

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Re ~L~ (Removal from the Jurisdiction - Holiday)

STEPHENS J

Introduction

[1] I have anonymised this judgment. The initials used are not the real initials of any of the individuals involved. Nothing should be reported which would identify the children or any member of their extended family. I refer to

- (a) the children as ~G~, ~Y~ and ~N~
- (b) the father as ~L~
- (c) the mother as ~C~

The parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

[2] ~L~, a national of a Middle Eastern country, married ~C~, a British national, in 1996. They have three children ~G~, ~Y~, and ~N~. Unhappy differences have arisen between ~L~ and ~C~ leading to their separation in 2007. A residence order has been made under Article 8 of the Children (Northern Ireland) Order 1995 settling the arrangements of the children so that they live with ~C~. Article 13 (1) of the Children (Northern Ireland) Order 1995 provides that where a residence order is in force with respect to a child, no person shall remove him from the United Kingdom without either the written consent of every person who has parental responsibility for the child or the leave of the court. I repeat in slightly different form the observations I made at paragraph [13] of *Re Sabina and Tamim (Temporary*

removal from the jurisdiction to Bangladesh) [2009] NI Fam 20 about the need for consideration to be given when a residence order is being made and where one or other or both spouses have strong ties to a foreign country, particularly a non Hague Convention on the Civil Aspects of International Child Abduction country, to bolstering the protection given to children under Article 13 (1) by also making a prohibited steps order under Article 8 of the Children (Northern Ireland) Order 1995. If a prohibited steps order is in place then the consent of the court is required to the removal of a child from the United Kingdom. Unfortunately experience has shown that a parent when giving written consent to a child being temporarily removed from the United Kingdom may not put in place sufficient safeguards for the return of the child leading to wrongful detention in a non Hague Convention country with irretrievable consequences. Furthermore there is no need for any written consent if the removal is by the person in whose favour the residence order is made and the removal purports to be, but in the event turns out not to be, for a period of less than one month.

[3] A residence order having been made settling the arrangements of the children so that they lived with ~C~, ~L~ required her written consent or the leave of the court to remove the children or any of them from the United Kingdom for a holiday. ~C~ declined to consent. Accordingly on 11 June 2009 ~L~ applied for a specific issues order under Article 8 of the Children (Northern Ireland) Order 1995 to permit him to take the children on holiday to a Middle Eastern country. The application was within a category that required transfer to the High Court, see paragraph 3 (6) of the *Allocation of Family Proceedings Note for Guidance* which is an appendix to the *Guide to Case Management in Public Law Proceedings* and *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084. Upon transfer that application did not proceed but rather ~L~ now seeks permission to take the children to another European country to visit his brother for a holiday. ~C~ opposes the application on the basis of her belief that there is a real and substantial risk that once in that other European country ~L~ would travel on to the Middle Eastern country, which is a non-Hague Convention country, with the children and would not return them to Northern Ireland. If those had been the original issues to be decided and even though there was no application to temporarily remove the children to a non Hague Convention country, the application would still have fallen within the terms of paragraph 3 (6) of the *Allocation of Family Proceedings Note for Guidance* as it would have “involved” removal to such a country. Accordingly if the original application had been constituted in that way it also would have been required to be transferred to the High Court.

Legal principles

[4] In determining this application my paramount consideration is the welfare of the children. I apply the welfare checklist in Article 3(3) of the

Children (Northern Ireland) Order 1995. I seek to apply a line of authorities in relation to the temporary removal of children from the jurisdiction. Those authorities include *Re K (Removal from Jurisdiction: Practice)* [1999] 2 Family Law Reports 1084, *Re A (Security for return to jurisdiction) (Note)* [1999] 2 Family Law Reports 1, *Re T (Staying contact in non-convention country)* [1999] 1 Family Law Reports 262, *Re A (Temporary Removal from the Jurisdiction)* [2005] 1 Family Law Reports 639, *Re L (Removal from the Jurisdiction – Holiday)* [2001] 1 Family Law Reports 241. The most important aspects of the checklist in Article 3 (3) in this application, in my view, are those found in Article 3 (3) (c) & (e), namely the likely effect on the children of any change in circumstance and any harm which they have suffered or at risk of suffering. As part of that consideration I am enjoined to assess the magnitude of the risk of the children not being returned to Northern Ireland and also the magnitude of the consequence to them of not being returned.

