



Neutral Citation Number: [2021] EWHC 3702 (Fam)

Case No: KH21C00142

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

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

Date: 21 December 2021

Before:

MR JUSTICE POOLE

Between:

**Re A and B (Children: Transfer of Proceedings to
Romania)
(No.2)**

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: 21st December 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 an order staying the public law proceedings involving the children of the first and second respondents with a view to requesting a transfer of proceedings to the court in Romania. I have previously given a written judgment on 2 November 2021 when I gave directions. This judgment follows further steps taken since 2 November 2021. I have produced two written judgments so that translations can be obtained to be provided to the authorities in Romania. The intention is that the Romanian authorities will have a clear understanding of the concerns of the court in this jurisdiction and the reasons why a request is being made to transfer the proceedings to Romania.
2. I have listed the case before me for a short hearing on 4 February 2022 so that some further work can be done, but with a view to making the request for a transfer on that day. I have stayed the proceedings today and will confirm the stay (or lift it if circumstances materially change) on 4 February 2022.
3. I refer to my judgment of 2 November 2021 for the background to the case and the legal framework. I provided a judgment of that date which has now been translated. I have apologised to the parties for the subsequent delay in providing that judgment to them – I do not know why that delay occurred. The mother and father have provided statements as ordered but they do not provide any explanations for the injuries to B as directed. The parents did not attend the hearing today due, I was told, to a medical appointment with A. It was disappointing that, once again, they have not appeared before the court. However, they were represented by Ms Tutu, their Romanian lawyer. Their English Counsel attended but without instructions and, for the avoidance of doubt, I excuse the attendance of the parents’ English lawyers on 4 February 2022.
4. Ms Tutu has been very helpful in providing the court with evidence from Romanian social services and medical professionals. I have a translation of a letter from the General Directorate for Social Care and Child Protection dated 15 November 2021 which confirms that the children are regarded as being in “beneficial living conditions” in their parents’ care and have “good development within the family.” A social care report by the Public Service for Social Assistance has been provided in translation. It follows visits to the family. The author concludes that the parents are attentive, involved, and open to communication with the local authorities for the “good of the two children”. It was observed that the children were “happy, playful, sociable, and they do not appear to be neglected or abused ... [they] are safe at this moment in time.” They will continue to be monitored by the Public Service for Social Assistance at local level.
5. The choice for this court is, in effect, whether to request a transfer of proceedings to Romania, staying the proceedings here, so that the Romanian courts and authorities can take steps to protect the children; or whether to take steps to try to secure the return of the children to this jurisdiction so that the courts here can ensure their protection. I have previously referred to the principle of comity. I have no reason to doubt that the Romanian authorities are capable of protecting children within their jurisdiction.
6. Concerns about the injuries suffered by B are unresolved and remain troubling. The parents’ explanations of how B suffered injury have varied. The explanations they gave to medical professionals in England shortly after the injuries were sustained, were not

consistent with the injuries suffered according to medical opinion given at that time. Medical professionals were suspicious that the injuries were non-accidental. I now have medical evidence, in translation, from Romania, that B is well and, after CT scanning, there is no ongoing abnormality that is of concern. That is reassuring but it does not answer the question of what happened to him in July 2021 to cause his life-threatening subdural haematoma.

7. I am also concerned that the parents left England for Romania in the face of a court order that the mother should deliver up A's passport and when the children were subject to interim care orders which gave the local authority parental responsibility for both children. The parents left quickly, they did not inform the local authority, and they had not handed over A's passport as ordered by the court. They have given inconsistent evidence about their reasons for leaving. I conclude that they deliberately left in order to evade the court proceedings in England. This adds to the concern that they had something to hide in relation to how B suffered his injuries.
8. On the other hand the parents have not hidden from the authorities in Romania. In fact they have engaged with authorities there, they have been open to the involvement of social services and medical professionals. They have instructed Ms Tutu who has assisted the court in these proceedings as requested. Although their statements are not detailed and do not address all the matters they were directed to address, they have provided statements.
9. The authorities in Romania have investigated and continue to monitor this family for the purpose of child protection. B has been under medical care and has been investigated including by way of a CT brain scan.
10. I am told that the English police have confirmed that they have closed their case in relation to B's injuries. There are no ongoing criminal investigations.
11. The Local Authority submits that I should stay the proceedings in this jurisdiction and request transfer to Romania in accordance with Art 8 of the Hague Convention 1996. This is supported by the parents but opposed by the Guardian who represents the children. The Guardian is concerned, as I am, about the parents' failure satisfactorily to explain the injuries to B, and their flight from this jurisdiction. Notwithstanding those significant concerns, and anxious that my decision is not seen as giving way to parents who have fled justice in this jurisdiction, I have decided to adopt the position proposed by the Local Authority.
12. This family is not going to return voluntarily to England. They have relocated permanently to Romania. They have family there; they speak Romanian and have Romanian heritage. A speaks Romanian and B will do so also as he learns language. The parents have work in Romania and a home there. The children are apparently registered with medical practitioners in Romania. A is in education there. Social services are involved with both children. The children have lived there now since the end of August 2021. I have already recorded that the children were habitually resident in England prior to being wrongfully removed from this jurisdiction at the end of August 2021. It is very likely that they are now habitually resident in Romania but, even if that is the case, the Local Authority, having parental responsibility, did not consent to their removal and has not acquiesced in their retention in Romania. Jurisdiction

