear in his evidence, both written and oral, that he told the mother he would not agree to a short interim removal of DQ from Spain to live with him in this country, and that if she was to come and live with him it would be on a permanent basis, or at least until she had completed her full-time education.
10. On 28 September 2021, the paternal grandparents travelled to Spain in part for a holiday, in part to discuss with the mother what the arrangements should be for DQ going forward for. In their written evidence, confirmed in their oral evidence, they set

out in considerable detail three meetings that they had had with the mother. The first in which the mother was suggesting that DQ came to live with the father in England for just one year. The paternal grandparents relayed the concerns of the father, which they shared, that it was not in the child's best interests for that arrangement to be in place, but that the mother should consider a permanent removal of DQ from Spain to live with her father in England. The mother said she would consider matters.

11. There was a second meeting. At that second meeting the mother put forward, according to the paternal grandparents, a different plan namely that DQ stayed with her in Spain, but that she would reduce her working hours. The grandparents pointed out that this was not a viable solution because it would result in the mother earning less which would increase her financial difficulties rather than alleviate them. Again, the mother agreed to consider the position.
12. There was a third meeting between the paternal grandparents and the mother on 13 October 2021. At that meeting, the grandparents asserted that eventually the mother agreed that DQ should come and live with her father permanently in England. Accordingly, having been told that, they made contact with their son, DQ's father, and he made arrangements to fly to Spain to collect her. He arrived in Spain just for 12 hours, and on 15 October, having had lunch with his parents, DQ and the mother, they spent a period of time at the grandparents' hotel. There, the mother was invited to sign a document. That document, which is very short, reads as follows:

“To whom it may concern,

This is to declare that I, JQ, agree to my daughter, DQ, residing in the United Kingdom with her father, JH.”
13. It is dated 15 October 2021. It is signed by the mother, and witnessed by the paternal grandmother. It was accepted by the father and the grandparents that on 15 October, the day when DQ was travelling to England with her father, the mother was, at times, emotional. They said she was particularly emotional at the airport prior to the father departing with DQ. But, the three of them asserted that she was not overly emotional when, at the grandparents' hotel, she was asked to sign the document.
14. The mother said in evidence that she was given the document and asked to sign it, she did and handed it back. The grandparents assert that the mother asked for the document to be explained to her, and they spent some time explaining the document to her. It was raised during the course of evidence by Mr Basi, that the grandparents and the father only speak English, and the mother mainly speaks Spanish, and would have difficulty reading English. The document that I have just read, it is accepted, was only drafted in English and not as well in Spanish.
15. It is accepted by the mother and the grandparents that prior to the events that I have described, the three of them had a close relationship, and the grandparents asserted that they had never had any difficulties in their communication with the mother of any description at all. The father travelled with DQ to England where she has resided with him and his partner since.
16. In January 2022 the mother had asserted to the father that he was in breach of their agreement by giving an indication that he would not be returning DQ to Spain come

late August or September. She told the father that she had instructed a solicitor whereas, in fact, it appears that she had spoken to somebody who was a friend and was legally qualified.

