

IN THE FAMILY COURT
Royal Courts of Justice

18 June 2014

B e f o r e :

THE HONOURABLE MR JUSTICE PETER JACKSON
Sitting at the Royal Courts of Justice

Between:

H

Applicant

-and-

F

Respondent

Joy Brereton (instructed by The International Family Law Group LLP) for the Applicant
mother

Sorrel Dixon (instructed by Bates Wells and Braithwaite) for the Respondent father

Hearing dates: 16-18 June

Judgment date: 18 June

JUDGMENT

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Mr Justice Peter Jackson:

1. These proceedings concern A, a little girl now aged seven months. She is a dual citizen of New Zealand, where she was born, and of the United Kingdom, where she has been for the last five and a half months.
2. A's mother, aged 27, is a New Zealander while her father, aged 25, is British. They met in England in November 2012 when the mother (who had arrived in May 2012 on a two year visa) was working here as a waitress. In February 2013, they went travelling together in Europe. This was intended to be for three months but in the following month the mother discovered that she was pregnant and they returned to England in March 2013.

3. In May 2013, the parents went to settle on the North Island of New Zealand. The father, who is a boatbuilder by trade, obtained a two year working visa. For three months the parents lived with the maternal grandparents before finding their own accommodation, where they remained for the next five months.
4. The parents' relationship was by this time not happy. They were struggling financially, with the father having lost his job. Each parent attributes problems in the relationship to difficulty in the other's mental health.
5. A was born in New Zealand on 4 November 2013. In mid-December, the parents moved in with the mother's parents and on 27 December, when A was aged just eight weeks, the parents came to England with her, moving in with father's parents in East Anglia. On arrival, the mother was given a six-month visitor's visa, which expires later this month.
6. The parents' relationship as a couple finally ended in February 2014, having lasted no more than 15 months in all. The separation occurred in this way. On 26 February, the father told the mother that he felt their relationship was over. On 27 February, an incident occurred, during which the mother kicked the father when he attempted to remove A from her. The police were called and the mother and A went to stay nearby with the father's aunt.
7. It was agreed that A would spend time with her father on the following day. However, the father, knowing that the mother was expecting him to return A, refused to send her back. Within a short time both parties had issued applications. After events that I need not detail, these came before me on 7 March. By that stage, the maternal grandmother had travelled to England and had rented accommodation for the mother and herself. I made interim orders whereby A lives with her mother and grandmother, returning to her father at the paternal home three times a week: each weekend from Saturday at 10 am to 5 pm (but continuing until Sunday at 5 pm on alternate weekends), and each Tuesday and Thursday between noon and 5 pm.
8. That order might have lasted for a few days only because the mother reserved her position on the question of this court's jurisdiction. A further hearing had been set up to deal with this but the parties sensibly agreed that a decision could and should be taken in England. As a result, the interim arrangements have continued as described.
9. The parents are each supported by members of their own family. Both sets of grandparents have stepped forward. The maternal grandmother, who is a teacher, has remained in England for the past three months, having taken leave of absence from her school. The maternal grandfather has travelled to attend this hearing. They have funded the mother's representation, while the father's parents have funded his.
10. The relationship between the parents is currently very difficult. This is perhaps to be expected. What is more surprising is that the grandparents have not been able to establish any real means of communication between them in the interests of their granddaughter. This is epitomised by the fact that the maternal grandmother has been living 10 minutes away from the paternal home for the past three months; she came halfway across the world in a family crisis, yet she has not been invited across the paternal grandparents' threshold, nor has there been any meeting of the grandparents

on neutral ground. I do not ascribe responsibility for this state of affairs to either side of the family but it must have been obvious to both that in consequence of this hearing A will be living either in England or New Zealand, and that this will place heavy demands on everyone. Nonetheless, the opportunity to build bridges while many of the important family members have been in one place has not been taken. I strongly urge the parents and members of A's wider family to make up for lost time and put aside their differences for her sake.

11. During this three-day hearing, evidence has been given by Teresa Julian of the CAFCASS High Court team, by the mother and her parents and by the father and his mother.
12. There are a number of specific factual issues about the past history. Where it is necessary to make findings about them, I apply the balance of probabilities. I am conscious that the families have to work together in future and bear this in mind when expressing my conclusions.
13. The issue is what the long-term living arrangements for A should be. How should her care be divided between her mother and her father? If her mother is to be her main carer, should she be allowed to take her to live in New Zealand?
14. The answer to these questions lies in an analysis of A's welfare, which is my paramount consideration. I shall refer to the relevant aspects of the welfare checklist, and in particular to features that have been referred to in guidance given by the Court of Appeal in relocation cases of this kind.
15. Those features can readily be incorporated in the checklist analysis, which provides that the court shall have regard in particular to:
 - (a) A's ascertainable wishes and feelings (considered in the light of her age and understanding);
 - (b) A's physical, emotional and educational needs;
 - (c) the likely effect on her of any change in her circumstances;
 - (d) her age, sex, background and any characteristics of hers which the court considers relevant;
 - (e) any harm which she has suffered or is at risk of suffering;
 - (f) how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;
 - (g) the range of powers available to the court.