therefore remains with the courts of England and Wales but the family are now rooted elsewhere.

13. The parents have co-operated with child protection authorities in Romania. They did not do so in England because they fled the jurisdiction. They would resist attempts to secure the return of the children. I am not at all confident that even if the children were returned to England, the parents would follow and/or would co-operate with child protection authorities here. It is much more likely, as events to date have demonstrated, that the family will work with child protection services in Romania than in England. It is in the interests of these two children that their parents work with child protection authorities.
14. I cannot envisage effective enforcement of return orders in respect of the children were they to be made by the court in this jurisdiction. This is not a case of one parent abducting children against the rights and wishes of the other parent. Both parents have acted together. Further, the Romanian authorities, at least at this stage, have taken the view that the children are not at risk. Hence, there is virtually no prospect at present of securing the return of the children to England if this court were to so order.
15. Some of the evidence and sources of evidence relevant to child protection are in this country: the medical professionals who dealt with B, the social workers who were involved after his injuries, the medical records, and the maternal aunt, who, I am told, is now back in this jurisdiction. However, other evidence and sources of evidence, namely the parents, as witnesses, medical professionals and social work professionals now dealing with the family, and the children themselves, are all in Romania.
16. After very careful consideration I have determined that on the present evidence it is in the interests of justice, and it is in the children's own best interests, for me to stay the public law proceedings in this jurisdiction and to request the Romania courts to accept the transfer of proceedings to them. The authorities in Romania are better placed to protect the children. There are three qualifications which lead me not to make a final order today:
 - i) Steps can and should now be taken to speak to the maternal aunt to obtain evidence or information from her as to the circumstances of the abduction of the children, and as to the children's circumstances in Romania, if she can assist.
 - ii) Liaison through ICACU and the IFJO to ascertain the mechanism through which a request for transfer should be made given that there are no ongoing court proceedings in Romania.
 - iii) Translations of this judgment and of the child protection medical reports to be provided, along with the translation of my earlier judgment, to be sent to the appropriate authorities in Romania so that they have relevant information to assist them in protecting the children. Further, I am sure that the local authority can provide such further documentation from the proceedings here to the appropriate Romanian authorities on request.

Once those matters are dealt with I can formally request the transfer of proceedings. If further evidence comes to light which materially changes the circumstances, I can

consider that evidence on 4 February 2021 and review the stay of proceedings in this jurisdiction.

Addendum – 4 February 2022

17. I heard this case again on 4 February 2022. The maternal aunt has returned to England and has been interviewed by the Local Authority. She has changed her account, saying that she voluntarily chose to travel with the parents to Romania – she was not forced to do so by them. She says she had no concerns about the welfare of the children in their parents’ care in Romania.
18. The IFJO has given advice that rather than directing transfer of the proceedings to Romania, the proper order, if I deem it appropriate, is to request the authorities and courts in Romania to assume jurisdiction in relation to issues of parental responsibility and child protection for A and B to take such child protection measures as they consider are necessary. A period of six weeks is common for a decision to be taken overseas to assume jurisdiction.
19. My judgments in this case have been translated and, together with the child protection medical documents, have been provided to the child protection authorities in Romania, and will be provided to the courts in Romania if proceedings are begun.
20. I have therefore discharged the interim care orders in this case and requested the Romanian authorities and Family Courts to assume jurisdiction. Upon their assuming jurisdiction the proceedings will be transferred to them on the basis that it is in the children’s best interests that they should assume jurisdiction and that this court shall no longer exercise jurisdiction. I have requested the IFJO and the Central Authority for England and Wales to liaise with the Romania Central Authority to ensure that the request for the authorities and courts in Romania to assume jurisdiction pursuant to Article 8 of the 1996 Hague Convention can be resolved within six weeks. I have given liberty to the Local Authority to apply to restore the matter before me if the request is not accepted. I have directed that all statements, reports and other documents within these proceedings shall be disclosed to the Romanian authorities and Family Courts, together with the translated judgments and orders.