17. In April 2022, DQ travelled, by agreement with the parents, to Spain to spend the holidays with her mother in Spain and at the conclusion of the holiday she returned to this country to be cared for by her father. At around the same time on 25 April, the father made clear to the mother that their agreement had been that DQ was permanently to live with him in this country. On 26 April, there was an exchange of WhatsApp messages between the parents. The mother, it appears, had consulted an immigration solicitor who had suggested it would be useful if he could speak to the father and so the mother requested the father's email address.
18. The significance of that piece of evidence is this: without the need for any immigration advice the mother had, on occasions, travelled to this country on a holiday to spend time with DQ. The mother accepted that in the discussions that she had with the paternal grandparents in September/October 2021 and, in particular, in the last conversation on 13 October, there was a discussion between the mother and the grandparents as to whether, given that DQ was going to come and live permanently with the father, she, the mother, would seek to relocate to live in England.
19. The mother accepted, as the grandparents had asserted, that that topic was discussed between them, but the mother said in evidence that it was never a realistic possibility. As to the reasons why she had instructed an immigration lawyer, I am afraid the mother's evidence was somewhat confused and unsatisfactory. At first it was about arrangements to spend time with DQ. When it was pointed out that she had consulted an immigration lawyer and not a family lawyer, she accepted that there had been a possibility, that she was considering the options of relocating to England.
20. In June of 2022, there was an exchange of messages between the parents which included a photograph of an itinerary which provided for DQ to travel to Spain to spend time with her mother on 15 August, and to return to England on 4 September. The father asked the mother why she had agreed to that return when, on her case, DQ should have been in Spain to commence her school education at the beginning of September 2022. Again, there was no clear answer by the mother to that question.
21. The mother then commenced these Hague Convention proceedings by instructing solicitors in November of last year.

Analysis

22. I found the paternal grandparents to be extremely compelling witnesses. They gave considerable detail of their meetings with the mother both in their statement and in their evidence. The mother agreed that the points that the grandparents say were raised were raised. The only issue she took was that she did not, she said, agree on 13 October for DQ to permanently relocate to live with her father in England.
23. I accept the grandparents' evidence that they had never experienced difficulties in past communications with the mother, whether when she lived here in England, or after she moved to live in Spain with DQ. I was impressed by the paternal grandmother

who emphasised that they were keen that neither of them should be seen or thought to be coercing or forcing the mother into agreeing to DQ's permanent relocation. Indeed, the grandmother told me that she, as a mother, felt for this mother in the decision she was making in DQ moving permanently to live in England. I accept, in saying that, the grandmother was entirely sincere in the emotions that she felt, and the feelings that she had for the mother.

24. It is of note, that the document that the mother signed on 15 October 2021 does not say "permanently residing". It was drafted by the grandparents solely for the purposes of overcoming any difficulties there might be in the father, or other family members, travelling with DQ abroad – a problem which had been encountered by the father's sister earlier in 2021. As to the submissions made by Mr Basi that the grandparents and the father were in a position of power, that submission would have more merit if the grandparents, prior to their discussions with the mother on their arrival in Spain in September 2021, had drafted a document that said: "permanently residing with the father in England" which it did not.
25. I am satisfied that the grandparents' account of their discussions is true and accurate. I accept their evidence and find that the mother understood the discussions that she was having with the grandparents, and in that discussion with the grandparents on 13 October 2021, she gave her clear and unequivocal consent to the permanent removal of DQ to live with her father in England. She willingly, I find, signed the document of 15 October, although that was merely for the purposes of assisting with travel and was not a recording of the agreement and the consent of the mother to the permanent removal.
26. The mother's actions in seeking the advice of an immigration lawyer to enquire into the possibility of her obtaining a visa to reside in this country and to relocate here reinforced the father's case that she had, indeed, consented to a permanent removal of DQ. Her agreement to DQ travelling to Spain in August of last year, and returning on 4 September last year, again reinforced the father's case that the mother had given her consent to a permanent removal. I am satisfied and find that the mother did consent to DQ being permanently removed from Spain to live with her father in this country. Accordingly, the father has not wrongfully retained DQ in this Country and the Hague Convention application is dismissed.
27. If it had been relevant to any decision I had to make today on the issue of habitual residence, I would, on the basis of the report of Ms Ashton, have found that DQ had transferred her habitual residence from Spain to England. She has undoubtedly, as is plain from the report of Ms Ashton, achieved a degree of social integration here, not only with her paternal family, but she loves her school. She told Ms Ashton about her wonderful schoolfriends, and all the activities that she undertakes and she spoke of her close relationship with her father, as she spoke of her close relationship with her mother, and that she would prefer not to return to live in Spain which she viewed as her second home.
28. Accordingly, in conclusion, this application is dismissed, and any further applications in relation to DQ must be dealt with in the local Family Court.