



Neutral Citation Number: [2021] EWHC 3703 (Fam)

Case No: KH21C00142

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

The Combined Court Centre
Lowgate, Kingston upon Hull
HU1 2E

Date: 2 November 2021

Before:

MR JUSTICE POOLE

Between:

**Re A and B (Children: Transfer of Proceedings to
Romania)
(No. 1)**

Kate Spence (instructed by the **Local Authority Legal Department**) for the Applicant.
Sara Blackmore (instructed by **GWB Harthills**) for the First Respondent.
Michael Burdon (instructed by **Howells Solicitors**) for the Second Respondent.
Jonathan Wilson (instructed by **Bates and Mountain Solicitors**) for the Third and Fourth
Respondents.

Hearing date: 2nd November 2021

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Poole:

1. This written judgment records my reasons for making the order for directions at the hearing before me today, 2 November 2021. It also provides a summary of the background to the application before me, which is the Local Authority's application to request a transfer of proceedings to Romania. For the reasons given below I am not prepared to grant that application today, but rather I have given directions with a view to determining the hearing once further evidence is available. I have directed that a copy of this judgment shall be translated into Romanian and provided to the Romanian Social Services and, if they are engaged in child protection measures, the Romanian Courts.
2. At this hearing Ms Spence appears for the applicant Local Authority, Ms Blackmore for the mother on instructions from her English solicitor, Mr Burdon for the father on instructions from his English solicitors, Ms Tutu appears as a Romanian lawyer who has been instructed by both parents in Romania, and Mr Wilson appears for the Children through their Guardian Ms Last.
3. I am concerned with two children, A, aged 6 years 9 months, and his brother, B aged 11 months. Their Romanian parents are the First and Second Respondents who came to live in England with A in 2017. On 10 July 2021, when he was aged eight months, B was brought to hospital by his parents having suffered a head injury. They reported that he had slipped in the bath and had then fallen from a 70 cm high bed onto the carpeted floor. A CT brain scan showed a right sided subdural haematoma causing mass effect. There were no significant external injuries but he also had scattered intraretinal haemorrhages in the right eye. A report from a Consultant Paediatrician written with a Paediatric Registrar concluded that "*the injury is suspicious of non-accidental injury given that the possible mechanisms described by his parents for the injury would be unlikely to cause an injury of this severity in the absence of an underlying metabolic or haematological disorder.*" B underwent surgery from which he appeared to make a good recovery.
4. The children were made subject to interim care orders on 16 July 2021. They were placed into the care of their maternal Aunt, who moved into the family home to look after them, whilst their parents moved out. Contact with the parents continued at the family home.
5. The case came before HHJ Cooper on 24 August 2021. Orders were made for expert reports in the fields of paediatrics, ophthalmology, and neurosurgery. At paragraph 23, HHJ Cooper ordered the mother to surrender A's passport to her solicitors forthwith. The Court was informed that B did not have a passport but an application had been made. The parents agreed to surrender the passport if it was issued.
6. The mother's solicitor made arrangements to meet her for the passport to be handed over on 31 August 2021. It should have been done sooner but the Bank Holiday and travel difficulties intervened, so Ms Blackmore has informed the court. On 30 August 2021 the mother and father removed the children from this jurisdiction and took them to Romania arriving on 31 August 2021. On 1 September 2021 the maternal aunt texted the social worker for the family saying, "*Hi Diane I'm in Romania with children and parents, it's not my decision they are not my children, They took the children from me by force and because I panicked I go with them*". On 2 September 2021 the Court made

a collection order but the children had already been removed from the jurisdiction. On 9 September 2021 the father emailed Mr Patrick, his English solicitor, “*We have returned to Romania indeed and have no intention to ever come back. A will start school here next week. B is closely monitored by the GP here. The Social Services have been notified and they are aware of our case. Please get in touch with our Romanian lawyer, Mrs Geta Lupu from now on.*” He gave contact details for Mrs Lupu. On 14 September 2021 the mother wrote to A’s English school, “*I am A’s mom and I am writing to inform you that our family has moved back to Romania for good to reunite with the rest of the family and start a new life.*”

7. The Local Authority has made numerous attempts to obtain information from the Romanian Authorities and ICACU in order to assist the Court in relation to what steps the Romanian Authorities would take in the event a transfer request was made. Unfortunately, the Local Authority has been unable to obtain any substantive response. A chronology of the Local Authority’s efforts is included In Ms Spence’s Position Statement.

