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IN THE FAMILY COURT

No. NE18P00113

Friday, 21<sup>st</sup> December 2018

Before:

RECORDER DARREN HOWE QC  
Sitting as a Deputy High Court Judge  
(In Private)

B E T W E E N :

F

Applicant

- and -

M

- and -

The Children

Respondents

F v M (Temporary Leave to Remove: Alleged Risk of Onward Abduction to Non-Hague Country)

MS H. LOCKE (instructed by Paul Dodds Law) appeared on behalf of the Father.

MR C. MCKEE (instructed by Beecham Peacock Solicitors) appeared on behalf of the Mother.

MS S WOOLRICH (instructed by Ward Hadaway Solicitors) appeared on the Children.

**J U D G M E N T**

RECORDER HOWE QC:

THE PARTIES AND THE APPLICATION

1 In these proceedings I am concerned with the welfare of two children. I have given the children initials to preserve their anonymity. The first child I shall refer to as “J”, a girl now aged eight years old, and a boy I shall refer to as “G”, who is now aged 5. Their father is seeking permission to remove the children to France for the purposes of a holiday between 29<sup>th</sup> December 2018 and 1<sup>st</sup> January 2019. I shall refer to him as “the father”. The children’s mother opposes that application. I shall refer to her as “the mother”. Both parents have the benefit of public funding and have been represented at court by Mr McKee and Ms Locke. The children are parties to these proceedings and have been represented by Ms Woolrich.

2 The application before me is that of the father for permission to remove the children from the jurisdiction for the purposes of a holiday to France. This application was listed before me with a ninety-minute time estimate, it being anticipated that I would determine the father’s application solely by the hearing of oral submissions from the advocates. On the court drawing the advocates’ attention to the decision of Mr Justice Cobb in *Re H (A Child) (Temporary Leave to Remove Turkey) (Enforcement of Child Arrangements Order)* [2015] EWFC 39, the parties accepted that this application could not be determined without the hearing of evidence. Fortunately, but not without some difficulty, it was possible to make sufficient court time available to hear the oral evidence necessary to enable the application to be determined this week.

3 I have heard oral evidence from both the mother and the father. I have considered the statements of the parents and read the other evidence contained in the court bundle. I give

this prepared ex tempore judgment having heard oral closing submissions from all advocates.

#### CONTENT OF THIS JUDGMENT:

§4 to §32 – Background Facts and History of the Proceedings

§32 to §36 – The Law

§36 to §41 – The Absence of Expert Evidence

§41 to §56 – Assessment of Risk

§56 to §64 – Discussion and Decision

#### THE BACKGROUND FACTS AND HISTORY OF THE PROCEEDINGS

4 For reasons that will become clear it is necessary to set out the history of the parties' separation and of their applications to this court. The mother and father married in 2008. The mother is a French national, holds French citizenship and a French passport. The father is a Lebanese national and holds a Lebanese passport. The father left Lebanon in 1999 and since that time has resided in a number of European countries. At the time of this application, the father has resided in the United Kingdom for a combined period of over ten years. The mother and father met in England but later relocated to France. The family then lived in France for a period of around two years before relocating back to the United Kingdom, first living in Glasgow and then ultimately settling in England. The family have now been in the United Kingdom for some seven years. The father works in the financial services industry.

5 The parents separated in the summer of 2016. I heard oral evidence from both the mother and the father as to the cause of the breakdown of their relationship. They both have different perspectives of that period in their lives, but it appears to be common ground that

the relationship floundered primarily due to the father's commitment to his career. The mother described him as spending long hours at work and continuing to work when at home in the evenings and at weekends. The mother described how the father would not participate in family life, due to his work, and this caused arguments between them. Interestingly, when I asked the mother about the father's account of the reasons she gave him for the ending of their relationship, she largely agreed with the evidence that he had given, save that she denied accusing him of having an affair. In her oral evidence, the mother did not refer to violence in the relationship as a reason for it breaking down.

6 Following their separation, the parties were able to agree arrangements for the children. J and G remained in the primary care of the mother but they enjoyed spending regular periods of time with their father. Indeed, I was told and I accept, that immediately following the separation and the father moving to alternative accommodation, the father would come to the former family home in the mornings to wake the children and take them to school. He would then return to the home in the evening, have dinner with the children, and then not leave until the children were asleep. This arrangement was put into place to hide from the children the parents' separation. There has, on the evidence before me, been no criticism by the mother of the father's commitment to the children.

7 I have, as one would expect, been told of occasions when there were disagreements between the parents. In his oral evidence the father described how the mother had left the former matrimonial home in late August 2016 without notifying him of the address where she would be relocating with the children. The father had expected to take the children out for the day but was told by the mother that they were with friends. The father went to the house and saw that it had been cleared. He then wanted to collect the children from the home of the friends where the mother said they were spending the day. The father told me that the mother objected to him collecting the children and she called the police. The mother said she called the police as the father had said to her that she would never see the children again,

and he refused to tell her what time he would be returning the children. In the father's evidence he described the police attending but the children were not removed from his care, the police taking the view that the dispute between the parents was a matter for the Family Court.

