

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**FAMILY DIVISION
(FAMILY APPEAL TO THE HIGH COURT)
OFFICE OF CARE AND PROTECTION**

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

and

IN THE MATTER OF AN APPEAL

Between

TT

Appellant

and

HM

Respondent

McBRIDE J

Introduction

[1] This case concerns a 14 year old girl, who will be referred to as "SY". She is the daughter of the appellant and respondent, who are hereinafter referred to as the father and mother respectively. The parents were both born in Egypt and hold dual Egyptian/British Citizenship. SY was born in Northern Ireland and during her life she has variously lived in Northern Ireland, Jersey, Saudi Arabia and Egypt. The central issue in dispute before the Court is whether SY should live with her father in Egypt or with her mother in Northern Ireland.

Applications before the Court

[2] There are five applications before this Court:

- (a) The father's appeal against the decision of the Family Proceedings Court sitting at Newtownards on 9 July 2014, whereby it refused his application to transfer the proceedings to a higher court, ordered that SY reside with her mother and further ordered that the father was not to remove SY from the jurisdiction of Northern Ireland.
- (b) The father's application, under the inherent jurisdiction of the High Court, for the return of SY to Egypt.
- (c) The father's application under the Family Law Act 1986, that the proceedings in Northern Ireland be stayed, on the basis that proceedings in respect of SY are either continuing outside Northern Ireland or that it would be more appropriate for decisions about SY to be determined in proceedings to be taken in Egypt.
- (d) In the event that the father's applications for a Return Order and for proceedings to be stayed are both refused, the father seeks a Contact Order.
- (e) The mother's application for an Occupation Order. This Order was granted in the Family Proceedings Court on 23 February 2015 and the proceedings were then transferred by the Family Proceedings Court to the Family Care Centre for onward transmission to the High Court to consolidate all proceedings.

[3] The father was represented by Mrs Dinsmore QC and Sarah Hansen. The respondent was represented by Ms McGreenera QC and Eric Cleland. The Official Solicitor was represented by Melanie Rice. I am grateful to all counsel for their very well researched skeletons augmented by clearly marshalled oral submissions.

Background

[4] SY's parents were both born in Egypt and married there in June 1989. There are three children of the family, namely LY who was born on 7 July 1991, DY who was born on 3 April 1995 and SY who was born on 29 April 2002. SY was born in Northern Ireland and holds an Irish passport. Both the Mother and Father have acquired British Citizenship.

[5] The mother and father came to live in the United Kingdom in 1994 and moved to Northern Ireland in 1996. Between 1996 and 2007 the father, a Consultant Obstetrician and Gynaecologist, worked in various locations including the Republic of Ireland, Wales, Dublin, Swindon and London, whilst the mother and the children remained living in the family home in Northern Ireland.

[6] In 2007 the family moved to live in Jersey. They remained living there for approximately one year. In 2008 the father secured employed employment in Saudi Arabia and SY and DY moved to live with him in Saudi Arabia. The mother

returned to live in Northern Ireland with LY. Whilst in Saudi Arabia SY attended the International School in Riyadh.

[7] In 2009 SY returned to live with her mother in Northern Ireland. In 2010 the father, who at that time was unemployed, returned to Northern Ireland. He subsequently secured employment in London in January 2011.

[8] The mother and SY remained living in Northern Ireland until the summer of 2013. The mother and SY then moved to Egypt. The father continued to work in the United Kingdom until he resigned from his employment and returned to Egypt on 18 September 2013.

[9] On 19 September 2013 the father sought to make contact with SY. He attended her school and was informed that SY had been removed. He then went to the family home but was unable to locate her. He obtained legal advice and on 21 September he lodged an application with the Egyptian court for a travel ban, to prevent SY being removed from Egypt.

[10] Proceedings before the Egyptian court on 22 September were adjourned to allow the mother to be served with the proceedings. Subsequently, on 13 October the Egyptian court issued the travel ban.

[11] The mother had in fact left Egypt with SY on 22 September 2013. She and SY travelled to Northern Ireland and have remained living in Northern Ireland since that date.

[12] The father came to Northern Ireland in December 2013 and again in January 2014. During these two periods he stayed in the family home. He then left Northern Ireland in January 2014 and returned to live in Egypt. He is presently unemployed and living in Egypt.