[5] The Article 8 rights of all the family members are engaged. The conclusions that I have reached bear in mind and have regard to the right to family life of ~L~ and ~C~ and their children, see the concluding paragraph of *Re L (Removal from the Jurisdiction – Holiday)* [2001] 1 Family Law Reports 241.

Facts

[6] ~L~ left the Middle Eastern country in or about 1990 and lived in the other European country for approximately 6 years. ~L~ and ~C~ first met in that other European country. ~L~ had three conditions before he agreed to marry ~C~. They were as follows:-

- (a) ~C~ would convert to the Muslim faith.
- (b) Any children of the marriage would be brought up as Muslims.
- (c) The children would live in the Middle Eastern country for at least two years of their childhood to learn Arabic, the culture and the ways of Islam.

[7] At this time ~C~ was a Christian without any particular strength of conviction and she enjoyed engaging with other religions and other nationals. She was very open-minded and was reassured by ~L~'s western lifestyle, his then attitudes to alcohol and relationships, and his then relaxed and liberal approach to strict religious observances. ~C~ did not perceive that there would be any difficulties and agreed to convert to Islam anticipating that she would approach her conversion without a need for any stronger adherence and commitment to that faith than her then existing adherence and commitment to Christianity. She also agreed that the children would be brought up as Muslims and that they would live in the Middle Eastern

country for at least two years as suggested by ~L~. She converted to and became a Muslim and they married.

[8] Shortly after they were married ~L~ did set standards by which he expected ~C~ to live. I am satisfied that these were standards which were different to the ones to which he had previously adhered. He explained to her that he was now responsible for her and as to how she behaved. In particular that he had responsibility as to whether she and the children went to heaven. This also affected whether he went to heaven. He accordingly imposed a number of requirements affecting the clothes that she wore, abstinence from alcohol, the use of Halal meat, the clothes their daughter wore, whether their daughter could swim in public after the age of 11, whether ~C~ could visit her mother if she was going to eat food that had not been prepared appropriately, whether the children and ~C~ could go to a fish and chip shop in case the oil used was inappropriate, whether the children could join a choir, whether ~C~ could go to the supermarket on her own, whether ~C~ or the children could visit McDonalds and whether ~C~ could use contraception. This list is not meant to be exhaustive but it reflects a change in the way that ~C~'s life was to be ordered and controlled. ~C~ found great difficulty in assimilating to this different way of life obtaining counselling in her attempts to do so. I make it absolutely clear that all these religious choices are completely respected and are reflective of and entirely consistent with the very sincere and strongly held views of ~L~ in accordance with the teachings of his faith. I mention them for two limited purposes only. The first is to illustrate the difficulties that both ~L~ and ~C~ have faced in their marriage coming to terms with different attitudes to religious observances. The second is to illustrate that ~L~, who is presently employed in a faith based organisation, is a person who takes seriously his obligations to encourage his family members to live their lives according to the teachings of their faith. The three pre-conditions to his marriage were all of considerable importance to ~L~ and I conclude that they all remain of considerable and indeed overriding importance to him.

[9] ~L~ and ~C~ lived in London after they were married moving to Northern Ireland to enable ~C~ to have the physical support of her family when she was expecting their first child. At this stage they were facing somewhat straightened financial circumstances in London. Upon the family moving to Northern Ireland ~L~, who has a university qualification, started working in a self-employed capacity in the double glazing business. This was not a financial success. He then worked as a machine operator in a factory. This employment was followed by a period as a market researcher carrying out interviews on behalf of a market research organisation. He has been employed for the last three years in a faith based organisation. His mother lives in the Middle Eastern country as do 6 of his 8 siblings and their families. A number of the members of his extended family have had considerable

financial success. The extended family owns a number of properties in the Middle Eastern country.

