

AB v TB (Temporary Removal to Jordan) [2014]

[2014] EWHC 4663 (Fam)

19/02/2015

Barristers

Michael Edwards

Court

Family Court

Practice Areas

International Children Law

Summary

Application by father to take children on holiday to Jordan. Expert evidence to the effect that the children's legal position in Jordan could be secured to a large, but not complete, extent. Order granted, subject to safeguards, on the basis that the father's evidence that he intended to return was accepted.

Facts

This was the father's application for a specific issue order allowing him to take the parties' children (a boy and girl aged 12 and 10 respectively) to Jordan for the purposes of a summer holiday. That application necessarily sought the discharge of a pre-existing prohibited steps order preventing the father from removing the children from England and Wales.

The mother was born in Afghanistan. The father was born in Kuwait into a Palestinian family, but moved to Jordan as a small child. Both parties are Sunni Muslims. The father has a large family network in Jordan. The father's case was that a visit to Jordan would be in the children's best interests both so they could meet their paternal family and also because celebrating Ramadan and Eid in a Muslim country would be an important experience for them.

Re A (Prohibited Steps Order) [2013] EWCA Civ. 1115 was cited as the most helpful authority on the applicable law. The court must consider the issue of risk broken down into three related elements:

- a) the magnitude of the risk of breach of the order if permission is given;
- b) the magnitude of the consequence of breach if it occurs; and
- c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.

The father's evidence that he had no intention of keeping the children away from England or their mother was accepted.

The judge was assisted by expert evidence as to the nature of Jordanian law. In summary, the expert's conclusion was that it was possible for the children's legal position in Jordan to be protected to a large but not complete extent. However, in reality the main safeguard for the children would be the court's assessment of the credibility of the applicant.

The father had proposed the following safeguards: 1) declarations about the children's habitual residence and this court's jurisdiction over them; 2) undertakings from the father about his commitment to return the children; 3) provisions to assure the Jordanian court that the father's acceptance of said requirements were freely given and would not be affected by any changes in circumstances; 4) a bond of £2,500, and; 5) a small sum to fund the mother's legal costs in Jordan.

Held

The judge found that he was positively satisfied that the advantages to the children of visiting Jordan outweighed the risks to their welfare. The risks in this case were not only the risks of retention, but risks arising from the children being deprived of any experience of their Middle Eastern background, not only now but for most of the rest of their childhoods.

Permission

Family Law Week 