



Neutral Citation Number: [2024] EWHC 2901 (Fam)

Case No: FD24P00310

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 November 2024

Before:

Mr Justice Trowell

Between:

M

Applicant

- and -

F

Respondent

- and -

E and F

(through their children's Guardian, Nick Lill)

Second and Third Respondent

Re E and F (Stranding)

Professor Rob George (instructed by **Dawson Cornwell**) for the **Applicant**

Cliona Papazian (instructed by **Freemans Solicitors**) for the **Guardian**

Hearing dates: 6 - 8 November 2024

**Judgment Approved by the court
for handing down**

Mr Justice Trowell:

1. The applicant is the mother, she has been represented by Professor Rob George, instructed by Dawson Cornwall. I shall refer to her as the mother.
2. The first respondent is the father. He has not attended and has not been represented. I shall refer to him as the father.
3. The second and third respondents are E and F. They are the children of the mother and father. They are aged 4 and 3. They have been represented by Cliona Papazian, through their Guardian Nick Lill. Nick Lill has in fact been ill and Ms Papazian has taken her instructions from the assistant team manager of the High Court Team and Daisy Veitch has kindly involved herself in this matter.
4. This case concerns the circumstances whereby the mother and children left this country and travelled to Pakistan. The mother wants me to make orders, confirming orders already made, for their return. The Guardian supports her in that application.
5. I record at this stage that I had no report from Mr Lill (and none was directed). I did have a full position statement from Ms Papazian at the beginning of the case. I did receive before submissions a typed account of a video WhatsApp with the children conducted by Daisy Veitch on the 7 November. That account contained some apparent expressions of a desire on the children's part to come back to this country, and memory of their life here. I do not put much weight on that given the ages of the children and the fact that they had been with their mother. Following Ms Papazian's submission, the weight that I put on that interview was how easy the children are in the care of their mother, and how comfortable she was as their primary carer.
6. The father has not engaged in these proceedings throughout, save for a couple of emails to the court in advance of an earlier hearing when he pointed out to the court that there are proceedings in Pakistan which he wants to prevail. He was given details of this hearing, including a link to allow remote attendance. He has played no part.
7. The issues I am asked to determine in this case are:
 - a. Findings as to whether the mother was subject to domestic abuse and whether she and the children were and remain stranded in Pakistan.

- b. Whether or not the children are habitually resident here now or were habitually resident here on the date of the mother's application to this court (whether that be the date she made the application or the date it was stamped as received by the court, i.e., 1 July or the 18 July 2024).
- c. Jurisdiction of this court – which flows from whether or not the children are habitually resident or were habitually resident on the date of the mother's application.
- d. Whether it is in the best interests of the children to make a return order.

Summary Background

- 8. The mother is aged 27. She was born in Pakistan and is a citizen of that country.
- 9. The father is aged 26. He likewise was born in Pakistan and is a citizen of that country.
- 10. They married in Pakistan in 2018 and at the very end of that year the mother came to London to join the father in his home there.
- 11. In September 2019 E was born. In December 2020 F was born.
- 12. In August 2022 they moved to the Midlands.
- 13. In September 2023 all the family received indefinite leave to remain in the UK. Their photo cards indicate that they are staying for settlement. Their cards expire at the end of the year, but that is no more than a reflection of the fact that the immigration scheme is going online.
- 14. There arose an issue between the mother and father over the mother obtaining British Citizenship. According to the mother this caused a heated argument on the 5 May and an attack on her by the father that night, on the 6 May.
- 15. On the 10 May 2024 they travelled to Pakistan. It is the mother's case that the father had promised her that this was so he could apologise to the mother's mother (who he had involved in the assault by a video telephone call) and then a trip to Mecca to seek forgiveness for assaulting the mother.