8 The father alleges that the mother, in August 2016, told him of her intention to permanently relocate to France but despite this alleged threat the parties were able to agree arrangements for the mother to take a holiday with the children in France, a holiday from which she returned. The parents were able to agree sensible arrangements for the children, the father having them on alternate weekends from Friday evenings through to Sunday evenings.

9 The father sought to improve his career prospects and income by taking a job in London. During this period he kept a flat in the town where M and the children lived, so he had a home in which he could accommodate the children when they stayed with him on the weekends. Ultimately, the father found it too difficult to work in London and maintain his commitments to his children so he found alternative employment closer to the children.

10 The mother is critical of the father's employment history. She says that he has been in five different jobs since 2016, most recently changing jobs in mid-November this year. The mother suggests this demonstrates the father's employment and career in England is not stable and should not be seen by the court as the father having any particular tie to this jurisdiction by reason of his employment.

11 I have also been told that, despite the parties having separated over two years ago, they have not yet been able to settle financial arrangements for the divorce as the family accrued a significant amount of debt. Both the mother and father live in rented accommodation. They are both in full time employment but this is not a family where there are any surplus funds available.

- 12 In January 2018, the father issued a without notice application seeking a prohibited steps order to prevent the mother from moving the children from the jurisdiction. He also sought a specific issue order requiring the mother to surrender the children's passports. The father made an allegation that the mother was short tempered with the children and alleged that it would be in their best interests to live with him. He alleged that if the mother was served with notice of his application, she would be likely to take the children to France without further notice to him. That application came before a District Judge and a without notice prohibited steps order was granted. The father's statement in support of that application alleges that the mother threatened to take the children to France unless he paid her a sum of money. The father also sets out in that statement that he believed the mother to have few ties to the United Kingdom and would abduct the children if given notice of his application to the court.
- 13 The father's application came back before the court three days following the without notice hearing and an order was made requiring all travel documents held for the children to be lodged with the mother's solicitors. An order was also made prohibiting the father from applying for any travel documents concerning the children. Fortunately, agreement was reached concerning child arrangements and an alternate weekend pattern for the children staying with the father was agreed, with a visit in the intervening week. It was also agreed that the children would spend half the school holidays with the father. The without notice order against the mother prohibiting her removing the children was not discharged. Proceedings were then adjourned for the parties to attend mediation; an attempt at dispute resolution that was unsuccessful.
- 14 On 27<sup>th</sup> March 2018 the mother issued an application seeking permission to remove the children to France for the purpose of a holiday. That application states that the father "has said that he will agree to me taking the children to France as long as he can take the children

to Lebanon. I am totally opposed to him taking the children to Lebanon.” Later in the same application form, when explaining her opposition to the father taking the children to Lebanon, the mother states “Lebanon is not a party to the Hague Convention, France is.” Later on it reads: “For all these reasons I am totally opposed to my children being taken to Lebanon. There is no reason whatsoever why the respondent’s family could not enjoy time with the children in France. He has three uncles with houses with swimming pools near Nice. The children could travel to France with the documentation that is currently being held in my solicitor’s office. My solicitor is holding G’s British passport and J’s French ID, both of which are sufficient for the children to go on holiday to France.”

15 The mother’s application came before the court in April 2018. At that hearing the father confirmed he wished to take the children to Lebanon for a holiday and said he would issue an application seeking the court’s permission. The order also records the father’s intention to pursue his application for the children to be transferred to his primary care. I pause here to observe that the statement filed in support of his January 2018 application provided no evidence that could in any way support a transfer of care of the children. I accept that this application came out of the blue for the mother and, as she described in her oral evidence, she felt under attack. This part of the father’s application has, in my judgment, driven an even larger wedge between these two parents who, on my assessment of them, are both highly intelligent people who each love and cherish their children, but who have fallen into the trap of doubting the other’s love for and commitment to those same children.

16 In April 2018, the District Judge granted the mother permission to remove the children for the purposes of the holiday. Directions leading to a hearing of the father’s application to take the children on holiday to Lebanon, and on his application for a change to the children’s living arrangements, were also made.

17 The father then, in May 2018, issued his application for permission to temporarily remove the children to Lebanon. Lebanon being a non-Hague Convention country, the proceedings were then with the permission of Mr Justice Cobb re-allocated to High Court level within the Family Court. Directions were made on the father's applications, including a requirement that any application for permission to rely on expert evidence be issued and listed on a date later in May. However, the father then filed an application seeking permission to withdraw his application for temporary relocation. That application states "The applicant has given the matters great thought and is aware of the lack of trust between himself and his former wife." It goes on "It is not in the best interests of the children for them to be at the centre of unnecessary conflict. The applicant has no intention of taking the children abroad and not returning them, although the mother is worried about this. The applicant does not want her to be worried and believes that at this time there needs to be co-operation between the parties and seeks permission to withdraw his application."

