



The Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

IN THE MATTER OF CK

CAUSE NO. FAM 2023-0321

BETWEEN: DT APPLICANT

AND IK RESPONDENT

Appearances: Ms. Sara Ismail of McGrath Tonner for DC, (the Applicant Mother)

Before: Hon. Justice Richard Williams

Heard: 15 November 2023

Transcript circulated: 15 November 2023

**Perfected transcript
Provided:** 16 November 2023

Headnote

Children Act proceedings – Making Section 10 orders when a child has been wrongfully removed from the Cayman Islands – Obligations placed upon an applicant making an ex parte application - Observations about habitual residence – Observations about the 1980 Hague Convention on Child Abduction, about the return order proceedings in a contracting state and about the role of the Central Authority.

TRANSCRIPT OF EX-TEMPORE JUDGMENT

Background

1. This matter comes before me in my capacity as the Judge responsible for the Family Division of the Grand Court and due to my being the Hague Convention Network Judge for the Cayman Islands.
2. Due to the requirement for a prompt decision to be made, I give this in the form of an Ex-Tempore Judgment. A copy of this oral Ruling will be transcribed, and copies provided to the parties. Additionally, I permit copies of the Judgment to be provided to (i) the parties' attorneys and to the Court in any related proceedings that may be brought in Turkey; (ii) to the Central Authorities of the Cayman Islands and of Turkey involved in any Hague Convention procedure concerning the child; and (iii) to police authorities (in the Cayman Islands, Turkey or Interpol) engaged in an any procedure concerning the child's return.
3. This matter concerns CK a female Caymanian national aged 8 (hereafter referred to as "the child") whose parents are the Applicant mother, DT (hereafter referred to as "the mother") and the father, IK (hereafter referred to as "the father"). The mother is a Caymanian national and holds a United Kingdom passport. The father is a Turkish national, who also holds a United Kingdom and a British Overseas passport. The child is Caymanian and also holds a United Kingdom passport. As far as the mother is aware, the child does not presently hold a Turkish passport.
4. Pursuant to section 4(2)(a) of the Children Act (2012 Revision) ("the Act"), the mother automatically has parental responsibility for the child. The parents are presently married, however the child was born after the date of the marriage, so parental responsibility was not acquired by the father pursuant to section 4(1) of the Act. As the father's name is on the child's birth certificate, he, pursuant to section 4(b)(i) of the Act, also has parental responsibility for the child.
5. The applications are brought by the mother by means of a C1 form ("the Form") dated 15 November 2023. At paragraph 7 of the Form, the mother sets out the factual basis for her application. At the foot of the Form, at paragraph 12, is a Statement of Truth signed by the

- mother. She has not filed a supporting statement or affidavit, but she confirmed to the Court today that the content in the Form is accurate and that it is her signature at the Statement of Truth section. The mother has also read out details of messages between her and the father and referred to evidence of bank transfers. None of these have yet been exhibited. When any further affidavit evidence is filed by the mother, these items should be downloaded and exhibited to that.
6. The mother alleges that on 10 November 2023, the father informed her that he was taking the child to the cinema. However, he instead left the jurisdiction with the child without the mother's knowledge or consent. On 11 November 2023, the father told the mother on the telephone at 5:15 a.m. (which would have been shortly after his British Airways flight arrived in London) that he was staying with the child at the Westin Hotel and that he would have the child back to the mother by noon, but in fact he had already left the Cayman Islands.
 7. The mother states that, on 11 November 2023, she contacted the Royal Cayman Islands Police Force ("the police"). The police were able to confirm, after contacting the Cayman Islands Immigration Department and British Airways, that the child and the father had left on the British Airways flight to London Heathrow with a connecting flight to Istanbul, Turkey. The mother was informed that the father has only purchased a one-way flight ticket¹ and that his business partner has confirmed that the father asked him to buy out his interest in his Cayman Islands business for C\$45,000.
 8. On 12 November 2023, via text messages, the father acknowledged that the child was in Turkey. On 13 November 2023, the father said to the mother, amongst other messages, "*come baby we miss you*". The mother in her messages was demanding that the child be returned, was talking about divorce proceedings, and threatening to involve Interpol. On 14 November 2023, the father said that he did not need permission from the mother's family members to take the child on vacation.

¹ See the footnote at the end of this perfected transcript.