[10] The children attend a local state school and they reside with ~C~. ~L~ has contact with the children. None of the children speak Arabic.

[11] ~L~ and ~C~ own the house in which they lived as a family. There is an outstanding loan on that house of £17,000. There was a debate as to the value of ~L~'s share in the house which I find for the purposes of this application amounts to approximately £35,000. In addition ~L~ has a car which he valued at £2,700 and deposits in bank accounts amounting to approximately £3,000. He earns £1,600 net per month in his present employment. I do not consider that his employment is particularly secure depending as it does on year by year availability of funds to the faith based organisation that employs him. In that respect I also bear in mind the pattern of his previous employment. ~L~ has no other family in Northern Ireland.

[12] ~C~'s concerns that the children would be taken to the Middle Eastern country and not returned to Northern Ireland originate from the pre-conditions to their marriage. Those concerns are reinforced by her intimate knowledge of ~L~'s priorities in life. She states that it is ~L~'s life time aim to have the children live in the Middle Eastern country regardless as to the financial and other precautions that can presently be put in place. In addition ~C~ has given evidence that ~L~ has made a number of statements to her that have further reinforced her concerns. He has informed her that he does not like Northern Ireland stating on numerous occasions that Northern Ireland is racist, rural and boring and that he blames her for bringing him to Northern Ireland.

[13] I have to consider the credibility of both ~L~ and ~C~ and also the reliability of each.

[14] There were a number of aspects that caused me considerable concern about the evidence of ~L~. In relation to his presentation I hold that there was a considerable degree of evasion, lack of candour and openness on his part. I have given consideration as to whether his presentation can be explained on the basis that English is not his first language. I do not consider this to be an entire explanation for his presentation. In addition I consider that some aspects of the content of his evidence were incorrect to his knowledge. I illustrate this with one example. In a statement dated 27 July 2009 he stated:-

“4. Since the respondent and I separated I have enjoyed a good level of contact with my children. Currently they have overnight contact with me 2-3 nights per week. Happily the respondent and I have

never had any previous issues surrounding contact and I have been able to come to agreements without any animosity or difficulties.”

This was just incorrect. There was a history of animosity leading to applications before the District Judge. A residence order, a contact order, an interim non-molestation order, and an occupation order have all been made. There was a question as to whether the non-molestation order had been breached. The defendant was charged with assault though in the event the prosecution did not proceed. Such was ~L~’s upset at some of the court proceedings that for a month he refused all contact with his children on the basis that he considered that ~C~ had lied and exaggerated in her evidence to the District Judge. Furthermore he informed me that he considered that ~C~ had for six months prior to their separation been building up her relationship with their daughter so as to undermine his relationship. None of this can be described as agreements being reached “without animosity or difficulties.” In relation to every conflict of evidence between ~L~ and ~C~ I prefer the evidence of ~C~ who by contrast was open and forthcoming in the manner in which she gave her evidence.

[15] I also find that ~L~ seeks to frustrate legal proceedings. I find that he was extremely resistant to any assessment of his ability to pay maintenance for his children and that he set out to delay the divorce proceedings by failing to sign the acknowledgment of service.

[16] I conclude that ~L~ has a profound and enduring desire to bring his children to the Middle Eastern country which overrides any regard that he has for his financial ties to Northern Ireland. I accept the evidence of ~C~ that “as far as (~L~) is concerned the children living in (the Middle Eastern country) with him by far surpasses the monetary value of any car or house in Northern Ireland”. In addition I consider that ~L~ does not have any other substantial ties to Northern Ireland given his expressed dislike of this country and his major reservations about the education that his children are receiving. I consider that he has a high degree of motivation to take his children to live in the Middle Eastern country. I do not accept him as being reliable when he states that he will return the children to Northern Ireland. Nor do I accept that he will comply with an order of this court or the undertakings that he proposes to give. I consider that ~L~ would wrongly justify such actions to himself and seek to justify them to others, on the basis that ~C~ was no longer a fit mother for a number of reasons including that she no longer adheres to the Muslim faith.