18 The proceedings had already been listed for a dispute resolution appointment. A welfare report was prepared by CAF/CASS for that hearing. I shall quote at some length from the report as it provides a useful summary of the allegations and counter-allegations that these parents have made against each other. Reading from the report at para.13 it states the following:

"The father alleges that he has been the victim of domestic abuse perpetrated by the mother and that this has been in the form of physical, emotional and mental abuse. The father suggests that the children have witnessed their mother shouting at and denigrating him and that the mother has even tried to coerce J into corroborating her false accusations of physical assault. He reports that he has suffered physical injuries and has experienced symptoms of stress and anxiety because of his experiences with the mother and believes that her current behaviour and issues around the children's arrangements are an extension of her abuse. The father reports



that the mother and her family are racist and have labelled him a terrorist in an attempt to heighten concerns about his involvement with the children. He suggests that although it was agreed before the children were born that they would be raised within the Islamic faith the mother has changed her mind since their separation and is confusing the children by undermining their Muslim values and traditions. The father reports that the mother suffers from depression and needs therapeutic input as she is unable to manage her responses to the children positively, which has led to her physically assaulting them in the past and being unable to manage a calm and positive home environment. He suggests that J now flinches if she feels she is in trouble and she and G expect to be beaten and that J has suffered bruising to her neck historically after being pinned to the shower wall by her mother. The father suggests that the mother has deliberately tried to alienate him from his children's lives by making false allegations against him, obstructing his communication with the children during periods when he has had to work away, and by preventing the children from having contact with their paternal family and culture. He suggests that the children have been traumatised by seeing the police with their father and by their periods of extended separation from him. He takes the view that the children require therapeutic support to explore their feelings and have a safe space to talk about their experiences but the mother is not appreciative of their emotional needs and will not support this. The father suggests that the mother is involving the children in the court process and manipulating issues to portray him in a negative light within the proceedings and suggests she is controlling her behaviour whilst proceedings are ongoing but is fearful that upon their conclusion the children will again be placed at risk of harm if they are not placed in his full-time care. The father has consented to the children going on holiday to France over the summer but has withdrawn his own application to take them to Lebanon. The father reports that this decision has been made due to financial implications of the application but that he intends to make

another application in the future. He denies any intention to remove the children from the jurisdiction and argues that the mother is better placed to do this as she has connections in France, which would make it very easy for her to remain there with the children. He remains concerned, however, that the mother's opposition to the children visiting Lebanon is further evidence of her efforts to alienate the children from their paternal family and culture."

19 When setting out what the mother alleged, the report said the following:

"The mother reports that she has been the primary carer of the children throughout their lives and the one consistent adult for them. She suggests that the father's work commitments have resulted in the family spending extended periods of time apart and in him being unable to consistently fulfil his obligations to the children. She queries the logic of the father's application suggesting that he would not be able to manage the care of the children full-time as his work commitments have meant that he has not been able to consistently prioritise contact arrangements. Consequently, she fails to see how he could accommodate the children full time. She reports the children have been repeatedly let down by their father who has promised to attend significant events on special days despite knowing his work commitments will not all allow this. The mother alleges that she has been the victim of domestic abuse perpetrated by the father and this has taken the form of coercive control, financial control, physical and emotional abuse. The mother suggests the father's application is a perpetuation of this abuse and raises concern about his capacity to manage his responses to her and the children. The mother reports concerns in relation to the father's mental health, alleges his behaviour is emotionally harmful to the children. She alleges that the father has told the children that he is going to die and they will never see him again, and has threatened in the past to take them away and not return

them to their mother's care. The mother reports that the father's behaviour is unpredictable and that this has resulted in her and the children feeling upset and unsafe. The mother raises concern that the father may kidnap the children and remove them to Lebanon. She asserts that the father has threatened to have his revenge and believes that this is likely to be by preventing her from having contact with the children."

20 When speaking to G, the CAFCASS officer reports him as saying:

"Mummy has better toys than daddy, and went on to say that she is really nice, she doesn't hit me on the bum but daddy does. I asked G when his daddy smacks him and he replied: he smacks me because I'm really naughty but I'm naughty at mum's and she doesn't smack. I asked G to show me how he was smacked and he showed me an open palm and described being hit hard on his buttocks. I asked G whether it was painful when he was smacked and he confirmed it was, adding it leaves marks. I asked if anyone had seen the mark and G told me: Mummy sees it when I'm in the shower but daddy hasn't seen it because I shower alone at daddy's. G went on to say: Daddy is much bigger than mummy, has more games on his tablet than mummy. He added: he's really nice but mummy is nicer. I suggested to G that he was talking like it was a competition, to which he replied: they don't like each other and they think it's a competition for J and me."

Later on the CAFCASS offer records:

"I asked G to tell me a bit more about his mother as we had focused a lot on his father. He told me: mummy doesn't say mean words but daddy does. I asked G

what kind of mean words and he replied: he tells me to shut up but it's not really nice to be told to shut up."

The CAFCASS officer also recorded that, when she asked G about anything that might worry him, he replied:

"Mummy scares me when she shouts at me. This appeared to be in the context of G being told off and he ultimately said that it was fair that he is told for negative behaviour."

She also said:

"G and I spoke about anything in his life he would like to change and he told me he wanted his father to change so he can't smack me on the bum anymore. G's final wish was for J to stop hitting him on the ears, describing a physical altercation between him and his sibling."

21 When speaking to J, the CAFCASS officer reported the following:

"J told me that the mother had said that she does not like the father anymore and that this worries J. She told me: I worry that she won't want me to live with daddy anymore. J told me that she preferred life when the family all lived together. J said that she enjoys spending time with her father, describing him as being 'really fun and that he cooks good food as well as her mother'. J said that her father buys her nice things, particularly lots of jewellery, which she likes. J complained that her father does not have a garden, that there are only two bedrooms in his house, explaining

that G gets to cuddle daddy all night because they share a room and this makes J feel jealous because she sleeps on her own.”