Date	Action taken
13.09.2021	The Social Worker notified the Romanian Consulate (RC) that the parents had fled to Romania with the children. The RC were notified that the children were the subjects of Interim Care Orders.
20.09.2021	The Local Authority contacted ICACU advising that it is considering requesting a transfer of proceedings to Romania. ICACU were provided with a copy of the Court’s order dated 02.09.2021 and a summary of events discovered from 31.08.2021. ICACU responded the same day attaching request forms.
21.09.2021	The Local Authority provided the request for co-operation form to ICACU, along with the Court’s order dated 02.09.2021, the Collection Order and the Interim Care Orders. The Local Authority emailed the RC advising that it is considering transfer of proceedings to Romania and inviting the Romanian Embassy to send a representative to the next hearing. A copy of the Court’s order dated 02.09.2021 was provided to the RC, along with an accompanying letter.
27.09.2021	ICACU contacted the Local Authority to state that it has placed the Article 36 request on hold until a decision is made regarding transfer of proceedings. ICACU advised the Local Authority to contact the RC directly to ascertain the wellbeing of the children.
05.10.2021	RC contacted the Local Authority to state that they cannot be a party to care proceedings and are not competent to give an opinion on issues relating to the Court’s jurisdiction.
12.10.2021	The Local Authority notified ICACU and the RC that it is inviting the Court to consider a transfer of proceedings and provided information about the next hearing date. The Local Authority provided a letter summarising its concerns and requested information about the children’s current circumstances.
15.10.2021	Chaser email sent by the Local Authority to ICACU.
19.10.2021	Chaser email sent by the Local Authority to ICACU and the RC.

20.10.2021	<p>ICACU responded to the Local Authority and state: “...In your email of 12 October 2021 you are now requesting transfer of court proceedings to Romania. This request has not been transmitted as it is incomplete. There is no completed co-operation form and there is no sealed order from the court requesting transfer and the Romanian Courts acceptance. Once we have them then the unit will have 15 working days to assess, create the file and for the request to be allocated to the case manager, translations arranged (unless you (Local Authority) provide them initially) once the matter is with the Romanian Central Authority with translations they will transmit to the competent court. Once the court accepts the request the Court will have 6 weeks to determine if they accept jurisdiction. Alternatively, the court here can proceed court to court directly in Romania. If the Court determines that is the path of choice then the IFJO should be able to assist...”</p> <p>The Local Authority responded to this email the same day seeking clarification of the way forward.</p>
21.10.2021	<p>RC contacted the Local Authority to confirm that they have notified the Romanian National Authority for the Rights of Persons with Disabilities, Children and Adoptions and asked for a report on their current situation.</p>
25.10.2021	<p>ICACU responded to the Local Authority reiterating the procedure outlines above and reiterating that an order requesting transfer is required.</p> <p>The Local Authority sent a chaser email to the RC.</p>
27.10.2021	<p>The Local Authority sent a chaser email to the RC.</p>

8. I understand that B’s injuries were referred to the Police who are conducting investigations. I have no information from the Police about the state of those investigations but am informed by Counsel for the Local Authority that the police had intended to interview the parents, that the police regard the parents as wanted for child abduction, and that the police seek guidance from the court as to whether the court would seek to extradite the parents or to transfer proceedings to the Romanian authorities and courts.
9. The chronology of the Local Authority’s dealings with ICACU and the Romanian authorities shows that within three weeks of the abduction of the children by the parents, the Local Authority was considering steps to transfer proceedings to Romania. On 25 October 2021 the Local Authority made an application to this court for an order that under Article 8 of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereafter the 1996 Hague Convention) this court should request the Romanian courts to assume jurisdiction to take such measures of protection as it considers to be necessary in relation to the two children.