[17] I accept that it would be in the interests of the children to have a holiday together in the other European country with their father. It is also evidently in the interests of the children to develop their links with their extended paternal family so that they experience the love and commitment

felt by the wider family to them and that they gain a better understanding of their origin, lineage and the culture and religion of their extended paternal family. It would also be in their interests to have a holiday together so that they can all interact with each other and their father and their paternal uncle as a family group. However I consider that if the children went to the other European country there would be a high risk of onward travel to and their remaining in, the Middle Eastern country, a non-Hague Convention country. In relation to the magnitude of the consequences if the children were not returned to Northern Ireland I consider that great harm would be caused to them. They would lose all contact with their mother, their environment and their present culture.

Conclusion in relation to the primary application to take all three children out of the jurisdiction

[18] In conclusion the risk of non return is high and the consequences of non return would be harm of a high degree of magnitude. I refuse ~L~'s application for leave to take all of the children to the other European country.

Alternative application for leave to take one or two children out of the jurisdiction

[19] ~C~ was of the view that if permission was given to ~L~ to travel to the other European country with one child then ~L~ would return that child to Northern Ireland. That if ~L~ was permitted to leave the jurisdiction with both boys at the same time that there would be the same risk of non return as if all three children had been permitted to leave. I accept that assessment. I consider that ~L~ would return one child to Northern Ireland. I appreciate that this more limited permission to leave the jurisdiction with one child will effect the quality of the holiday for that child and for ~L~ but it does provide a method of facilitating one of the children (and depending on how things develop each child in turn) acquiring a greater degree of contact with and assimilation into his or her extended paternal family. I hope that ~L~ will understand that this judgment is not designed to prevent the children individually from being able to go to the other European country and/or to the Middle Eastern country. That it is designed in such a way as to permit future applications to be made enabling the children each in turn to visit their father's homeland and to meet their father's extended family in their own homes.

[20] I next consider the magnitude of the risk to the one child if in fact ~L~ did not return him or her to Northern Ireland. I repeat that I consider great harm would be caused if he or she was not returned to Northern Ireland and accordingly it is for the court to achieve what security it can for the child by building in all practical safeguards see *Re K (Removal from Jurisdiction: Practice)* [1999] 2 Family Law Reports 1084.

Safeguards

[21] I turn to consider safeguards but before doing so I will indicate that the child to whom I will give ~L~ permission to take to the other European country is ~Y~. He is the more assured of the two boys given his age and increasing maturity and does not have the undoubted difficulties that ~G~ presently experiences in her contacts with ~L~. All practical safeguards to be in place have to be proportionate to the risk of the non return of ~Y~ to Northern Ireland, which I have approached on the basis that the risk is low and the magnitude of the consequences if ~Y~ was not returned to Northern Ireland. I have indicated that great harm would be caused to ~Y~ in such circumstances. I will at the conclusion of this judgment give consideration with the assistance of counsel to the detailed drafting that will be required. I set out the safeguards:-

1. The court order will contain a declaration that ~Y~ is habitually resident in Northern Ireland and that ~Y~ is governed by the courts and laws of Northern Ireland.
2. The court order will provide for the date of the applicant's and ~Y~' departure from Northern Ireland and for the date of the return of ~Y~ to Northern Ireland.
3. The applicant is to provide written undertakings to the court. In broad terms those undertakings will include the following:
 - (a) To return ~Y~ to Northern Ireland by the fixed date.
 - (b) To lodge in the Office of Care and Protection at least two weeks before he and ~Y~ travel to the other European country photocopies of his passport and of ~Y~'s passport.
 - (c) To lodge in the Office of Care and Protection within 48 hours of ~Y~ returning to Northern Ireland his passport.
 - (d) To lodge in the Office of Care and Protection at least two weeks before he and ~Y~ travel to the other European country photocopies of their return air tickets with those photocopies being endorsed by his solicitor as being true and authentic copies of originals which have been shown to him or her together with proof of payment and a letter from his travel agent to the effect that the money is non refundable on the return ticket.