- 22 The CAFCASS officer explored G’s allegations of being smacked by his father with J, and asked J about disciplinary methods employed by both parents:

“J told me the mother uses a naughty chair and has a reward chart for the children. She told me that her father shouts at us and puts us in the naughty chair in our rooms. I asked about whether the discipline was the same for J and G and J said it was. She added: daddy shouts at my brother when he is being mean, describing occasions when she and G had been fighting, and asserting this was all G’s fault. She told me that her father shouts and hurts her eardrums and this was something that she did not like.”

When the Officer spoke to J about the relationship between her parents, she said her parents get on sort of badly and she would like that to change. The report says:

“We spoke about her current arrangements and J stated that she would like to spend more time with dad before looking wary and telling me ‘mum said not to tell you’. That’s because then she would get time taken away from her.”

The Officer explained to J that she is not responsible for the arrangements and that the adults will come up with a plan that is right for her and her brother.

- 23 This report, unsurprisingly, concludes in the following way:

“Both children are too aware of the acrimonious relationship of their parents, and G has suggested that his parents are in competition with one another for the children.

Though each party states they are motivated by the children's welfare many of the allegations are historical and were not acted upon at the time, suggesting that either the parents lacked the capacity to safeguard the children historically or they did not need to take action to ensure the children's safety at that time."

Over the page the Officer says the following:

"It is further concerning that G and J have reported feeling fearful of their parents and worrying about their arrangements due to their vigilance to the continued parental conflict."

The Officer says the following at para.61:

"The parties are still engaged in divorce proceedings and I am worried that whilst this remains unresolved conflicts are likely to continue. There have been repeated applications made in respect of the children and if matters are not resolved I am concerned that the children will suffer emotional harm. Their awareness of the acrimony within the parental relationship could result in them feeling conflicted in their loyalties or lining with one parent against the other. Furthermore, if the allegations of either party are true then the children have already been exposed to a level of frightening adult behaviour which could leave them feeling unsettled or unsafe and continue to be at risk of harm through inconsistent parenting and inappropriate emotional responses to the children."

24 The CAFCASS report recommended that the children were made parties to the proceedings, that a guardian be appointed, and that a fact finding hearing take place on the cross-allegations that each parent was making against the other. On 16<sup>th</sup> July 2018 the District

Judge accepted those recommendations and made the necessary order, including directing the parents to file Scott Schedules of the allegations they relied upon.

25 The initial CAFCASS safeguarding letter described the contact that the police and the local authority had with the family. Of note is the following: on 9<sup>th</sup> June 2016 the police reported to the local authority that there was a verbal disagreement between the parties. The mother alleged that there was previous domestic abuse in the relationship but no further action was taken. On 12<sup>th</sup> August 2016 the police reported that the mother had called them stating that the father was going to remove the children from the United Kingdom. The police found no evidence to support this and no further action was taken. On 9<sup>th</sup> May 2017 the mother raised her concerns with her general practitioner that J had returned from her father's care with a bruise. The mother was contacted by Children's Services and clarified that she believed this was caused by J bumping into something and was accidental. She had no safeguarding concerns regarding the children spending time with the father.

26 On 2<sup>nd</sup> January 2018, the father called the local authority to report the mother was emotionally harming the children by preventing the ordered child arrangements. He believed the children should live with him and said he would not be returning them to their mother. He believed that the mother would call Children's Services and make counter-allegations against him. He did not report any additional concerns. No further action was taken. Two days later, on 4<sup>th</sup> January 2018, the mother called a neighbouring local authority to report that the parties were going through a difficult divorce and the father had raised concerns regarding her care of the children to their local authority. It was reported that, in October, her solicitor had written to the father to say that she was considering stopping the child arrangements due to her concerns about his behaviour. The parties appeared to be making counter-allegations against the other's care of their children due to their acrimonious divorce. No safeguarding concerns were identified and this was deemed to be a private law matter. The mother was advised to seek legal advice.

- 27 The father's application for a change of child arrangements then came back before the court 3<sup>rd</sup> September 2018. The order records that the father did not support there being a separate fact finding hearing, and the mother also opposed this as it would cause delay. The guardian remained of the view that it was necessary for a fact finding to be undertaken and the District Judge ordered both parents to respond to each other's Scott Schedules. A further hearing listed to consider what allegations should be the subject of a fact-finding exercise. A two-day fact-finding hearing was listed for 22<sup>nd</sup> November.
- 28 On 9<sup>th</sup> October, the parties again appeared before the District Judge. The order records that both parents then supported a fact-finding hearing taking place, as did the guardian, but the parties reached agreement for child arrangements and a shared live-with order. The mother, who had retained the children's travel documents following her return from the French holiday in breach of para.3 of the order of 16<sup>th</sup> April, was ordered to return them to her solicitors, as the issue of foreign travel remained a dispute between the parties. Both parents were prohibited from removing the children from the jurisdiction and a further hearing was listed on 9<sup>th</sup> November, the fact finding hearing being vacated.
- 29 The order of 9<sup>th</sup> November records the father wanting to renew J's French passport and apply for Lebanese passports for both children. The mother was not in agreement with the father's proposals. The case was reallocated to the Designated Family Judge. Both parties were prohibited from removing the children from the jurisdiction and from applying for travel documents. The father's application for permission to take the children to Lebanon on a holiday was reinstated and listed for case management. That case management hearing took place on 3<sup>rd</sup> December. The third recital to that order reads as follows:

“The mother has previously agreed to allow the applicant/father to take the children on holiday to France in December 2018 for New Year.”