[13] On 16 January 2014 the mother brought proceedings in Newtownards Family Proceedings Court seeking a residence order and Prohibited Steps Order to prevent the father removing SY from Northern Ireland. The Family Proceedings Court made the orders sought. These orders are now the subject of appeal by the father.

Appeal Proceedings

[14] By Notice of the Appeal dated 22 July 2014, the father appealed the decision of Newtownards Family Proceedings Court dated 9 July 2014, whereby it refused his application to transfer the case to a higher court and made a residence order that SY reside with her mother, together with a Prohibited Steps Order preventing the father removing SY from Northern Ireland.

[15] The Notice of Appeal sets out the various grounds of appeal which can be summarised as follows:

- (a) The court's refusal to transfer the case to a higher court was wrong in law and in fact as the case involved jurisdictional issues, conflict of laws and the need to invoke the inherent jurisdiction of the High Court.
- (b) The court lacked jurisdiction to make any order as SY was not habitually resident in Northern Ireland.
- (c) The court failed to have any or adequate regard to the father's Convention rights.
- (d) The court failed to give any or proper regard to the welfare checklist.

Consideration of the Appeal

[16] A question arose at an initial review hearing, whether the court had jurisdiction to hear this appeal. At a subsequent review the parties agreed, and the court accepted, it had jurisdiction.

[17] By application dated 3 July 2014 the father requested the Family Proceedings Court to exercise its discretion to make an order under Article 5 of the Children (Allocation of Proceedings) Order Northern Ireland 1996 to transfer the case from the Family Proceedings Court to the Family Care Centre for onward transmission to the High Court. He submitted that the case should be transferred, *inter alia* on the basis SY had been abducted from Egypt and the only way he could seek her return, given that Egypt was not a signatory to the Hague Convention on Civil Aspects of International Child Abduction, was under the inherent jurisdiction of the High Court. He further submitted that the Family Proceedings Court lacked jurisdiction as the child was not habitually resident in Northern Ireland.

[18] The Children Order Advisory Committee, Best Practice Guidance, 2nd Edition 2010 at Appendix 1 "Allocation of family proceedings - Notes for Guidance" Part II - guidance on specific cases states at paragraph 3:

"The following proceedings shall be transferred to the Family Division of the High Court:

- (1) all cases involving the inherent jurisdiction of the High Court;
- (2) abduction cases;
- (3) all cases involving issues as to whether the Court has jurisdiction as opposed to another national jurisdiction;

- (4) all cases involving the recognition and enforcement of orders made by the Courts of another national jurisdiction;
- (5) all cases involving conflict of laws, inquiry into foreign jurisdiction or requirement for mirror orders;

...”

[19] This was a case with an international dimension, involving an alleged abduction from a non-convention country and a dispute about whether the Courts in Northern Ireland or Egypt had jurisdiction. In light of the COAC guidance this case ought to have been transferred upwards and the Family Proceedings Court erred in failing to do so.

[20] Practitioners and judges dealing with international children’s cases, in accordance with the COAC guidance, ought to transfer these cases at the first opportunity to the High Court. This is because the High Court has greater powers to deal with the issues which typically arise in these cases, and in some cases is the only court which has jurisdiction to deal with them. In this case the father’s application for a return order could only be made under the inherent jurisdiction of the court given that Egypt is not a signatory to the Hague Convention on Child Abduction. Neither the Family Proceedings Court nor the Family Care Centre has such jurisdiction. The Court’s refusal to transfer the father’s case meant his case was dismissed without adjudication on its merits.

[21] Given that the father’s application for a return order and/or a stay of proceedings is now before this court, and as these applications involve an enquiry into adjudication upon the substantive issue of where and with whom SY should live, it is unnecessary for this court to adjudicate upon the other grounds of appeal.

Father’s application for a Return Order

[22] The father seeks a return order in respect of SY to Egypt under the inherent jurisdiction of the court.

The relevant Legal Principles

[23] Egypt is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction. In Re J (A Child) (Custody Rights: Jurisdiction) [2006] 1 AC 80 Baroness Hale set out the approach the court ought to take in applications for the summary return of a child to countries which are not parties to the Hague Convention on the Civil Aspects of International Child Abduction. At paragraph 25 she stated:

“... in all Non Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child ... the child’s welfare is paramount and the specialist rules and concepts of the Hague Convention are not to be applied by analogy in a non-convention case.”