A's wishes and feelings

16. She is of course too young to have wishes, but she does have feelings and will be sensitive to the family atmosphere and to any distress on the part of her parents and wider family.

A's age, sex, background and relevant characteristics

17. Two particular features are that A is very young and that she has parents from such far-flung countries. Her young age means that it is important not to focus only upon the events of the past few months, but rather to look to the months and years ahead. The distance between countries makes it important to seek all possible ways of sustaining her relationships with both parents. A is at a stage where every moment that she spends with each parent is important for her and for them, and where sustained absences would have a much greater effect on how these relationships develop than if she was an older child.

18. A is making good progress despite the various upheavals in her short life. According to the health visiting service, she is a contented baby who is meeting her milestones. Both parents consider that she is doing well.

A's physical, emotional and educational needs

19. There is no reason to believe that A's physical or educational needs will not be met, whatever the future arrangements may be. Her emotional need is for consistent, reliable care and for loving relationships with as many family members as possible. She needs to be supported in this by family members who speak well of each other.

Any harm which A has suffered or is at risk of suffering

20. During the time that the parents were together following A's birth, there were many arguments between them. These included the incident on 27 February when the mother assaulted the father while she was holding A. Aside from the risk that A would be accidentally hurt, the emotional effect of such events on even such a small baby would not be beneficial. I doubt whether this amounted to harm as such because the parents' cohabitation ended so soon. Nonetheless, had they remained together, A would undoubtedly have been at risk of suffering harm as a result of their dysfunctional relationship. There is of course the possibility that ongoing parental conflict will be at such a level that it will harm A, but with a reasonable amount of good sense on the part of both families it must be hoped that this is unlikely.

21. It is the father's case that the mother represents a source of harm to A. In the first place, he and his family allege that she was incapable of giving her adequate daily care without close support. I am sure that there were times when the mother, newly arrived in England, was not giving of her best. However, I am not satisfied that this is a reflection of the wider picture. There is no independent support for the allegation that A's feeding or general care has been neglected by the mother, and certainly not in the past three months. I accept Ms Julian's evidence:

"During the time I spent with both parents, I observed very good communication with their daughter and they were attentive to her needs. It is clear that A is loved by them both and appears from information provided by the health visiting service to be

thriving in the care she currently receives in both parents' home. I observed nothing that would contradict this..."

22. The father further alleges that it would be unsafe now and in the future for the mother to have main responsibility for A's care. He describes his experience of her flying into a temper without provocation and losing control of herself. Having obtained her medical records, he points to a period in 2004 when at the age of 17 she needed support and counselling from the mental health services after periods of low mood and angry outbursts. He further claims that she has been a habitual drug user who had a convicted drug dealer and firearms user as a previous boyfriend.
23. The mother accepts that there have been occasions when she has lost her temper, and indeed reprehensibly assaulted the father during the course of arguments. She denies the father's broader allegations.
24. My conclusion is that A is unlikely to come to harm in future in the Independent care of either parent. The mother appears to be a person who is vulnerable to stress, but not to the extent that it would prevent her from offering good care to A, particularly if she is surrounded by family and friends. I accept the evidence of the maternal grandmother that the mother has looked after A well for the past three months without her needing to intervene. The father's situation is similar. His reaction to stress appears to be less dramatic than the mother's, but he has recently suffered from depression for which he is wisely taking medication. Likewise, both parents have been receiving counselling to strengthen their mental health.
25. The father's allegations about the mother's drug use are based upon what she told him and a questionnaire that she filled in as part of her maternity notes. This amounts to the taking of a few ecstasy tablets and the use of cocaine on one occasion, in each case before the parents met. I accept the mother's account that this was the full extent of her drug use, freely admitted. I also accept that she saw the father smoking cannabis with a friend in England on one occasion, something he denies. I also reject the father's suggestion that the mother is likely to associate with criminals and drug dealers, whether in England or New Zealand. The mother accepts that one of her friends (not a boyfriend) had used drugs, but not that he was a dealer or a criminal in other ways: this court does not have sight of the man's criminal record but I see no reason to doubt her account. Having considered the evidence as a whole, I am satisfied that drugs and criminality are not an issue in this case.

The capacity of the parents and other family members to meet A's needs

26. Ms Julian's view, which I accept, is that both of these parents are capable of caring for A now and in the future. They both put forward detailed and well thought-out plans, encompassing living arrangements, health care, education, social life and time with the other parent.
27. In a number of ways, the parents are on an equal footing. They are equally committed to A and love her equally. Their motivation for putting themselves forward as carers is acknowledged by the other to be entirely sincere, and I accept this. Once a decision is made about A's future, the effect on the parent who is disappointed is bound to be hard. There is not much to choose between them in that respect either, and each of

them knows that they can rely on close family members for comfort in the short term and support in the longer term.