It goes on to record at recitals 4 and 5:

“Counsel for the guardian raised that the court may wish to be satisfied that the father will not use his holiday in France to pursue any application through the courts there for permission to travel to Lebanon.”

Recital 5 records:

“The respondent/mother confirms that J only holds a French ID card at present as her passport has expired and this ID card only allows travel to and from France and confirmed that she had agreed the holiday to France on this basis.”

30 Before me the mother accepts that recital 5 is inaccurate both in its content and in what she believed. The mother accepted that she knew that the French ID card permitted travel within the EU but says she was then unaware that it also permitted travel to Turkey. The order drafted by the advocates present at that hearing records a concern of the court that there were no safeguards in place to address what is described as ‘The risk that the trip is used to travel beyond France to Lebanon’. I pause here as in my judgment the wording of this recital suggests that a risk had been established, whereas in the absence of there having been any finding contrary to the father’s clear position that he was seeking permission to take the children to France on holiday and would not be travelling to Lebanon, as had previously been agreed by the mother, that recital should have been expressed in terms of an allegation or, at most, an un-assessed risk.

31 Directions were given for the parties to file statements and skeleton arguments concerning the father’s proposed holiday to France, and that application was then listed before me. The father’s application for permission to take the children to Lebanon is listed before the

Designated Family Judge in January 2019 for further case management, including any

application for permission to rely on expert evidence. It follows, therefore, that there is no expert evidence before this court for the purpose of this application by the father for permission to take the children to France.

### THE LAW

32 This is an application for permission to remove the children to France for the purposes of a holiday. France is a Hague Convention country and were it not for the mother's objections to this trip, based on her allegations that the father is likely to use this trip for the purposes of onward travel to Lebanon, I would have little difficulty in granting the father's application when undertaking a welfare analysis through the prism of the s.1(3) Children Act 1989 Welfare Checklist.

33 The children are represented by their children's guardian, who has been involved with this family first as the family court reporter and now as a guardian since July 2018. Having been informed of the evidence given by the parents before me, and of the safeguards offered by the father, the guardian is not opposed to the father's application. Indeed, it has been submitted on behalf of the guardian that there are welfare benefits for the children in taking this short holiday with their father to meet with their aunt, uncle and cousins who they know from FaceTime and phone call communication but with whom they have not met for a number of years. I am told the children know of the proposed holiday and are looking forward to it. They are under a shared care arrangement between the mother and the father, the father therefore being able to meet all of their needs when they are with him, be that with him in this jurisdiction or on holiday. Were this a family with UK and European connections only, and a risk of abduction to Lebanon was not being advanced, such risks of a non return from France would have been assessed within the context of the Hague Convention being available to effect a return should the father choose to remain in France.

34 However, given the mother’s allegation that there is a likelihood of abduction to Lebanon, I adopt the approach as set out by Mr Justice Cobb in *Re H*. Mr Justice Cobb was considering an application for permission to remove the children to Turkey for the purposes of a holiday. That application was opposed as it was said there was a risk of it being used for onward abduction to Iran. At para.18 Mr Justice Cobb said the following:

“Turkey is a Hague Convention country. It is well-known that this Convention provides a mechanism for the swift return of children to their country of habitual residence when they have been unlawfully removed or retained abroad. In itself, this represents a significant safeguard to ensure the child’s safe return to this country. However, I recognise that the father’s concern is not really about the mother’s retention of the child in Turkey, rather it is that if the mother were permitted to travel to Turkey, she would travel onwards and over the border to Iran from where the child would not return. In those circumstances it is necessary for me to consider:

- a. the risks that she would take those steps feared by the father;
- b. that if she did so, the magnitude of the consequence of the breach if it were to occur; and
- c. the safeguards offered in order to moderate any of the identified risks.

35 Then at para.19:

“I have therefore considered it appropriate to pay due regard to the Court of Appeal’s judgment in *Re A* [2014] 1 FLR 643 which draws on earlier authorities including *Re K* (Removal from the Jurisdiction: Practice) [1999] 1 FLR 1084 and *Re M* (A child) [2010] EWCA Civ 888. In *Re A Patten LJ*, giving the judgment of the court, said this at [23]:

“The overriding consideration for the court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child’s return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in Re M (Removal from Jurisdiction: Adjournment), we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the court should err on the side of caution and refuse to make the order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course.”

36 At para.20:

“Patten LJ added:

As the quotation from Thorpe LJ’s judgment in Re K (Removal from Jurisdiction: Practice) see para [19] above) confirms, applications for

temporary removal to a non-Convention country will inevitably involve consideration of 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.

It is necessary for the judge who considers such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave.”