9. The mother has been able to speak to the child by WhatsApp on 13, 14 and 15 November 2023, which has been facilitated by the child's paternal aunt in Turkey.
10. The mother states that the father has removed all the original copies of the child's paperwork and that he has been contacting her school requesting her academic transcripts. The mother fears that he is seeking to enroll the child at a school in Turkey. It is this action, coupled with: (i) the surreptitious way in which the father removed the child; (ii) the fact that he asked his business partner to pay out his share in their business²; (iii) the fact that US\$15,550 on 5 September 2023 and other funds on other days have been transferred by him to his personal Turkish bank account; and (iv) the fact that he had purchased only a one way flight ticket³, that leads the mother to conclude that the father does not intend to return the child to the Cayman Islands.
11. The mother believes that the child and the father are at the paternal grandparents' home in Hatay, Iskenderun, Turkey.

The Applications

12. The mother, in the Form, seeks orders because of the alleged wrongful removal of the child. The mother seeks: (i) a Sole Residence Order; (ii) a Specific Issue Order requiring the father to forthwith return the child to her care in the Cayman Islands; and (iii) a Prohibited Steps Order prohibiting the father from obtaining information pertaining to the child from her school in the Cayman Islands.
13. Ex-parte orders of this nature are draconian and are ordinarily made only in exceptional circumstances, based on sufficient evidence presented by an applicant. A determination is made by the Court based on the evidence placed before it by an applicant in the absence of any representations from the other party. Therefore, an applicant has a clear duty to assist the Judge and provide the Court with full and frank disclosure of the evidence, in other

² The business partner confirmed to the mother that the father's interest in the business is CI\$45,000 and that he has already paid out \$15,500 and \$14,000 to the father.

³ See the footnote at the end of this perfected transcript.

words, she has a high duty of candor. A failure to do so would ordinarily be grounds for a discharge of the order. An applicant at an ex parte hearing should, if aware of it, outline to the Judge any defence that a respondent would likely argue if they had been in attendance. For example, if the mother had knowledge that the father intended to return the child to the Cayman Islands, she would be expected to share that with the Court.

14. When I today consider the mother's ex parte application, I am acutely aware of the obligation placed upon the applying party and the Court at such hearings. Mostyn J. in *UL v BK* [2013] EWHC 1735 (Fam) sets out his concerns about the overuse of ex-parte applications and the duty placed on the applying party. Although that was a case dealing with freezing injunctions made within divorce proceedings, the general principles arising out of his review of the case law are insightful when considering Children Act applications.

Observations - Habitual Residence

15. Although I accept that it is not appropriate to make an ex parte ruling on the issue of habitual residence (see Sir James Munby, President at paragraph 12 of *Re F (A Child)* [2014] EWCA Civ 789), I set out my review of the case law in my decision in *CMS v RGS* Fam 177 of 2013 which may be of help to the parties and to another Court at a later date. Therein I stated that it is the habitual residence immediately before a wrongful removal or retention that is the determining factor when considering habitual residence: *RE S (A Minor) (Abduction)* [1991] 2 FLR 1 & *Re F (Minors) (Abduction: Habitual Residence)* [1992] 2 FCR 595.
16. *In Re J (A Minor) (Abduction: Custody Rights)* [1990] 2 AC 562, Lord Donaldson MR stated:

“... in the ordinary case of a married couple... It would not be possible for one parent unilaterally to terminate the habitual residence of the child by removing the child from the jurisdiction wrongfully and in breach of the other parent's rights.”
17. Millett L.J. stated in *Re M (Abduction: Habitual Residence)* (1996)1 FLR 887:

“Where both parents have parental responsibility, neither of them can unilaterally change the habitual residence of the child wrongfully and in breach of the other party’s rights: Re J. at 572 and 449 respectively per Lord Donaldson, MR.”

18. In the Court of Appeal decision of *ZA & Anor v NA* [2012] EWCA Civ 13 Patten L.J. said at paragraph 52:

“... Whether one treats both parents or only the mother as having the care and control of the children, it is well established that the habitual residence of the children cannot be changed by the unilateral action of one parent, which is not consented to, or acquiesced in by the other. This would be a charter for abduction. The forced retention of the children in Pakistan cannot therefore found the basis of a claim that by passage of time and their inevitable involvement in family life and education in Pakistan the older children have ceased to be habitually resident in England.”