- (e) To lodge in the Office of Care and Protection at least two weeks before he and ~Y~ travel to the other European country a schedule setting out: -
 - (i) The full names, addresses and telephone numbers of his brothers who reside in the other European country.
 - (ii) The full names, addresses and telephone numbers of his mother and each of his siblings in the Middle Eastern country.
 - (g) To immediately respond whilst in the other European country to any enquiry that the court directs should be made to him in relation to ~Y~.
 - (h) That his present solicitor's address should remain as his address for service of any document whilst ~Y~ is outside Northern Ireland even if those solicitors no longer act for him and in that event he will arrange for all documents sent to his solicitor to be forwarded to him.
 - (i) That he will permit reasonable indirect contact between ~C~ and ~Y~ whilst they are in the other European country.
 - (j) That he will not commence any proceedings that relate to arrangements for care, control, residence or custody of ~Y~ before any court other than the Family Division of the High Court of Justice in Northern Ireland.
4. The applicant and his brother with whom he is to reside whilst in the other European country will enter into solemn declarations on the Qu'ran guaranteeing the safe and due return of ~Y~ to Northern Ireland. The contents of these declarations are to be informed by *Re A (Security for return to jurisdiction) (Note)* [1999] 2 Family Law Reports 1. If the parties cannot agree on the precise terms of the declarations then there is liberty to apply. The declarations to be made before an imam and are to be lodged in the Office of Care and Protection at least two weeks before the applicant and ~Y~ travel to the other European country.
5. The applicant is to lodge in the Office of Care and Protection at least 2 weeks before he and ~Y~ travel to the other European country a letter from his bank stating that the bank hold the

contents of his bank accounts up to the sum of £3,000 as security for the safe and due return of ~Y~ to Northern Ireland and that if ~Y~ is not safely and duly returned to Northern Ireland they will transfer that money to whoever the court directs.

6. The applicant is to lodge in the Office of Care and Protection at least 2 weeks before he and ~Y~ travel to the other European country a letter signed by himself stating that his interest in the Matrimonial home will be security for the safe and due return of ~Y~ to Northern Ireland and irrevocably appointing his solicitor to execute any transfer of his interest in the Matrimonial home that may be directed by the court.
7. The applicant is to lodge in the Office of Care and Protection at least 2 weeks before he and ~Y~ travel to the other European country the registration book for his motor vehicle as security for the safe and due return of ~Y~ to Northern Ireland and he is to leave the keys with his solicitors.

[22] In conclusion I consider that it is appropriate to grant leave to ~L~ to take ~Y~ to the other European country for a holiday provided these safeguards are in place. Absent any of which, the permission is withdrawn so that further submissions will have to be made to this court. In that respect I give liberty to apply. I would hope that these safeguards could be used as a template by the parties in their consideration of any future applications by ~L~ to take one of the children to the Middle Eastern country, though of course any future applications whether to take one child or all of the children will be decided on its own merits. Furthermore because a prohibited steps order is in place application will have to be made to this court regardless as to whether both ~L~ and ~C~ agree.

Prohibited steps

[23] A number of prohibited steps orders have now been made in this case. I will now bring greater definition to them by substituting a new order in the following terms

- (a) ~L~ is prohibited whether by himself his servants or agents or otherwise howsoever from removing any of the children ~G~, ~Y~ or ~N~ from Northern Ireland.
- (b) ~L~ is prohibited whether by himself his servants or agents or otherwise howsoever from applying for or obtaining or retaining any passport in the name or names of any of the children ~G~, ~Y~ or ~N~.

- (c) ~L~ is prohibited whether by himself his servants or agents or otherwise howsoever from applying for or obtaining or retaining any passport to which the name or names or the photograph or photographs of any of the children ~G~, ~Y~ or ~N~ are added.
- (d) ~L~ is prohibited whether by himself his servants or agents or otherwise howsoever from applying for or obtaining or retaining any travel documents involving travel outside Northern Ireland for any of the children ~G~, ~Y~ or ~N~.

The permission which I have given in relation to the removal of ~Y~ is an exception to these prohibited steps.