#### THE ABSENCE OF EXPERT EVIDENCE

37 As I have already described, there is no expert evidence before me concerning how, or if, it would be possible for the mother to obtain a return of the children from Lebanon should the father abduct the children to that jurisdiction. The mother has filed a great deal of material, that she has sourced from the internet, describing how she as a French Christian woman would be highly unlikely to be able to secure the children’s return from Lebanon if they resided there with their father. The father does not accept the mother’s evidence concerning the judicial system in Lebanon, or the other dangers that the mother advances in terms of terrorism, armed conflict, poor public services, poor hygiene and poor healthcare. It is the father’s case that his family live in a prosperous neighbourhood away from the conflict zones and that his children would be perfectly safe with him were they to travel to Lebanon to visit family.

38 Given the absence of any expert evidence concerning effectiveness of safeguards, the father was, for the purposes of this application before me, prepared to accept all that the mother says about Lebanon, in terms of its safety and its judicial system.

39 Therefore, for my determination of this holiday application, I proceed on the following basis:

(a) If the children were abducted to Lebanon it would be extremely difficult, if not impossible, for the mother to secure their return;

(b) There are physical safety and health risks for the children should they be taken to Lebanon; and

(c) as a result of (a) and (b) it is likely that were the children abducted to Lebanon their relationship with their mother would be permanently severed and they would be likely to suffer significant harm in terms of their emotional wellbeing and physical safety.

40 I repeat that I am not making any judicial determination on what are the actual realities of life in Lebanon, or of the ability of this mother to achieve the return of the children from Lebanon should they be abducted. In the absence of any expert evidence, and taking a cautious approach, as I must, it is necessary for the court to take the mother's concerns at their highest as this court has no reliable independent evidence advancing a contrary view. Therefore, when assessing the magnitude of the consequences to the children should they be abducted, I have to conclude that the consequences could not be more grave.

#### ASSESSMENT OF RISK

41 I now turn to what is the risk, if any, of the father breaching the terms of any order I may make today and failing to return the children at the end of the trip to France. I heard oral evidence from the father. He presented as a calm intelligent man who had thought carefully about the arrangements for his short holiday with his children. He gave the address where he would be staying with his sister, and despite the mother raising a concern that the father was flying to Geneva and not in fact to France, a matter that she raises as suspicious, the father described that he may well spend some time in Switzerland with the children, as his sister lives just over the French border. I found nothing suspicious in the father flying to Geneva, it being the closest airport to where his sister lives. I was impressed with his honesty when not ruling out taking the children back into Switzerland for the purposes of sightseeing and other activities, although it is his intention that they will stay each night at the home of his sister. I entirely accept his account that this trip is intended as a visit to France to see his sister and there was nothing deceptive in his application being raised in terms of a trip to France despite the flights being booked in and out of Geneva

42 I have heard a great deal of evidence from the mother and the father concerning the ability of the father to travel around and out of the EU with the travel documentation currently available to the children. G has a passport so it would be possible for the father to take him out of the EU. J has a French ID card so she can travel freely with that card around the EU and, I accept, into Turkey. The mother does not deny the father's assertion that J could not fly into Lebanon using a French ID card as the immigration authorities in Lebanon require a visitor to hold a valid passport. However, it is the mother's case that the father is likely to travel to Turkey with both children by taking a land journey across Turkey, then through Syria, and then slip into Lebanon through what has been described on the mother's behalf as a porous border. It is the father's case that he would not undertake such a dangerous and arduous journey.

- 43 It is also the mother's case that, even if the father did not take a land journey to Lebanon, there is a risk that he will take G, who has a passport, and abandon J in France as she is not so able to travel. It is also the mother's case that the father may seek to obtain a passport for J when he is in France and then use that document to abduct J with G to Lebanon.
- 44 The mother accepts that, for the father to obtain a passport for J, he needs to present to the consular authority a number of documents. I exclude from this list of documents the current expired passport for J as the mother asserts, and I accept, that there are procedures for obtaining a new passport when the previous passport has been lost. So, excluding an expired passport the father has to present (a) his own passport, (b) proof of address that is less than six months old, (c) a French family record book, (d) a court order defining the father's exercise of parental responsibility for the children, and (e) a form signed by the mother granting her permission for the father to obtain a passport for the child.
- 45 The father's response to the mother's allegation that he will seek to obtain a new passport for J is short. He says he does not have the necessary documents in his possession to make such an application, and he points to there being just one working day in France during the period of his trip and he says it will not be possible for him to obtain a passport in that limited period.
- 46 In his oral evidence, the father said he would have to produce proof of an address in France if he were to apply for a passport in France rather than England, where the child resides. He has produced no documentation that supports that assertion so I proceed on the basis that any proof of address required includes an address in England. However, the father does not have the French family book. It has been suggested that the father might have made photocopies of that document and could use that when obtaining a French passport. I remind myself of the father's evidence, which has not been challenged, that following the parties' separation, at a time when the father had received a sizeable redundancy settlement



and had the children's travel documents in his possession, he made no attempt to abduct the children despite that being a time of high conflict between the parents. Even if it were possible for the father to obtain a new French passport with a photocopy of the French family book he tells me, and I accept his evidence, that he does not have such a copy.