19. Although I am not ruling on the issue of habitual residence, I find that even though the father also has parental responsibility, he is not able to take unilateral action to remove the children from the Cayman Islands. Permission is required by all of those with parental responsibility for the child, or permission from the Court. Neither have been given to the father in this case. Taking a child abroad without such permission amounts to a ‘wrongful removal’. That is what the position is in this case.
20. The child was born in the Cayman Islands. From 2019 to 2021, she resided with the mother in Turkey whilst the father remained in the Cayman Islands. In Turkey, the mother and child lived in a property which the parties then owned and still own. The child has always lived with the mother. The parents were still cohabiting in the matrimonial home in Grand Cayman until the father left the Cayman Islands on 10 November 2023.

Conclusions

21. I am satisfied that the Grand Court retains the jurisdiction to make orders in relation to the child. Having found that the father has wrongfully removed the child from the Cayman

Islands, having considered the ‘welfare checklist’ set out at section 3(3) of the Act and recognising that the child’s welfare is my paramount consideration, I make the following orders:

- (i) pursuant to section 10 of the Act, a Sole Residence Order made to the mother in relation to the child;
- (ii) pursuant to section 10 of the Act, a Specific Issue Order requiring the father to forthwith return the child to the Cayman Islands and to the care of the mother;
- (iii) pursuant to Section 10 of the Act, a prohibited steps order prohibiting the father from obtaining information pertaining to the child from her school in the Cayman Islands;⁴ and
- (iv) If the father seeks to apply to vary or discharge this order, he must give at least 72 hours’ notice to the mother’s attorneys.

Observations – 1980 Hague Convention on Child Abduction proceedings

22. Turkey is a contracting state to the 1980 Hague Convention on Child Abduction. This Convention is an international agreement, and it operates to ensure the fast return of children to the country where they normally live if, for example, they have been wrongly removed from there.
23. The mother has quite correctly contacted the Cayman Islands Central Authority who are in the process of making an application to the Central Authority of Turkey to seek the return of the child to the Cayman Islands.
24. If the father fails to comply with the orders of the Grand Court, then the application for a return order for the child will take place in the Courts in Turkey. It is very important that the Central Authority in Turkey is provided with the child’s address there. The Turkish Court will likely wish to make orders for the child to be located and secured until that Court can determine that application. The Turkish Court may confiscate the passports of the child

⁴ The school’s name will appear in the Order to be drafted and that Order can be served on the school.

and the abducting parent. It is therefore important that the Central Authority application is processed promptly.

25. The proceedings under the Convention would probably not involve the Turkish Courts dealing with where the best place is for the child to live. The question for that Court will be whether the child has been wrongfully removed. If the Court also considers that the child has been wrongfully removed, then in most cases it must order the return of the child. The defences to an application under the Convention are limited.



The Honourable Mr Justice Richard Williams
JUDGE OF THE GRAND COURT

Footnote

The draft transcript of the oral Judgment delivered on 15 November 2023 was provided to the mother's attorney for her to review pursuant to Practice Direction No. 1/2004. The mother's attorney, on instructions from her client, made a request to appear before me on 16 November 2023. At a hearing held on 16 November 2023, having regard to the duty to provide full disclosure in ex parte proceedings, Counsel felt the need to provide an update to the Court before this transcript was perfected. She informed the Court that, after the 15 November 2023 hearing, her client had been told by a "credible source" that the husband had, after his arrival in Turkey, purchased flight tickets for him and the child to return to Grand Cayman on 5 December 2023. The husband has not informed the wife of this, nor has she been provided with or seen any flight tickets. The mother believes that, if the father has purchased tickets, he has only done so to delay any Hague Convention proceedings in Turkey.

Having reviewed this additional information, I find that the orders made in my ex-tempore ruling of 15 November 2023 remain the same. The father has wrongfully removed the child. He did not have the consent of the mother to permanently remove the child or even to temporarily remove the child for almost 4 weeks during the school term time from 10 November 2023 to 5 December 2023. The surrounding evidence including (i) his initially purchasing one way flight tickets to Turkey (despite the fact that, post arrival to Turkey, he has possibly purchased one way tickets back to Grand Cayman); (ii) the sale of his business assets in the Cayman Islands and the recent transferring of realised funds to Turkey; (iii) the surreptitious manner in which the child was removed from the jurisdiction; and (iv) the recent attempts to obtain the child's academic records from the child's Cayman Islands School, all support a genuine concern that the father's intention was to wrongfully remove and is to retain the child permanently in Turkey.