And at paragraph 29 stated :

“the focus has to be on the individual child in the particular circumstances of the case.”

[24] Baroness Hale recognised that in so called “kidnapping cases”, in accordance with the welfare principle, the court would have power to order the immediate return of a child to a foreign jurisdiction without a full investigation of the merits. She then set out a number of factors to be taken into consideration in making an assessment of what was in the child’s “best interests”. These can be summarised as follows:-

- (a) The degree of connection of the child with each country. This involves a consideration of his nationality, where he has lived most of his life, his first language, his race or ethnicity, his religion, culture and education.
- (b) The length of time he has spent in each country.
- (c) The extent to which the legal system of the other country is different from our own.
- (d) The impact of return on the primary carer.
- (e) The factors set out in the welfare checklist as enumerated in the Children (Northern Ireland) Order 1995, namely:
 - “(a) the ascertainable wishes and feelings of the child concerned;
 - (b) his physical, emotional and educational needs;
 - (c) the likely effect on him of any change in his circumstances;
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;

- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this order in the proceedings in question."

Evidence before the Court

[25] The evidence before the court comprised:

- (a) Statements made by the mother on 1 July 2014, 22 May 2015 and 13 August 2015. In addition the mother gave oral evidence.
- (b) Statements by the father dated 10 May 2015 and 16 June 2015. The father also gave oral evidence via Skype.
- (c) Report by the Official Solicitor dated 14 September 2015.
- (d) An expert legal report by Mr Sarwat Abd El- Shahid, lawyer of the Supreme Court in Egypt, dated 28 February 2016.

The Father's Case

[26] The father submitted this was a case of abduction as SY had been habitually resident in Egypt immediately before she was unlawfully removed by her mother and brought to Northern Ireland. In such circumstances the Court ought to order an immediate return without a full investigation of the merits. In the alternative he submitted that it was in SY's best interests to return to Egypt for the following reasons:-

- SY's main connection was with Egypt, given that both her maternal and paternal extended family resided in Egypt and the only family member who lived in Northern Ireland was her mother.
- SY is Egyptian in terms of her race, religion and culture and therefore Egypt would be the best place to meet and promote these needs. He expressed concern that these needs were not being met or promoted whilst SY lived in Northern Ireland.
- SY would benefit from the education system in Egypt as her academic progress was much greater in Egypt than it was in Northern Ireland.
- He was in a position to provide suitable accommodation and had the financial wherewithal to provide for SY's needs.

[27] The father expressed some concerns about the suitability of SY's living arrangements in Northern Ireland and the mother's financial ability to meet her

needs. He expressed concerns about SY living with her mother as he believed her mother had set a low moral standard as evidenced by her admitted fraud in relation to wrongfully claiming child tax credits.

[28] When cross examined about SY's wishes, the father stated he believed SY enjoyed living in Egypt and any contrary views now expressed by her were the product of influence by her mother and thus were not truly her own views.

The Mother's Case

[29] The mother denied that SY had been abducted. She stated she had legal custody of SY and her removal from Egypt was not unlawful as no travel ban was in place at the time of her removal.

[30] In her written and oral evidence the mother submitted that SY's real connection was with Northern Ireland as she was born and raised in Northern Ireland, lived here most of her life, held an Irish passport, her parents held dual citizenship and she spoke English as her first language. She gave evidence that SY's religious, cultural and language needs were met and promoted in Northern Ireland as she spoke to SY in Arabic at home and took her to various religious and cultural events organised by the Muslim community in Northern Ireland. She outlined that SY was attending a good school in Northern Ireland and was receiving a good education here.

[31] The mother expressed concern about the father's financial ability to care for SY as he had not worked for two years. She gave evidence that when she and SY had lived in Egypt she had noticed SY had a poor relationship with her father's extended family. The mother also expressed concern that due to the political unrest in Egypt it was not in SY's best interests to return and she gave evidence about her older sister LY being attacked by a man carrying a knife when she lived in Egypt. The mother gave evidence that when she had lived in Egypt the father had made her live in unsuitable accommodation, he had given her no financial support and had been violent to her. The mother did not, however, state that she would refuse to return with SY if the Court made a return order.