16. In Pakistan the mother says she was encouraged to stay with her mother. She did so, with the children, after some protest. The father, she says, retained her and the children's travel documents.
17. She then, she says, was served with papers from the Family Court in Karachi. Those proceedings expand such that contact between the father and the children is ruled on by the Karachi court, the father divorces the mother, the children's names are placed on a passport control list, and an order is made that the children should attend school.
18. On the 1 June 2024 the mother relates that she was told by a neighbour in England that the father had returned to England and emptied the family home there.
19. The mother issued an application for wardship of the children in these courts. She submitted it on the 1 July and it is issued on the 18 July. That was granted by Mrs Justice Gwynneth Knowles on the 2 August 2024. The judge requests that anyone who is not in the jurisdiction and who is in a position to do so co-operates in securing the immediate return of the children and also makes orders for the father to handover to the mother the ID cards, residence cards and passports of her and the children. That is with a view to the mother bringing the children back to this jurisdiction. Gwynneth Knowles J makes a further order on the 12 August 2024. Mr Goodwin KC sitting as a Deputy High Court Judge on the 12 September makes a further order requesting the return of the children and orders anyone within the jurisdiction to co-operate in securing the return of the children. He lists this hearing and provides for a PTR.
20. On the 25 September an order was made appointing the Guardian to act for the children. At the PTR on the 29 October 2024 Garrido J repeated the order that anyone within the jurisdiction of the court should co-operate in securing an immediate return of the children and gave directions for this hearing.
21. In the meantime there has been a determination in the Family Court in Karachi on the 10 September 2024 in which they have acknowledged the requests of the English Court for the return of the children, but they have declined to do so on the basis that the judgment of the English court was *ex-parte* and not on the merits so not enforceable in Pakistan. Further, the Pakistan court asserts that the children's address is in Pakistan, and says that gives the Pakistani court jurisdiction, and, what is more, the family's time in England was contingent on the father's employment here.

22. I am told that the determination of the 10 September 2024 has been appealed by the mother and the appeal is proceeding to a hearing on the 14 November 2024 in the High Court. I am told that permission will be asked of me to allow this judgment to be put before the High Court. (I draw attention to the fact that I have not received any expert evidence in relation to the Pakistani law, and Professor George says to me that it may in fact be that it is not the appeal being heard on the 14 November, but that there are proceedings being conducted in parallel in the High Court and the Family Court, in which the High Court is considering the question of jurisdiction and the Family Court is considering practical arrangements on the assumption of jurisdiction.)
23. The father's involvement in these proceedings has been by way of:
- a. An email to the court on the 11 August 2024 just before the hearing on the 12 August 2024 drawing attention to the hearing in the Pakistani Court in the 10 August 2024 (which as I understand it is the Family Court in Karachi), which he says was to decide jurisdiction. Such decision he appears to say would be available on the 17 August. I understand that to be in fact the 10 September determination set out above.
 - b. An email on the morning of the 12 August 2024. This references the same hearing and attaches documents from the Pakistani proceedings.
24. I am satisfied that the father was well aware of the hearing today and has chosen not to participate. He was ordered to attend the hearing by Mr Justice Garrido. He has been repeatedly emailed to the same email address that he has used to communicate with the court. The effect of his non-participation is that the effect that the mother's evidence is in large part unchallenged. However, it does not mean this is an *ex parte* hearing. The father had the opportunity to participate and has chosen not to.

Mother's evidence

25. The mother gave her oral evidence remotely, and through a translator. She gave it across two days. I did not have the benefit of seeing her give her evidence. On the first day the connection at one stage broke down because of a power cut. On the second day the connection broke down and the majority of her evidence was given by WhatsApp.

26. She confirmed her statements, and she was taken through many of the critical parts of her evidence in chief by way of an exception to the normal rule that her written evidence should stand as her evidence in chief. I encouraged Professor George to take this path given that there was no one to cross examine the mother. Where her oral evidence might have been inconsistent with her written evidence, I put questions to her myself. And she was questioned on behalf of the Guardian.
27. I acknowledge that because of the father's decision not to involve himself her evidence was not subject to cross examination. I nonetheless find that her evidence was entirely credible. She struck me as a warm character with a lot to say. I had no reason to believe that she suffered from poor mental health as was alleged by the father in the proceedings in Karachi, and indeed she denied that she had ever been referred to anyone for treatment in relation to her mental health.

The Maternal Grandmother

28. The maternal grandmother also gave evidence by WhatsApp and through an interpreter. Again, I did not have the benefit of seeing her. She confirmed her written evidence. Two points were highlighted: one that when she was called by video 'phone early on the morning of the 6 May she was deeply distressed by the 'torture', as she put it that she saw had been inflicted on her daughter; and the second that when on the 10 May the mother and the father came to her home in Pakistan, and the father apologised to her in relation to his attack on the mother on the 6 May, it was an unexpected visit. That was a contrast with all other occasions when they had visited which had been arranged in advance.
29. Again, I found her evidence credible.