47 The mother accepts that the father is not a man who engages in criminal activity and has no previous history of forging her signature or obtaining counterfeit documentation. In my judgment, having carefully considered his oral evidence, I find it so unlikely that the father would forge the mother's signature on a passport application form, or seek to obtain a counterfeit passport, or counterfeit documents to support a passport application, that this possibility can be discounted. There is nothing in the father's history that could lead me to a conclusion that the father would behave in this manner, and the mother herself accepts that she has seen no hint of this behaviour in the past. In my finding, the father does not have available to him the documentation necessary for him to obtain a new French passport. In my judgment, the risk of the father obtaining a new French passport by any means is so negligible that it can be ruled out.

48 In her oral evidence, the mother said that she had informed the French Embassy that she did not agree to any new travel documents being issued for her children and that this warning to the French authorities was sufficient to prevent any passports being issued in England. However, she said it was not adequate to prevent a passport being issued in France. She said she was informed by a French official that the embargo placed on the system used by the French authorities in England would not appear on their system in France. I invited the parties to seek confirmation of the mother's assertion directly from the French authorities. In her oral evidence, the mother said that she had made further enquiries and was again told that any prohibition on issuing a passport when in France would have to be made on an application by a French lawyer acting on the mother's behalf.

49 When the French Embassy replied to enquiries made by the father's solicitor, they provided a web link giving details of the appropriate authority that should be contacted by the mother's lawyer to notify the authorities in France that a passport should not be issued. I find it curious, given that the mother now says she has always been concerned about the risk of abduction to Lebanon even by the father travelling through Europe, that if the mother was truly concerned about the father making a clandestine application for a passport for J why she not taken advantage of the procedure available to her to prevent a passport being issued in France. Given my finding that the father does not have in his possession the documents necessary for him to obtain a French passport, the absence of the procedure in France having been utilised by the mother does not, in my judgment, increase the likelihood of the father obtaining a new French passport.

50 During her oral evidence, the mother was asked on a number of occasions to explain why she believes the father would abduct the children. She referred to a threat he had made when in court on 3<sup>rd</sup> December when, she says, he said to her in the French language that she would pay for opposing his holiday to France. In the father's oral evidence he accepted that he spoke to the mother but he says he said to her in a sarcastic manner "I hope you are happy now".

51 I remind myself that the mother had, before the guardian expressed concerns about the risk of onward travel, agreed to the father taking the children to France. I also remind myself that in her own court application the mother had positively advanced that the father could take the children to France to see his family. It was with the mother's consent in hand that the father purchased the flight tickets for himself and the children on 12<sup>th</sup> November 2018. It is therefore not at all surprising that the father felt frustrated at the mother jumping on the coat tails of the guardian, as it has been described, and then opposed the children's holiday with their father.

52 There were elements of the mother's oral evidence that concerned me greatly. When the mother was asked if the children would enjoy a holiday to France with their father, she replied "I don't know". It was only when it was put to her that the children would be seeing their cousins, taking a ride on a plane and visiting somewhere new, did she accept they would enjoy those activities, but she did not accept they would enjoy the whole trip. She said she did not know what the father would be doing with them. This answer, in my judgment, demonstrates the mother's fixation on a battle with father rather than focusing on the needs of her children. There was no reason for the mother to deny that the children would enjoy their trip to France with the father. That enjoyment would not make the trip safe if there was a risk of abduction.

53 Similarly, the mother's assertion that the father would abduct G and abandon J to the care of his sister in France was another example of the mother's answers that do not fit with the other evidence she has given. She accepts that the father has a close relationship with J, describing her as his "little princess". Although J described her jealousy of G to the CAF/CASS officer, as she thought the father spent more time with G than with her, the mother described the children having what she called "different stories with their father", and the father having a very close relationship to J as she was the oldest child and therefore had a longer relationship with him. The mother did not assert that the father had a preference for a male child, or that the children had, in her experience, been treated any less favourably by him. In my judgment, the father has pursued his relationship with both children equally, showing significant commitment to them by leaving his employment in London to be closer to them. There is, in my judgment, no evidence before me from which I could conclude that this father would separate the children in the manner that the mother presents as a risk.

54 I have already referred to the mother's allegation to the police on 12<sup>th</sup> August that the father had threatened to remove the children from the United Kingdom. The police attended,

found no evidence to support the mother's allegations and therefore no action was taken. I accept the father's evidence that he has had opportunities to abduct in the past but has not done so. There is no evidence before me that the father has broken the terms of any court orders concerning these children, whereas the mother has been in breach of the requirements of an order to return the children's travel documentation to her solicitors.

55 For the father to abduct G and leave J with his sister, a great deal of planning would be required that would involve his sister participating in the conspiracy. The mother accepted that she had been good friends with the father's sister, although she broke contact after the parties separated. That was due to her own decision and not due to any falling out or actions on the part of the sister. The mother has not explained why the father's sister would support the abduction of the children in the manner that would be necessary if the father was to travel just with G, as the mother asserts is likely.

56 I found the mother's presentation of the father as a man having no ties to England as curious given her description of their relationship having broken down due to his focus on his work to the exclusion of family life. If the father were given permission to travel to France, gave an undertaking to return but then failed to do so, he understands that were he ever to return to this jurisdiction he would face a likelihood of a custodial sentence for Contempt of Court by reason of his breach of undertaking and of my order. He said in his evidence that career possibilities for him in Lebanon are extremely limited. The mother alleges that he has family members with businesses and funds to support him, but this does not recognise the mother's own description of the father as career focused and ambitious. In my judgment, this is another example of the mother making contradictory assertions simply to support her opposition to the father's application.