Official Solicitor's Report

[32] SY was interviewed by the Official Solicitor on 9 September 2015. She noted SY was very mature for her years. SY confirmed that English was her first language and that she only spoke "some Arabic". She informed the Official Solicitor that she had supported her mother's decision to return to live in Northern Ireland. In her view Northern Ireland was the better place to live. She said the area she lived in in Egypt was not safe and as a result she had to go out in taxis as it was not safe to walk about outside her home. She stated the accommodation in which she and her mother lived had no running water and she had witnessed her father hitting her mother.

[33] She informed the Official Solicitor that when she returned to Northern Ireland she settled well. She has made lots of friends and now considers Northern Ireland to be her home and she loves her home. She accepted that she had performed better academically in the Egyptian school. She said the teaching was good and she really liked that school. She also told the Official Solicitor that she did not like her father's extended family.

Consideration regarding Return Order

[34] As was noted in Re J the Court has power in "kidnapping cases" to order an immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits.

[35] I am satisfied that this is not such a case for the following reasons:-

- (a) SY has been living in Northern Ireland for 3 years since the date of removal.
- (b) The father has participated in proceedings in this jurisdiction since the date of SY's removal and during the course of these proceedings he informed Maguire J on 14 April 2015 that he had not sought an immediate return of the child due to her expressed views.
- (c) There is no evidence before the Court that the removal of SY was unlawful. The expert legal evidence confirms that the mother had legal custody of SY at the time of the removal. There is no evidence that there was any legal impediment to the mother removing SY from Egypt and this view is corroborated by the fact the father, on foot of legal advice, sought to obtain a travel ban to prevent her removing SY from Egypt. At the time of the removal no travel ban was in place and therefore I am not satisfied that the father has established on the balance of probabilities that the removal was unlawful.

[36] In the context of an application that SY should be returned to a Non Convention country, the court must act in accordance with the welfare of the child being paramount and in doing so will have regard to the factors set out in paragraph [24] above.

Degree of connection of the child with each country

[37] SY was born in Northern Ireland. She has lived in Northern Ireland for 11 out of her 14 years and holds an Irish passport. Her first language is English. She has received most of her education in Northern Ireland. Whilst she lived abroad she attended English speaking schools. SY informed the Official Solicitor that she regards Northern Ireland as her home, she is settled here and has made friends here. SY is of the Muslim faith and is Egyptian in terms of race and culture, although her parents hold dual British and Egyptian citizenship. SY can speak some Arabic. She has lived in Egypt for 1 year and her entire extended paternal and maternal families live in Egypt. She informed the Official Solicitor that she did not like her extended paternal family. Taking all these factors into account I find that SY has a much greater connection with Northern Ireland than Egypt.

Time spent in each country

[38] SY has lived in Egypt for 1 year. She has lived in Northern Ireland for 11 years. She has therefore spent most of her life in Northern Ireland.

Legal Systems in each country

[39] Mr El- Shahid, Egyptian law expert, confirms that under Egyptian law the Court of Appeal in Egypt has power to rescind or vary the travel ban and can stay enforcement of first instance orders. I find that the differences in the legal systems is not a decisive factor as legal proceedings in Egypt can achieve a fair hearing of the competing parental claims in respect of SY's upbringing.

Impact of return on the primary carer

[40] As Baroness Hale noted in Re J at paragraph 40:

"The effect of the decision upon a child's primary carer must also be relevant, although again not decisive."

The mother is SY's primary carer. She gave evidence about how life in Egypt was intolerable due to the father's "controlling behaviour", the unsuitability of the accommodation and the father's physical and verbal abuse. The father denies that the accommodation in Egypt was unsuitable. SY, however, corroborated her mother's evidence, that the accommodation lacked running water and was in an unsafe area, when she spoke to the Official Solicitor. I therefore accept that the accommodation was unsuitable and that the area in which they lived was not safe. I also find that the father is "controlling" as evidenced by his application to the Egyptian court on 25 June 2013 to terminate the mother's legal and financial rights. I also accept the mother's evidence, which was again corroborated by SY in her statements to the Official Solicitor, that the father was abusive and violent to the mother.

[41] If a return order were made however, the mother has not stated she would refuse to return to Egypt. I therefore find that if the court ordered SY to return it would be reasonable to expect the mother to return with her. Steps could be put in place to ensure that she had suitable accommodation, income and protection from the father. I therefore do not find that the effect on the mother of a return order should prevent the making of such an order.