Mr F

30. Mr F attended the court in person. He confirmed his statement. He explained that his family were friends with the father's family and that he had been introduced to the mother when she came to England. He and she got on well.
31. Mr F reported that he had spoken to the mother shortly after the assault (as had his sister) and the mother had told him (as she had told his sister) what had happened to

her. The account is consistent with what the mother says in these proceedings. Mr F also reports that the father had admitted his assault to him, as well as to other members of his family.

32. Again, I found his evidence credible.

Ms K

33. I have read a statement from Ms K. That relates that on the 1 June 2024 she ‘phoned the mother to say the father and others were emptying her house in England. Ms K was not prepared to come to court to give evidence so even though her statement has a statement of truth I treat it with caution. I accept it however as evidence supporting the mother’s account of a ‘phone call on that day from Ms K to her.

Domestic Abuse

34. I record that the standard of proof is the balance of probability. I note that I have largely unchallenged evidence before me and that I have found the mother’s evidence credible.

35. Professor George asks for 6 findings. They are as follows (with some summarising from me):

- a. *Father is unable to control his temper and has been physically, emotionally and psychologically abusive to the mother throughout the relationship, by way of example falsely claiming she has mental health problems.* I decline to find that the father has been abusive throughout the relationship or that he was unable to control his temper. I do accept that in moments of difficulty between the parties he would bang his head against the wall, or his hands on the table. I will make findings on the particular incidents which have been detailed to me below. From the evidence that I have heard I find that the parties’ marriage was an unhappy one. The father, I was repeatedly told, did not, by and large, discuss matters with the mother and would spend his time either on his phone or on his laptop. That is not abuse. I do find that the father has made an unfounded allegation as to the mother having poor mental health in the proceedings in Pakistan and the manner in which he expressed that allegation is abusive in particular that the

mother is a ‘psycho patient’ and that she has ‘some shadow of the Devil (...) on her’.

- b. *When the mother was pregnant with the second child the father demanded she have an abortion and threw her downstairs and hit her stomach with a shoe. I make this finding. I have the mother’s clear and uncontested written and oral evidence on the point. I pressed her on this issue myself in oral evidence and she confirmed orally the account in her statement. I note that when I asked her why she did not think about leaving the father at this time if he had behaved as she alleged, she said to me that she had been brought up without a father and she thought that her children should have a father. So, she forgave the father for what is abusive behaviour.*

- c. *On the 5 May 2024 the parents argued about applying for British citizenship for the mother. The father became aggressive, banged his hands on the table and his head on the wall. I make this finding. I have the mother’s clear and uncontested written and oral evidence on the point. I accept, as she told me, the children were in the house as the row was happening and were aware of it and were frightened by it. Further, I accept the mother’s evidence that the father made an application for the children to have British Citizenship, but not her. I have information provided from the Home Office which details this. The applications were made on the 5 April 2024 and were withdrawn on the 24 May 2024.*

- d. *In the early hours of the 6 May 2024 the father assaulted the mother while she was asleep. He sat on her back and punched her back, pushed her neck down and slapped her, and twisted her left hand. I make this finding. I have the mother’s clear and uncontested written and oral evidence on the point. It is confirmed by:*
 - i. The evidence of her mother (the maternal grandmother), who relates that she was ‘phoned by the father immediately after the assault and she could see the mother, whose face was swollen and marked, and the mother asked her to ‘save me from this man he is going to kill me’.

- ii. The evidence of Mr F in his account of what was said by the mother to him on the 'phone shortly after the assault happened. Mr F had 'phoned in response to the maternal grandmother's requests that he should do so. Mr F also related, in his written evidence that the father accepted he had assaulted the mother.
 - iii. The fact that, as I have seen from medical records, the mother was admitted to A&E (that is the hospital emergency department) on the 8 May and discharged without being subject to a clinical assessment. She was admitted for a 'collapse / fainting'. That accords with her account that following the assault she spent two days in bed, during which she was provided with medication by the father, which rendered her drowsy. Only when she had not recovered did the father take her to hospital, and then he got very nervous and caused her to leave. Given the father accompanied the mother I am not at all surprised that the complaint was not described in the records as an assault.
- e. *The father stranded the mother in Pakistan by causing her to travel on a false pretence, retaining her and the children's travel documents and refusing to allow her to return to England.* I make this finding. I primarily rely on the clear oral and written evidence of the mother, but it is supported by the evidence of her mother (in particular that the visit was unexpected) and Mr F (in particular, that the father concealed the trip from him), and the fact that the parties did not pack up the house in England. In particular, I find:
- i. The father told the mother that the trip was for the purpose of apologising to her mother and then travelling to Mecca for a pilgrimage so he could ask for forgiveness because of the assault. She thought they would not be away for more than 2 weeks.
 - ii. The father swore on the Koran that they would only be away for 2 weeks.
 - iii. It was only because of (i) and (ii) that the mother agreed to go to Pakistan.

