Neutral Citation Number: [2019] EWHC 3043 (Fam)

Case No: EX18P00145

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING IN EXETER

Exeter Combined Court
Southernhay Gardens, EX1 1UH

Date: 14/11/2019

Before :

MR JUSTICE MOSTYN

- -

Between:

AY	**Applicant**
- and -	
AS	**1st Respondent**
- and -	
A	
(By her Children's Guardian Sally Perryman)	**2nd Respondent**

- -
- -

Piers Pressdee QC & Roshi Amiraftabi (instructed by **The Family Law Company**) for the **Applicant**
Zoe Saunders (instructed by **Ford Simey LLP**) for the **1st Respondent**
Nicholas Bradley (instructed by **Stephens Scown Solicitors**) for the **2nd Respondent**

Hearing dates: 5 – 7 November 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) 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 Mostyn:

1. In this judgment I shall refer to the applicant as the mother; to the respondent as the father; and to their daughter as A. A was born on 31 January 2017 and is therefore 2¾ years old.

2. This is my judgment on the mother's application dated 26 April 2018 for permission to relocate A permanently to Kazakhstan, the mother's home country, where she proposes to live with A in the capital Nur-Sultan (which was known as Astana until March 2019).

3. It is my custom in a relocation judgment always to begin by quoting the wise words of Lord Justice Thorpe in *Re G (Leave to Remove)* [2008] 1 FLR 1587 at [19]:

> "These cases are particularly traumatic for the parties, since each of them conceives so much as being at stake. They are very, very difficult cases for the trial judges. Often the balance is very fine between grant and refusal. The judge is only too aware of how heavily invested each of the parents is in the outcome for which they contend. The judges are very well aware of how profoundly the decision will affect the future lives of the children and how difficult it will be for the disappointed parent to adjust to the outcome."

4. In similar vein in *Re AR (A Child: Relocation)* [2010] EWHC 1346 (Fam), [2010] 2 FLR 1577, [2010] 3 FCR 131, I stated at [4]:

> "Applications for leave to relocate are always difficult for the court and distressing for the parties. They involve a binary decision - either the child stays or he goes. There is no scope for any middle way. If the decision is that the child goes, then the left behind parent inevitably suffers a disruption to his relationship with the child, at the very least in terms of quantum and periodicity of contact. If the decision is that the child stays then the primary carer, if not invariably, then frequently will suffer distress and disappointment in having what will normally be well reasoned and bona fide plans for the future frustrated. So the decision, whichever way, is bound to cause considerable trauma."

5. In fact, as I will explain, a middle way was identified as this case drew to its conclusion. That middle way would allow the mother to relocate internally and thereby to seek to exploit her considerable potential in the employment market. I am satisfied that the middle way is the solution most consonant with the best interests of A, and I will adopt it for the reasons that follow. It is supported by the child's Guardian, Mrs Perryman. By the end of the case it was supported by the father. If I reject her primary case the mother accepts the middle way. The practical details of the middle way have been agreed by the mother and the father in the event that I adopt it in principle. Those details are set out below.

6. There is no dispute about the law. It is agreed that I correctly summarised it in my recent decision of *GT v RJ* [2018] EWFC 26 at [2] where I stated:

> "The legal test to be applied is now very straight-forward. It is the application of the principle of the paramountcy of the children's best interests, as taxonomised by the checklist in section 1(3) of the 1989 Act. That principle is not to be glossed, augmented or steered by any presumption in favour of the putative relocator. Lord Justice Thorpe's famous "discipline" in *Payne v Payne* [2001] 1 FLR 1052 is now relegated to no more than guidance, guidance which can be drawn on, or not, as the individual case demands. In fact, most of the features of that guidance are statements of the obvious. Obviously, if the applicant's case is not well thought out and is not supported by evidence it will likely fail. Obviously, if the applicant's case, or the respondent's defence, is not advanced in good faith but rather is driven by an unworthy ulterior motive, then that case, or defence, will fail. Obviously, the court must consider the impact on the mother if the application is refused as well as the impact on the father if it is granted."