The Applicable Law

10. Following the United Kingdom's departure from the European Union as from 31 December 2020, Brussels IIR no longer applies, save under the transitional arrangements which do not apply in the present case. The Private International Law (Implementation of Agreements) Act 2020 gives domestic effect to the Hague Conventions 1996, 2005 and 2007.
11. Articles 5, 6, 7 and 8 of the 1996 Convention apply. The 1996 Hague Convention provides, where relevant,

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights

of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

(2) The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a) a State of which the child is a national,
 - b) a State in which property of the child is located,
 - c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
 - d) a State with which the child has a substantial connection.
- (3) The authorities concerned may proceed to an exchange of views.
- (4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

12. In the present case there is no dispute that the children were habitually resident in the jurisdiction of England and Wales immediately prior to their removal to Romania at the end of August 2021, and that their removal was wrongful. Neither is there any dispute that the Local Authority had parental responsibility for the children pursuant to the interim care order made on 16 July 2021 and that the Local Authority has not acquiesced in the removal to or retention of the children in Romania. Hence, Art 7 of the 1996 Hague Convention operates so that jurisdiction is kept in England and Wales irrespective of whether the Romanian courts also have jurisdiction on the basis of habitual residence, about which I make no finding. No challenge has been made to the jurisdiction of the Family Court to have made the interim care order. No party disputes that this court has kept jurisdiction by reason of Art. 7 of the 1996 Hague Convention, and therefore has jurisdiction under Arts. 5 and 6 of the 1996 Convention.
13. Part 12.61 of the Family Procedure Rules 2010 provides:

Transfer of proceedings under Article 8 of the 1996 Hague Convention

12.61

- (1) Where the court is considering the transfer of proceedings to the court of another Contracting State under rules 12.62 to 12.64 it will –
- (a) fix a date for a hearing for the court to consider the question of transfer; and
 - (b) give directions as to the manner in which the parties may make representations.
- (2) The court may, with the consent of all parties, deal with the question of transfer without a hearing.

14. Part 12.62 of the Family Procedure Rules 2010 provides:

Application by a party for transfer of the proceedings

12.62

(1) A party may apply to the court under Article 8(1) of the 1996 Hague Convention –

(a) to stay the proceedings or a specified part of the proceedings and to invite the parties to introduce a request before a court of another Contracting State; or

(b) to make a request to a court of another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.

(2) An application under paragraph (1) must be made –

(a) to the court in which the relevant parental responsibility proceedings are pending; and

(b) using the Part 18 procedure.

(3) The applicant must file the application notice and serve it on the respondents not less than 42 days before the hearing of the application –

(a) where the application is also made under Article 11 of the Council Regulation, not less than 5 days, and

(b) in any other case, not less than 42 days,

before the hearing of the application.

15. By FPR 12.62(3) 42 days notice has not been given before the hearing today. I would have to abridge time in order to proceed today to a final determination of the application.

16. Romania is a signatory to the 1996 Hague Convention. The principle of comity applies as described by Baroness Hale in *N(Children)* [2016] UKSC 15 at [4] and applied by Mrs Justice Knowles in *Re D (Care Proceedings: 1996 Hague Convention: Article 9 request)* [2021] EWHC 1970 (Fam) in a 1996 Hague Convention case:

“...Comity within the context of the 1996 convention requires this Court, when considering making a transfer request, to apply both the principle of mutual trust and the assumption that the

authorities of the other Contracting State are, in principle, competent to deal with all aspects of the case” (§72).

17. The question for this court is essentially which jurisdiction is better placed to continue and determine child protection issues in this case, the jurisdiction of England and Wales, or of Romania.