Welfare Checklist Factors

[42] In determining the child's welfare it is necessary to have regard to the factors set out in the Welfare Checklist at Article 3(3) of the Children (Northern Ireland) Order 1995.

[43] *Child's wishes and feelings:* - SY is 14 years old. She was described by the Official Solicitor as very mature. She clearly expressed her views. She wanted to return and live in Northern Ireland. She is settled in Northern Ireland and regards it as her home and has friends here. Although the father felt her views were influenced by her mother there is no evidence to support this contention. When speaking with the Official Solicitor, SY gave valid reasons why she wished to live in Northern Ireland and did not like living in Egypt. Given her age I give considerable weight to the views which she has expressed.

[44] *Physical, emotional and educational needs:* - SY's physical, emotional and educational needs can be met in either Northern Ireland or Egypt. There was a dispute about her educational needs. I accept the father's evidence that she was performing better academically in Egypt. This was borne out by the school reports which were ultimately produced to the court and indeed SY herself accepted that she had performed better in Egypt and that she liked school there. Notwithstanding this, I find that her educational needs can be met in Northern Ireland. She attends a good school and the difference in her attainment is probably due to the fact, as SY herself stated, she went out less and therefore worked harder when she was in Egypt. I have no doubt that if she does this in Northern Ireland her academic results will improve accordingly and that she will achieve the level which she has attained previously in Egypt.

[45] *Likely effect of any change in circumstances:* - SY has been living in Northern Ireland for almost 3 years since she was removed from Egypt. She has settled in Northern Ireland and has made friends here. I find that a return to Egypt would cause upheaval in her living arrangements, her education and break the social ties with the friends she has now made in Northern Ireland.

[46] *Age, sex, background and other relevant characteristics:* - SY is the child of parents who have dual Egyptian and British citizenship. She is a Muslim. SY's culture, religion and Arabic language should be promoted. The father submitted this can best be achieved in Egypt. I do not accept this submission. When SY lived in Egypt and in Saudi Arabia she attended international English speaking schools. I have not heard any evidence that the father promoted her religion or the Arabic language whilst she lived in Egypt. The mother indicated that she promoted SY's language, culture and religion in Northern Ireland. Under cross-examination by Mrs Dinsmore QC it became clear that the mother had not done as much as she could have to promote SY's culture. I find, however, that SY's culture, religion and Arabic language can be met and promoted in Northern Ireland. Her mother should continue to speak to her in Arabic and take her to the various cultural and religious events organised by the Muslim community in Northern Ireland.

[47] *Harm suffered or at risk of suffering:* - There was a conflict in the evidence given by the mother and the father as to the risk of harm SY would be exposed to if she was returned to Egypt. The mother gave evidence about the eldest child being attacked by a man with a knife and SY also spoke about the area in which they lived not being safe. The father gave evidence that the incident with the eldest child arose

due to a drunken escapade when she refused to pay a taxi driver. He indicated that the family home was in a safe area. I am not satisfied that physical harm would result to SY if she returned to Egypt as a result of the political instability there. Notwithstanding the political instability, the mother did return to live in Egypt and clearly considered the area where the family home was located was suitable, given that she applied for and obtained a court order to allow her to live at that address.

[48] *Capacity of each parent to meet the child's needs:* - Although the father criticises the mother's moral standard on the basis that she had committed fraud by obtaining tax credits, he made no other criticism of her ability to care for SY. Similarly, the mother did not question the father's capacity to meet the needs of SY, although she was concerned that he was unemployed and may be unable to provide for her financially. I find that each party has the capacity to meet SY's needs. I have no doubt that the father would be able to find employment in the future given his qualifications, experience and work history and therefore would be in a position to provide financially for SY. The mother denied that she had been fraudulent in her written statements to the court. Under cross-examination by Mrs Dinsmore QC she was forced to concede that she indeed had been fraudulent. Notwithstanding the mother's fraudulent conduct, I find that she has the capacity to meet SY's needs.

[49] The father clearly loves SY and I accept his evidence that his main goal has always been the welfare of his children and that he has travelled the world to enable him to offer his children the best he can.