28. There is, however, one very significant respect in which the parents and the wider families are not alike. I consistently found the evidence of the mother and her parents to show the greater insight into the causes of the difficulties in this relationship and to be more likely to promote solutions in the future.
29. In particular, I am concerned that the father has not understood the very significant contribution that he himself has made to the current situation. I find that during the course of the parents' relationship, he badgered the mother about her previous boyfriends in the way that she describes – the details, which are in her statement, are striking and I need not repeat them here. I am quite sure that the father confided in the maternal grandfather about this issue in the way that the latter describes, and I reject the father's denial. I am afraid that there were a number of occasions during his evidence when his anxiety about the outcome led to him being untruthful.
30. I also find that the disastrous decision that the parents made to move back to England with such a young baby and when their relationship was in such difficulties arose from the mother putting her obvious need for her family second to the father's needs. Both sets of grandparents doubted the wisdom of this move at that time, yet it took place: the father was, I find, able to persuade the mother to fall in with his interests.
31. I also find that the father has presented inaccurate information in an attempt to shore up his case that the mother represents a risk to A. His description of her as a habitual drug user is quite untrue, as is his attempt to portray her as having had a boyfriend with a serious criminal record. He has even, on the most flimsy basis, suggested that she may have had a concealed child at a younger age.
32. Given the very high stakes, it is easy to understand errors of judgment and exaggeration; what is of particular concern here is that the father seemed unable to acknowledge any shortcomings on his part. He was instead highly critical of the mother. If he had the full-time care of A, I would not be confident that he would give her a fair account of her mother, or be supportive of any arrangement that impinged on his own preference. I refer to his approach to two major decisions, the first being the decision to return to England, and the second being his retention of A on 28 February. I also recall the father's proposal to the court on 7 March. This was that A should spend one day at a time with each parent until this hearing, a proposal that took no sensible account of the effect of this on the child. At no stage during his evidence has the father shown any recognition that he may have got it wrong about any of this.
33. In contrast, I found the mother to be clear and straightforward in her evidence. During the course of the relationship, she let herself down in a number of ways by immature and impetuous behaviour, but I reject the father's case that the particular incidents arose out of nowhere. The mother's poignant e-mail of 12 November, written when A was just a week old and, ironically, produced by the father in support of his own case, shows the length to which she had to go to appease his emotional pressure on her. At the very same time, he was visiting his counsellor and mentioning her previous boyfriends. Overall, I found the mother's account of the difficulties during the parents'

relationship to be much more convincing than that of the father, not least because she acknowledges her contribution to them. In particular, I accept her evidence about her assault on the father on 27 February having arisen after he had kept on pressing her about her future plans when she wanted to be left alone.

34. I was also impressed by the evidence of the maternal grandmother and grandfather. They have succeeded in supporting their daughter without attacking the father. The paternal grandmother has not, I am afraid, reached the same point.

The likely effect of any change in her circumstances

35. At A's age, I do not consider that she will be greatly affected by the change in surroundings that a move to New Zealand would entail. Given that any solution is second best to her living with united, happy parents, the greatest negative impact upon her would be the loss of her mother's frequent presence. This is not to downplay the disadvantage of the loss of her father.
36. The parents are not on an equal footing in relation to their immigration status. The mother has no prospect of a secure future in this country. She either has to leave immediately or remain illegally. If she remains, she has no source of income and no family support close to hand. I believe that this would carry considerable risks for her well-being with obvious likely detriment to A.
37. The father by contrast has a working visa in New Zealand until next April and might be able to use this period of grace to consolidate his position there if that is what he decides to do. He has a choice, albeit a difficult one, that the mother lacks. Realistically, a return by the father to New Zealand is the only way that A will have both parents readily available to her.

The range of powers available to the court

38. The court has ample flexible powers to reach a welfare-based solution and confidence that this would be supported if necessary in the New Zealand jurisdiction.
39. In particular, if the parents remain in different countries, there will be a reliable regime of twice-yearly contact, underpinned by assurances from the grandparents. The parties have already agreed these arrangements and the commitment of the grandparents to supporting the parents practically and financially is once again generous.
40. In the event that the parents are in the same country in future, more advantageous arrangements can readily be devised.

Conclusion

41. The realistic options for A's future are, I find, either to live in the care of the father in England in the mother's absence, or to live in the care of the mother in New Zealand in the father's absence. That would be mitigated if he himself relocates, but I must for the purposes of my decision assume that he will decide to remain here.

42. I do not attach weight to the current artificial circumstances. Before the separation, both parents were fully involved in A's care. Since March, the mother has been the main carer, but if other factors pointed towards a change, that would not count for much. What is far more important is the weight of evidence that establishes that it is clearly in A's best interests that the mother should be her main carer in the future. For the reasons that I have given above, she and her family are better able to meet A's long term needs than the father and his family, however committed and important they undoubtedly are and will, I hope, remain.
43. It is not realistic to expect the mother to remain in England. It would be an insecure and daunting situation for a person with her known fragilities. She would be unsupported by her own family and would not feel supported by the father or his family. The detriment to A would be extensive and, in my judgment, greater even than the huge loss of the current closeness to the father and his family that would result from her moving away. On the other hand, A will gain from the greater involvement of her maternal family.
44. I will accordingly make a child arrangements order under which A will live with her mother and spend time with her father on the occasions that have been agreed.