The Parties’ Submissions

18. The Local Authority applies for a transfer on the basis that Romania is better placed. The parents agree. The children’s guardian has doubts and considers that further evidence is required to be placed before the court before the matter can be determined. I agree with the guardian and the Local Authority has not pressed strongly for a final determination today given discussions before and during the hearing.
19. The question of transfer is certainly a balanced one. The determination of the facts as to how B’s injuries occurred is fundamental to decisions to be made about the protection of both children. B’s injuries all occurred here. His examination and treatment and the medical assessment that led to the public law proceedings all happened here. The medical records are held here and are in English. The children were habitually resident here at the time of the injury and the later abduction. A had lived most of his life in England; B all his life in England. The English police are involved as well as the English medical services. The English courts are already seised of the case and had made interim care orders. The parents abducted the children in breach of the English courts’ orders. It was a flagrant abduction. Through Ms Tutu the parents, who did not attend the hearing today, have suggested that they were not fleeing justice and did not realise that what they were doing was an abduction. Given the very recent court hearing only six days before the children were removed to Romania, at which hearing it was recorded that the mother would not flee, and that she was directed to surrender A’s passport forthwith (obviously to prevent flight from the jurisdiction) it is difficult to accept that the parents did not fully appreciate that what they were doing was abducting the children. Arguably the priority should be to secure the return of the children to this jurisdiction but no attempt has yet been made to secure their return through ICACU and the 1980 Hague Convention.
20. On the other hand the parents and children are in Romania, they have strong connections there. Ms Tutu tells me that Romanian social services are actively involved and aware of the proceedings in England, and B’s injuries. I have to say that it seems highly likely that the Romanian social services have only the parents’ accounts of events at present. One of the reasons for my giving this judgment more fully than would ordinarily be the case when giving directions only, is to allow for it to be translated and provided to Romanian social services so that they have a record of what has occurred in this jurisdiction and why the courts here are concerned to protect the children.
21. The determination of jurisdiction should be made as early as possible. Nevertheless, weighing all the evidence available to the court at this hearing, I am satisfied that it

would be wrong to determine this application today. Rather, further evidence is required for submission before a final determination.

22. In particular:

- i) Each parent separately shall file and serve a statement addressing (i) the circumstances of B's injuries in July 2021; (ii) the circumstances of their abduction of the children to Romania, and (iii) the family's circumstances in Romania, including all arrangements in relation to their accommodation, care, health and education of the children, and the family's contact with social services and the courts in Romania to date.
- ii) The parents are directed to file and serve copies of any communications and documents they have received from Romanian social services.
- iii) Social services in Romania are requested to send to the LA any welfare report, records of investigations, contact with the parents, and assessments of the parents as soon as practicable and in any event before the end of the month. The LA shall arrange for translations of such documents into English.
- iv) The Police are requested to file and service a statement providing an update in relation to their investigations into the circumstances of B's injuries and the abduction of the children to Romania. Any applications by the police to withhold information from the parents shall be made to Mr Justice Poole on notice to the Local Authority and the Children's Guardian.
- v) A copy of the order, and this judgment explaining the background and reasons for making the order shall be translated into Romanian by the Local Authority and provided to the Romanian Social Services and any Romanian court considering the protection of the children.
- vi) The Local Authority shall file and serve an updating statement.
- vii) Position statements shall be filed and served before the next hearing. The Applicant's position statement should include a statement of its position in relation to applying for return of the children to the jurisdiction of England and Wales under the Hague Convention 1980.
- viii) I offer to contact the International Family Justice Office for assistance in relation to transferring proceedings to Romania, in particular if there are no ongoing proceedings in relation to the children there.
- ix) I shall hear this case again, with a view to a determination of whether to request a transfer to Romania on 17 December 2021 subject to confirmation with the clerk of the rules.
- x) Other directions shall be given as I shall consider fit after further submissions. These are recorded in the approved order.