7. The father was born in Hertfordshire and is aged 51. He is English. He is a self-employed builder. The mother was born in Kazakhstan and is aged 36. She is a Kazakhstan national. She is highly skilled being fluent in Kazakh, Russian, English and French. She obtained her bachelor's degree in Kazakhstan in English and French. In 2010 she started work at Nazarbayev University as personal assistant to two Vice Presidents. In 2011 she was awarded the Bolashak scholarship which enabled and funded study abroad. She thus undertook a Master's degree at King's College, London in education management. Thereafter she returned to Astana and to her employment at the University where she was promoted as a programme manager in the business school. She was working there when she was introduced to the father through a mutual friend in May 2014. At this point their interactions were only virtual; they physically met in September 2014 when the father travelled to Astana. Romance blossomed. They would meet every two months, alternating trips to Kazakhstan and England respectively. In 2015 they became engaged. In April 2016 the mother moved to Devon to live permanently with the father. They lived together in a mobile home within an old barn on a plot of land in Devon owned by the father. In May 2016 the mother fell pregnant with A. She was a planned baby. They were married on 18 June 2016. The mother was granted a spousal visa on 28 July 2016.

8. Unfortunately, cracks had already formed in the relationship by the time that the parties got married. It is not necessary to go into the details but among other tensions the mother appears to have been resentful of the father's close relationship with his de facto stepdaughters from a previous relationship. Things quickly went from bad to worse, so much so that by October 2016 the parties had entered into relationship counselling. I have no doubt that by this stage the relationship was doomed. The father can have had no doubt by this stage that the mother is emotionally labile and fragile. Indeed, I believe that he must have realised that this was the essential trait of the mother's personality from a very early stage in their relationship.

9. In December 2016 the parties moved to a rented cottage in Devon where the father's own parents live (albeit in separate dwellings as they are separated and have re-partnered). A was born, three weeks early, on 31 January 2017.

10. From the moment of her birth A has been adored by each of her parents. Comparisons are of course invidious, but it is my clear conclusion that the mother played the greater role in A's life in these early days. Plainly, the fact that she was breastfeeding A meant that the physical and emotional attachment between mother and daughter was very intense. This is not to say, however, that the father was remote, distant or uninterested. He was very involved and conscientious right from the start.

11. In July 2017 the mother and A travelled to Kazakhstan for a month-long holiday. There A was introduced to the mother's very close family. In September 2017 the mother's parents visited Devon from Kazakhstan. Meanwhile, the relationship continued its journey to inevitable collapse. By October 2017 the parties were discussing separation, and the mother raised with the father the possibility of her returning to Kazakhstan taking A with her. The parties returned to counselling at about that time.

12. On 10 December 2017 the mother and A travelled to Kazakhstan with the father's consent. In her first witness statement the mother said this:

> "On the way to the airport [the father] shouted at me in front of A which really upset me. Once I arrived in Kazakhstan we did not speak for several days. When we started talking, I asked [him] if he had thought about our relationship and the things that had come up in counselling. He replied that I had to 'sort myself out'. I told [him] that I was exhausted and that if he was not prepared to work on the relationship, then I wanted to separate and live in Kazakhstan with A. I asked whether he would agree to this and give his consent. He said he would, but wanted me to return to England first so he could have some time with A before she left and deal with the paperwork. When I returned [he] took A's passport."

13. Although the father does not agree with the way that this is phrased, he largely agreed with the thrust of the mother's evidence. Specifically, he agreed that he would give the necessary consent to A living in Kazakhstan with the mother. On 16 December 2017 he had sent a WhatsApp message to the mother saying "I would never want to lose contact with you or A, should it end up you staying in KZ". The following day the mother asked the father to send her the notarised letter of consent for A to live permanently with her in Kazakhstan. However, his position was that the mother and A had to return to England first to sort out the paperwork. He explained to me from the witness box that he made an insincere promise as a ruse de guerre in order to get them both back into this country. The mother and A returned on 16 January 2018.