- iv. The father retained and continues to retain her and the children's passports and identity cards.
 - v. On arrival, the father arranged for the mother to be taken to her mother's home, where he apologised to her mother. She did go back to his parents' home but was encouraged to go and stay with her mother with the children, which she did eventually do.
 - vi. On either the 21 or 22 May she was served with court documents issued in the family court in Pakistan.
 - vii. On the 1 June the mother learnt from a neighbour in England that the father had been back to their house in England and emptied it.
 - viii. Since when she has been unable to return to England by a combination of orders of the court in Pakistan and the father retaining her and the children's passports.
- f. *The father has disposed of her chattels within the property in England.* The mother has given evidence that she left the home in England on the basis of a 2-week trip. She relates the telephone call of the neighbour. I have read the statement of the neighbour. The father, I find, has taken everything.

Habitual Residence

- 36. Habitual residence is a matter of fact.
- 37. There is no doubt that the children were habitually resident here on the 10 May 2024 when they left. They had been to two different nurseries near their home in the Midlands. They were registered with GPs. The mother had pressurised the father into making an application for E to attend primary school near their home in the Midlands which would have started in September 2024. They had leave to permanently remain here and the relevant card records that their presence was for settlement. Further, the father had made an application for them to become citizens.
- 38. The mother related that she had been told in advance of her wedding that she would be living permanently in England, and she had endeavoured to integrate the children in

this country. She would bring F to E's nursery. She would join in all events of the nursery. It was her who was the driving force for getting them enrolled in nursery and E into school.

39. Ms Papazian makes the point that the mother is the primary carer, and, where children are as young as these it is sensible to be mindful of the primary parent's habitual residence. Here there is no doubt that the primary carer was the mother, and she was habitually resident here, integrating herself into this country, first in London and then in the Midlands. She was making friends in each area and making health provision for her and the children and making education provision for the children.
40. I am aware that the father is saying in Pakistan that he was only in England for his work. The mother denied that, saying, that she was told she would be living in England when she married. The mother did give evidence that the father would travel for work. And that the parties did spend time in Pakistan. The father's travel for work was part of the reason that the Guardian considers the mother the primary carer. The trips to Pakistan were entirely consistent with a family who have close family abroad, and the ban on international travel during Covid. The time in Pakistan had no impact on habitual residence.
41. There can be no doubt that the children remained habitually resident in this country at the time of the mother's application to this court. Whether the date be the beginning or the end of July the short period of retention after the 2-week expected trip cannot shift the balance.
42. There is some question to be asked in relation to the current position, some 6 months after they children have been moved to Pakistan. I am aware that E has started school in Pakistan.
43. Ms Papazian says to me, in a forceful submission, that these children depend on their mother, their primary carer, for their habitual residence. And the mother is in effect trapped in Pakistan, rather than habitually resident there. In like manner the children are trapped not habitually resident in Pakistan.
44. Professor George relies on the following points:

- i. The children's lives remain in a state of significant flux. *I accept this point it is clearly right given the ongoing litigation here and in Pakistan.*
- ii. The children and their primary carer mother remain stranded in Pakistan – although that is a country in which they are nationals and have the right to remain, it is not the country the mother wishes to be in. *This is right.*
- iii. The family has no home of their own, forced by the father's actions to live precariously with extended family. *This is right and is to be contrasted to their position in this country where they, as a consequence of their leave to remain, have recourse to public funds. I do however need to consider that what was their home, a rental property in England is now not available to them.*
- iv. There has been on-going litigation for the entirety of the time that the children have been in Pakistan which fundamentally is about whether they should remain there, and although the children are very young the disruption to their primary carer mother will have affected the children's stability. *This is just a particularisation of (i)*
- v. The court has heard the mother's evidence about the children's lack of friendships, etc in Pakistan *I record I did hear that, and it contrasted with her evidence in relation to friends in the nurseries in this country.*
- vi. The children's belongings, as much as the mother's, remained in England and their whereabouts are now unknown. *I think that this is no longer a tie to England – the father has I suspect disposed of the chattels – but there is no tie to Pakistan through chattels.*

45. Considering the matter in the round I conclude that the children remain habitually resident in England. In essence I do so because they are now being held in a state of limbo while their parents' dispute is litigated. This is not normal life for them. It is not habitual or ordinary.

