

Neutral Citation Number: [2024] EWHC 2741 (Fam)

Case No: FD24P00437

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24<sup>th</sup> October 2024

**Before :**

**SIMON COLTON KC**  
**SITTING AS A DEPUTY HIGH COURT JUDGE**

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**Re MSD and FPD (Children) (Stranded Spouse; Wardship)**  
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**Ms Mehvish Chaudhry** (instructed by **Dawson Cornwell Solicitors**) for the **Applicant**

**Ms Ayesha Hasan** (instructed by **Archbold Solicitors**) for the **Respondent**

Hearing date: 22 October 2024  
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**Approved Judgment**  
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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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mr Simon Colton KC:**

### **Introduction**

1. At the directions hearing on this matter, the issue arose as to whether the two subject children should remain wards of court. I decided to discharge the wardship orders, and provided brief oral reasons. I later informed the parties that I would provide more extensive written reasons. These are those reasons.

### **Background**

2. This is a case involving allegations of transnational marriage abandonment, also known as spousal stranding. Family Practice Direction 12J recognises this as a form of domestic abuse. As there described:

“‘abandonment’ refers to the practice whereby a husband, in England and Wales, deliberately abandons or ‘strands’ his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights and/or rights in relation to childcare in England and Wales. It may involve children who are either abandoned with, or separated from, their mother;”

3. Abandonment or stranding has been described judicially as “*abhorrent and unfeeling*” and “*selfish and cruel*”: *Re S (Wardship: Stranded Spouses)* [2010] EWHC 1669 (Fam), [2011] 1 FLR 305 (Hogg J) at [60]. The core feature of the concept is the exploitation or attempted exploitation by one spouse of the other’s vulnerability or weakness to seek to ensure that they are not able to come to or return to the UK: *Re A (Children)* [2019] EWCA Civ 74, [2019] 1 FLR 1175 at [71] (Moylan LJ).
4. Mother and Father are both Indian citizens. They met and married in India, have two children born in India, and in 2020 Father moved to the UK on a work visa. Mother and children followed shortly thereafter, as his dependants.
5. Mother alleges that in May 2024, with the family still living in England, Father persuaded Mother to travel to India for a short trip, leaving their children behind in England in the care of the paternal grandmother. Once in India, Father removed Mother’s passport from her, then returned to England without her. On his return, he informed the Home Office that he and Mother were separated. He then unilaterally changed the children’s residence and school, moving to a different English town.
6. Father denies this version of events. He makes cross-allegations of domestic abuse. At this stage, I can make no findings as to where the truth lies.
7. On 19 September 2024, Mother issued an application in the Family Division for orders under the court’s inherent jurisdiction in respect of the children. She sought, without notice to Father, a location order – to discover where the children had been moved to – and an order that the children be made wards of court. On 7 October 2024, Ms Naomi Davey sitting as a Deputy High Court Judge made these orders.

8. The Father was served with the orders and other documents, and the matter returned before me on 22 October 2024. At that hearing, in addition to a range of directions, Mother sought a continuation of the wardship orders.

## Discussion

9. In *Re S (Wardship) (Guidance in cases of stranded spouses)* [2011] 1 FLR 319, Hogg J provided some “*suggestions*” as “*guidance and assistance*” for practitioners and other judges in the context of stranded spouse cases. The first of these suggestions was:

“1. Given the international element and the experience of the judges of the Family Division in dealing with cases of this type, child abduction and other international cases, the best vehicle for these type of cases is wardship. Such proceedings should be managed, if possible, and heard by a judge of the Family Division.”