## DISCUSSION AND DECISION

57 Having considered all the evidence I have read and heard, I have come to the conclusion that the risk of the father travelling with the children from France to Lebanon is negligible. I have found that he does not have the documentation necessary to obtain a French passport for J. I am satisfied that he would be unable to enter Lebanon by public transport without a passport for J, and I am satisfied that the father would not abandon J in France and leave her alone with his sister.

58 I have considered the mother's fear that the father would travel with both children by land, taking them through Turkey and Syria to arrive through a porous border in Lebanon. The demands of such a journey would be huge. It was pointed out on behalf of the guardian that the flights that the father has booked are for hand luggage only, and although I accept that luggage could be added to the booking, or further belongings and equipment could be purchased in France, the booking of hand luggage only flights at a time when the mother was agreeing to the children travelling does not make any sense if the plan is to abscond with the children by land to Lebanon. If the father had planned to do so when the flights were booked, why did he not add the extra luggage he would need for such a journey? There would have been nothing suspicious about it at the time as he was travelling with two children and with the mother's consent.

59 Although it is impossible to absolutely rule out any risk of the father obtaining a vehicle and travelling by land through Turkey and Syria, I am of the view, having considered all the evidence, that the risk has to be assessed in the context of:

- (a) the father having lived in the United Kingdom for over 10 years;
- (b) his evidence, which I accept, of career opportunities in Lebanon being very limited and this being one of the reasons why he left;

- (c) his movements around Europe have, on the evidence before me, always been by legal means, and there is no evidence that the father has, or would, engage in criminal activity;
- (d) he has stable accommodation and employment in England, albeit the new job is only some weeks old, but the father has a pattern of stable employment in England, and
- (e) although the father has family in Lebanon there is no actual evidence he wishes to make a life there. He does not want to take his children to Lebanon to live. He does want to take his children to Lebanon to visit his family, particularly his aging parents, but he has quite properly made an application to the court for permission to do that given the notice he gave to the mother of his desire for such trip and her objection to it.

60 The safeguards offered by the father, in my judgment, significantly reduce any risk there may be of the father abducting the children and travelling by land to Lebanon. He offers:

- (a) to give an undertaking to the court not to apply for travel documents for the children and to return the children, on 1<sup>st</sup> January 2019, to this jurisdiction. Given that the breach of this undertaking would have serious consequences for this man, who I assess to be honest and hardworking, I consider the giving of this undertaking to be a material safeguard;
- (b) at my suggestion, the father offers to install the app “Find my Friend” onto his mobile telephone so the mother can check at any time of her choosing where he is located. He also agrees to the making of FaceTime calls to her, and I will require that to be each morning and each evening. I will also require him to agree to take

calls from the mother at any time so that she can satisfy herself that the children and the father are where the “Find my Friend” app has the father’s phone located. Should the terms of this safeguard be breached, and the mother is persuaded the father is not with the children in France or Switzerland, the mother can then contact the appropriate authorities.

61 When this hearing commenced, I suggested that a possible compromise to the application would be for the mother to travel with the children and then stay with the family she has in the South of France, taking with her the children’s travel documents until she met again with the children at Geneva airport for the return home. The father was agreeable to this compromise, although my suggestion was not accepted as workable by the mother as she has to work on 31<sup>st</sup> December. However, the father’s willingness to agree to this arrangement gives me confidence in my assessment that the risk of abduction is incredibly low.

62 I also take into account that it was the mother who was positively promoting the father taking the trip to France with the children between 27<sup>th</sup> March 2018, when she issued her application to the court, and 3<sup>rd</sup> December 2018, when the mother then changed her mind following the concerns raised on behalf of the guardian. The mother now says she has never supported the father taking the children to France and was only agreeable to such trip as part of the negotiations before the court on 9<sup>th</sup> October when seeking a consensual outcome to the child arrangements applications. I do not accept that evidence. It is clear from the chronology I have set out earlier in this judgment that it was the mother who was pressing for the holiday in France as an alternative to a trip to Lebanon. I assess the mother to be highly intelligent and determined. I do not accept, had the mother thought there was a possibility that the father would embark upon a complicated road trip to Lebanon via Syria, that she would have stayed silent.

63 I have raised some concerns regarding this mother's evidence in the paragraphs above. I found the father to be a thoughtful and honest witness, whereas I found the mother to be evasive and ready to make criticisms of the father that did not stand up to scrutiny. I also find that her assertion, that this father is likely to abduct the children, does not survive the scrutiny that it has received during this hearing.

64 I acknowledge the grave harm that would be suffered by the children were they to be abducted to Lebanon but, for the reasons I have given, I consider the risk of such an abduction taking place to be vanishingly small. I consider the advantages to the children of taking this trip with their father, as outlined on behalf of the guardian earlier in this judgment, significantly outweigh that vanishingly small risk that they will be abducted. I therefore grant permission for the father to take the children to France and Switzerland from 29<sup>th</sup> December 2018 to 1<sup>st</sup> January 2019, subject to the safeguards that I have mentioned.

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**CERTIFICATE**

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