Jurisdiction

46. As a consequence of that finding I have jurisdiction to make orders by virtue of the section 2(1)(a) of the Family Law Act 1986.

47. If I am wrong about habitual residence, as of now, it does not matter because I have jurisdiction by section 2 (1)(b) because of the finding that the children were habitually resident here at the time the application was made.

Whether it is in the best interests of the children to make a return order.

48. It is appropriate as a preliminary matter before considering the question posed above to remind myself that in this matter the Family Court in Karachi has found that it is best placed to make orders in relation to these children.
49. I remind myself of the Protocol dealing with Child Abduction cases between the UK and Pakistan entered into in January 2003 between the President of the Family Division and the Hon Chief Justice of Pakistan. That protocol was designed to protect children of the UK and Pakistan from the harmful effects of wrongful removal or retention. It draws on the common heritage of law and common commitment to the welfare of children. And it is desirous of promoting judicial co-operation between the UK and Pakistan.
50. It sets out as its first term that in normal circumstances the welfare of a child is best determined by the courts of the country of the child's habitual or ordinary residence. I have determined that the habitual residence is here. I acknowledge that the children have now been in Pakistan for some six months but that is as a result of the father's actions not a consensual move. The mother has promptly sought the return to this jurisdiction, but her desire has been thwarted.
51. The second term is that if a child is moved from one country where it has habitual or ordinary residence to another without the consent of a parent with a custody/residence order the judge of the court where the child has been retained shall not normally exercise jurisdiction save to order the return of the child. Here there is not a custody or residence order preceding the move because the parents had lived together. I consider that I should however inform my approach to the terms of the convention by referring to the terms of the 1980 Hague Convention which talks about 'rights of custody' rather than custody orders. Here the mother was clearly exercising 'rights of custody': she was the primary carer of the children.

52. I further note at the fourth term that these principles should apply without regard to nationality, culture or religion of the parents.
53. In the light of these considerations, and noting that there has been no application by the father for a stay of these proceedings so as to consider a *forum conveniens* application, it is appropriate for me to go on and make a welfare determination of the application before me.
54. I do make very clear that it is not for me in London to dictate in any way how the courts in Pakistan deal with these children. For my part I am going to make orders which I consider to be in the best interests of the children and in accordance with the spirit of the Protocol.
55. The welfare case advanced by the mother is that given that the children, who were habitually resident in this country, have been stranded in Pakistan by the father's actions their best interest is to be returned to this country. If the father wants to remove them from their mother or move to Pakistan with them, he should then make an application to this court. The Guardian whole heartedly supports that position.
56. I consider that approach accords with the first paragraph of the protocol. There is nothing to make this case an exception to the normal rule that the court where there is habitual residence of the children is best place to determine issues in relation to them. Further given the findings that I have made as to the father's conduct to the mother, some of which the children were aware of, and the fact that she is their primary carer, I consider that it is in their best interest to be looked after by the mother. She wants to return to this country, and so they should return with her.

Conclusion

57. I will make orders that oblige the father to return to the mother her and the children's passports and relevant identity documentation on the basis that she will return with the children to this jurisdiction. I understand that there are orders of the Pakistan Court which have the effect of stopping her and the children leaving the country, so an application will need to be made to those courts before she can go. I will make orders that the father facilitates that and other necessary steps.

58. I will not and cannot make orders which oblige the court in Pakistan to behave in any particular way. What the courts in Pakistan determine will be a matter for them, and how they consider that this case should be dealt with, bearing in mind, no doubt, the 2003 Protocol between these courts and their courts.
59. I ask counsel to provide me with respectful draft orders. I anticipate that a realistic period of time should be provided for the mother to return with the children, and there will need to be a further hearing in the court after their expected return to deal with any dispute that arises as to their care.

Mr Justice Trowell