10. Despite this guidance, it is not clear to me why it would follow, from the proposition that there is an international element, and that judges of the Family Division are experienced in dealing with child abduction and other international cases, that wardship is “*the best vehicle*” in cases of a stranded spouse where – as in the present case – the children concerned remain in England.
11. The wardship jurisdiction is part of the Family Division’s inherent jurisdiction, and while it would go too far to say that the inherent jurisdiction cannot be invoked unless the issues concerning the child cannot be resolved under the Children Act 1989, nonetheless the court should not be asked to make use of its inherent jurisdiction generally, nor a wardship order in particular, unless there is some sufficient reason to do so: compare *In re NY* [2019] UKSC 49, [2020] AC 665 at [44]; and Family Practice Direction 12D, para 1.1.
12. There is no doubt that the wardship jurisdiction can assist or enable the court to find “*carefully crafted individual solutions*” to complex or unusual cases: *Brighton and Hove City Council v Y* [2015] EWHC 2099 (Fam) at [20]. In that case, Hayden J cited the guidance of Hogg J, quoted at paragraph 9 above, as an example of where wardship continues to be used.
13. Where a child is made a ward of the court, no important or major step in their life can be taken without first obtaining the approval of the court: *In re a Ward of Court (Wardship: Interview)* [2017] EWHC 1022 (Fam) 369 at [8]. In that case, Munby P went on to cite from the judgment of Russell LJ in *In re Mohamed Arif (An Infant)* [1968] Ch 643, 662:

“When an infant becomes a ward of court, control over the person of the infant is vested in the judges of the Chancery Division of the High Court. It is for the judge to say by order from time to time where the ward is to reside and with whom, and disobedience to such an order is contempt of court by anyone who knowingly breaches or is party to a breach of that order. Moreover, even without any judge's order

forbidding it, it is a contempt to remove a ward outside the jurisdiction of the High Court.”

14. Consistently with this, Family Practice Direction 12D states at paragraph 1.3:

“The court’s wardship jurisdiction is part of and not separate from the court’s inherent jurisdiction. The distinguishing characteristics of wardship are that –

- (a) custody of a child who is a ward is vested in the court; and
- (b) although day to day care and control of the ward is given to an individual or to a local authority, no important step can be taken in the child’s life without the court’s consent.”

15. In the present case, however, although I was being asked to continue the wardship order, I was not being asked to make any order as to where the children should live, nor with whom. As a matter of fact, I understand the children are living with Father. But I was neither being asked to approve that factual circumstance, nor make some other order. Indeed, I was not being asked to make any orders consequential on the children’s status as wards.

16. Ms Chaudhry, on behalf of Mother, argued that continuing the wardship would prevent Father from changing the children’s residence or schools again without court approval. But there is no indication in the evidence that Father has any intention of changing the children’s residence or schools; and if there were such indication then this concern could be met with appropriate orders under the Children Act 1989.

17. Ms Chaudhry also made the point that, by stranding Mother abroad (as Mother alleges), Father has sought to prevent Mother from exercising her parental responsibility, stopping Mother spending time with the children or even having information concerning their development. But, even accepting that (on Mother’s case) this is so, and that Father has sought to achieve this through a form of domestic abuse, that does not seem to me to warrant a wardship order being made. It is not suggested that the necessary statutory powers are lacking and, so far as regards enforcement, as McFarlane LJ observed in *In re B (Children) (Removal from Jurisdiction etc)* [2015] EWCA Civ 1302, [2016] 1 WLR 2326 at [70]:

“the use of wardship does not, as a matter of law, enhance any of the court’s powers over and above those that would be available in the event of there being a breach of an ordinary section 8 order. Wardship may appear more formal and it may be seen by [the applicant] to have some form of enhanced status, but in reality it does not.”

18. In the present case, a location order was sought and granted by the court in the exercise of its inherent jurisdiction. However, that limited use of the inherent jurisdiction does not seem to me to be a significant factor pointing in favour of wardship.

19. Finally, it seems to me relevant to note that while the judges of the Family Division do have expertise in matters relating to international child abduction, there is no allegation of international child abduction here. The primary international elements of this case are that (i) one parent is abroad, and there is uncertainty as to whether or when she might obtain permission to enter or stay in this country, and (ii) there is a factual dispute as to what happened between Mother and Father (and, potentially, wider family members) when they were abroad. It seems to me that these are issues which may today be faced by any judge of the Family Court, which may represent a change since the decisions of Hogg J in *Re S*.
20. Overall, I conclude that continuation of the wardship order in respect of these two children is not justified.

**Conclusion**

21. For these reasons, I discharged the wardship order.