

Re MM (A Child: Relocation) [2014]

[2014] EWFC B176

04/02/2015

Barristers

Jacqueline Renton

Court

Central Family Court

Practice Areas

International Children Law

Summary

Application by mother to relocate to South Africa with her child, aged 15 months at the time of the judgment. Permission to the mother was granted.

Facts

The background

Both parties were born in South Africa and are South African nationals. They formed a relationship in 1998 and despite several breaks in their relationship they decided in 2004 to move to the UK to pursue better job opportunities. In 2006 the relationship broke down and the mother returned to South Africa however in 2008 they reunited and she returned to the UK to marry the father. The relationship deteriorated and on 12 August 2013, two weeks after M was born, the father left. Following separation the father continued to see M on a daily basis; he informed the mother that he was staying with, and taking M to, his parents (who lived in the UK). However, unbeknownst to the mother, the father had been in a relationship with a work colleague, Ms G, since March 2013, and he was in fact taking M to her house (where he too was living).

The mother sought the father's permission to take M to South Africa for Christmas 2013, which he agreed to on the basis she sign the divorce papers. On her return, contact was reinstated; however on 8 February 2014 the mother discovered the father's relationship with Ms G (in addition to being told by her mother that he may have a nine year old daughter in South Africa). In response to this news the mother boarded a plane to South Africa, taking with her M and most of her belongings.

The father obtained an order from the High Court for the return of M to the United Kingdom, which the mother complied with on 28 February 2014. Following the mother's application to permanently relocate to South Africa (opposed by the father) and the fathers' application for contact to move to overnight (opposed by the mother) a s.7 report was ordered and the matter came before the HHJ Pearl on 13 - 17 October 2014.

Findings

The court heard evidence from both parties, the Cafcass officer and the maternal grandmother. The court made the following relevant findings:

- The mother returned to the UK in 2008 with the sole reason of marrying the father but always intended to return to South Africa to bring up her children [37].
- The father had hidden his relationship with Ms G from the mother for 10 months and he hid the fact of Ms G's pregnancy from the mother and the court for five months [20].
- The father had been dishonest with the mother and the court about his finances, stating he could not afford to pay for M's swimming lessons (£138) when he had recently received £49,000 from his employer (unbeknownst to the mother). He stated he could not afford to travel to South Africa to visit M however the court found that he had exaggerated the likely costs of such a trip and understated his means [43, 45 - 47].
- The mother's criticisms of the father were a 'necessary part of the litigation'; however the court was satisfied that she (and her mother) were more than capable of not denigrating the father to M and would in fact promote a positive image of the father [48 - 54, 70].
- In the event permission to relocate was granted, the mother would comply with any visiting arrangements and facilitate contact (indirect and direct) between M and his father [55 - 57].
- There were no concerns as to the mother's ability to parent M, nor any concerns in respect of the mother's mental health (aside from long - term depression which the court was satisfied was under control) [35].
- The mother was likely to be in a stronger financial position in South Africa where she would have better job prospects, a pension and beneficial share in property [37].
- Were the application granted, the mother and M would be surrounded by her immediate and extended family and friends which would provide a supportive and familial environment in South Africa whereas there was no good reason for her to remain in London for either family or career reasons [59 - 60].
- The abduction of M by the mother in February 2014 was an impulsive one-off which was not part of a pattern of the mother's behaviour and she did not present an on-going risk to M by possible impulsive behaviour [64].
- The risks of marginalisation were not inevitable and there was a realistic prospect of M having a meaningful relationship with his father. Visits three times a year were affordable and indirect contact every other day was possible [70, 74].

Held

The decision was made with the welfare of M as the paramount consideration. The definitive case governing the court's approach was *Re F (Relocation)* [2012] EWCA Civ 1364 (with *Payne v Payne* [2001] EWCA Civ 166 being for guidance purposes only). On the basis of her findings, HHJ Pearl granted the mother's application and refused the father's application for overnight contact stating that it would not promote M's welfare [80].

The judge considered that a mirror order was not strictly necessary but noted with approval the mother's suggestion that both parties prepare undertakings not to denigrate the other in front of M. Finally the judge criticised the father's ex parte application for the return order in February 2014, noting that it fell far short of the duty to set out all the facts and matters in an open and honest way [78].

Permission

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