[50] This is a case where SY's most significant connection is with Northern Ireland. She has lived here most of her life. She is familiar with Northern Ireland and is now settled in Northern Ireland having lived here 3 years since her removal from Egypt. She is now 14 years old and has clearly expressed her wish to remain living in Northern Ireland. I give this significant weight as it is an independent and informed view. Taking into account all these matters, and the factors set out in the welfare checklist, I find that it is in SY's best interests to remain living in Northern Ireland. I therefore refuse the father's application for a return order.

Stay Application

[51] Under sections 19 and 20 of the Family Law Act 1986 the court has jurisdiction to make an Article 8 Order under the Children (Northern Ireland) Order 1995 when a child is present in Northern Ireland. All the parties therefore accepted that the Court had jurisdiction to make orders in respect of residence and contact. The father, however, requested that the Court exercise its discretion to stay the proceedings in accordance with Section 22 (2) which states:

“Where, at any stage of the proceedings on an application made to a court in Northern Ireland for a [Part I Order]... it appears to the court-

- (a) That proceedings with respect to the matters to which the application relates are continuing outside Northern Ireland ...
- (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside Northern Ireland ...

the court may stay the proceedings on the application.”

Relevant Legal Principles

[52] The relevant legal principles, in determining *forum conveniens* were set out in In The Matter of K (A Child) [2015] EWCA 352 at paragraphs [27-29], as follows: -

- (i) The court approaches a question of *forum conveniens* on the test set out in Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460.
- (ii) The burden is on the applicant for such a stay to persuade the court that the stay should be granted.
- (iii) The welfare of the child is a relevant consideration in determining the question of convenient forum but it is not an issue, that determination to which the paramount principle in the Children Order applies.
- (iv) If jurisdiction is established and if a stay is not imposed, then the court is free to go on to make more general welfare determinations with respect to the child’s future.

[53] The principles to be collated from the decision of the House of Lords in Spiliada are:

- (i) A stay will only be granted where the court is satisfied there is some other available forum having competent jurisdiction in which the case may be tried more suitably for the interest of all the parties and the ends of justice.
- (ii) The burden of proof is on the party seeking a stay. If the court is satisfied another forum is appropriate, the burden shifts to the party wanting to keep the proceedings here to show special circumstances which require the trial nevertheless to take place here.
- (iii) The court can consider whether jurisdiction is founded as of right.
- (iv) The court looks to see which forum has the “most real and substantial connection” with the action, in terms of expense, convenience, the availability of witnesses, the law which governs the relevant issues which the court has to decide and the place where the parties respectively live or carry on business.

- (v) If there is a *prima facie* more appropriate forum then a court will ordinarily grant a stay unless there are special considerations.

[54] In addition to the common law principles, the father submitted, the court's approach should be guided by the principles set out in the "Cairo Declaration". This is a declaration which was signed in 2005 between the judiciary of the United Kingdom and Egypt. The participating judges agreed to recommend to their respective governments that they should institute proper procedures to adopt the principles agreed. One of the agreed principles was that the courts of the State where a child had his home (defined as meaning the child's home immediately preceding the child's removal) should be the State which would take decisions about the welfare of the child.

Father's submissions

[55] The father submitted SY's home immediately before the removal was Egypt, and in accordance with the principles of the Cairo Declaration, the court should stay the proceedings here to allow the Egyptian courts to make decisions about SY's welfare. He further submitted that Egypt was the more appropriate forum because SY was habitually resident in Egypt at the date of removal; there were ongoing proceedings in Egypt; both parties could conveniently participate in proceedings in Egypt, as the mother had already participated in Egyptian proceedings, proceedings would be conducted in both parties' first language and both parties had lived in Egypt and had a substantial connection with Egypt.

Mother's submissions

[56] The mother questioned the applicability of the Cairo Declaration given the political instability which had occurred in Egypt since the agreement had been signed. She further submitted that the proceedings should not be stayed, as the child was habitually resident in Northern Ireland and had more significant and substantial links to this jurisdiction; the witnesses relevant to determination of SY's welfare now resided in Northern Ireland, the father had already participated in proceedings in this jurisdiction and legal aid was available to all the parties, which may not be the case in Egypt. For all these reasons she submitted Northern Ireland was the more suitable forum in terms of convenience and availability of witnesses.

Consideration of the stay application

[57] SY has lived in Northern Ireland for 11 of her 14 years. She has been resident in Northern Ireland for the past 3 years approximately. For the reasons outlined above I find she was not unlawfully abducted. The father has participated in proceedings in this jurisdiction and by indicating to the court that he was not seeking an immediate return of SY he has acquiesced in SY living in Northern Ireland. In all these circumstances I find that jurisdiction is founded as of right in this court.

[58] I am also satisfied that Northern Ireland has the most real and substantial connection with these proceedings. The issues before the court relate to the welfare of SY. I am satisfied, in light of the time SY has spent in this jurisdiction, that the witnesses relevant to the welfare issues all reside in this jurisdiction. I am also satisfied both parents can conveniently engage in proceedings here, both speak English, both can access legal representation and, as the father has already taken part in proceedings here in the past, I have no doubt he would be able and willing to do so in the future. It is therefore more convenient in terms of expense and availability of witnesses that proceedings are taken in this jurisdiction.

[59] Whilst I am satisfied that Egypt is an available competent jurisdiction in which the case may be tried, there are no actual ongoing proceedings in Egypt. Therefore if proceedings were now to be issued in Egypt in relation to SY, this would necessitate further delay which would not be in the child's best interests.

[60] The Cairo Declaration has not been implemented into law by either Egypt or the United Kingdom. It therefore remains only a declaration. Even if this declaration was to become law, it is likely that it would contain exceptions to the making of return orders, similar to the exceptions contained within the Child Abduction and Custody Act 1980. Under the 1980 Act there is no automatic right to a return order in circumstances where the child has lived in the state to which he has been abducted for more than one year. SY has been in this jurisdiction for almost 3 years and therefore, notwithstanding the principles set out in the Cairo Declaration, this court is not bound to order her return as the declaration is not binding and even if it was incorporated into our law it would likely contain an exception to an immediate return when a child has been removed for a period, in excess of 12 months.

[61] For all these reasons I refuse the application to stay the proceedings.

[62] In accordance with Re K, as jurisdiction is established and no stay is being imposed, I intend to go on to make welfare determinations with respect to SY's future.

Residence Application

[63] Taking into consideration the statements filed, the oral evidence and the report of the Official Solicitor and in accordance with the welfare checklist, I am satisfied that SY's welfare requires that she reside with her mother in Northern Ireland and accordingly I affirm the Residence Order made in favour of the mother by the Deputy District Judge.

Application for Prohibited Steps Order and Contact Order.

[64] The father seeks contact with SY both in Northern Ireland and Egypt together with indirect contact.

[65] When interviewed by the Official Solicitor SY said she would like to have contact with her father in Northern Ireland once a year. She indicated that she was not agreeable to having contact in Egypt. She further indicated that she would like her father to instigate indirect contact with her.

[66] The mother and SY both express concern that the father may try to keep SY in Egypt if she visited him in Egypt on her holidays and for this reason the mother sought a Prohibited Steps Order. The mother indicated she would be agreeable to contact between the father and SY in Northern Ireland subject to SY's wishes.

[67] I am satisfied that contact between SY and her father is in SY's best interests. I therefore make an order that direct contact takes places in Northern Ireland for a period of at least one week per year. Details are to be agreed between the parties and if required can be made part of the court order for contact. I further order that the indirect contact takes place between SY and her father once per week in a manner and at times and dates agreed by SY. I further direct that there should be such other reasonable contact as is agreed between the parties.

[68] In light of the concerns expressed by SY and her mother and which I find to have substance, I affirm the Prohibited Steps Order, made by the deputy District Judge, preventing the removal of SY from this jurisdiction by her father.

Occupation Application

[69] No submissions were made to this court in relation to the extant Occupation Orders made in the Family Care Centre. This Order will be affirmed unless contrary submissions are filed within 7 days of the date of this order.

Conclusion

[70] This is a complex children's case with an international dimension. The proceedings ought to have been transferred to the High Court for the reasons I have outlined in this judgment. I therefore allow the father's appeal from the Family Proceedings Court on this ground.

[71] I reject the father's application for a return order and I decline to exercise my discretion to stay the proceedings. I affirm the Residence and Prohibited Steps Orders made by the Deputy District Judge and I make a defined Contact Order in the terms set out above. I further affirm the Occupation Order subject to filing of submissions to the contrary within 7 days of the date of this order.

[72] I make no order as to costs, save orders for legal aid taxation of the appellant's and the respondent's costs and I certify for Senior Counsel.