14. The father's explanation to me is contradicted by a WhatsApp message sent by him to the mother on 25 January 2018 where he wrote:

> "I promised I would sort things out ASAP I will not hinder your return home. But A cannot leave without the correct

> documents and agreements being written down legally and that is that. I have organised this to be done as soon as possible."

15. The father's explanation that he had written this so as to induce the securing of A's passport is not true; it is clear, and I so find, that the passport was secured virtually immediately following the return of the mother and A on 16 January 2018. Thus, it can be seen that at this point in time the father was genuinely agreeing that the mother could return to Kazakhstan taking A with her.

16. However, pretty quickly the father had changed his position, and this has generated within the mother a burning sense of resentment. She feels she was duped into returning from Kazakhstan with A on the basis of a false promise. She also feels that a promise of which she had accepted the sincerity has now been broken. Of course, she could only have stayed in Kazakhstan with A had the father consented. Had she retained A at the conclusion of the holiday in the absence of such consent she would have been returned here promptly - of that I have no doubt, Kazakhstan having recently joined, for the UK's purposes, in April 2017 the 1980 Hague Convention club (following the authorisation by the European Union of acceptance of its accession in June 2016).

17. This event seems to have been a final fatal blow to the marriage. Both sides acknowledged it was over and by early March 2018 they were attending mediation. On 7 March 2018 the mother and A left the family home and moved to the home of a friend of the mother, sharing a single room in that property. That friend asked the mother to pay £400 a month in rent and the father agreed to pay this. In addition, he provided £50 a week in child maintenance. He also paid for her mobile phone charges and provided her with a car. The mother received child benefit of £20 a week. Thus, the mother found herself as a result of the breakdown of the marriage living in a single room in a friend's house with an income of £70 a week. This income regime continued until April 2019 when the mother was awarded universal credit, following the grant to her in January 2019 of a 30-month parental visa, with recourse to public funds.

18. Following mediation on 13 March 2018 the parties agreed that the father would have contact with A on three days a week from 9 am to 6:30 pm.

19. On 26 April 2018 the mother made her relocation application, for which she had been granted legal aid. This came before Judge Robertshaw on 7 May 2018. An order was made which had the effect of transferring the matter to the High Court. I shall have something to say later in this judgment about whether that was the right step having regard to the terms of the President's Guidance on the Jurisdiction of the Family Court dated 28 February 2018. One of the consequences of that order has been a great delay in the adjudication of the mother's application arising from a dearth of either full-time or deputy High Court judges to deal with it.

20. On 23 May 2018 the father made an application for overnight staying contact seeking two such nights each week.

21. On 18 June 2018 A was made a party to the proceedings.

22. On 5 July 2018 the father's application came before Judge Robertshaw who awarded the father more overnight staying contact then he had asked for, namely three nights a week. I expect this came as a surprise to everybody. Although the mother was disappointed, I record that she has complied scrupulously with this order ever since. In July 2019 the parties agreed that the father's overnight contact should be on three consecutive nights. Thus, the present regime is that the father has A from Saturday morning until Tuesday morning.

23. In September 2019 the mother was able to move to a rented two-bedroom flat in the centre of Exeter. The tenancy is for six months, which the father has guaranteed. The mother's income is provided by universal credit of £1200 a month, of which over £600 is for rent; child benefit of £20 a week; and £400 a month in maintenance from the father. Obviously, this means that the mother and A are living if not at, then very close to, the breadline.

24. The father lives in his mother's home. He told me that his pre-tax profit after expenses from his building business is around £30,000 per annum.

25. The mother has made a fair number of applications for part-time employment some of which had been of a standard far below that of her qualifications. None has been successful. She finds herself in an objectively intolerable position: she lives alone, close to the breadline, unemployed and isolated geographically and socially. There is no Kazakhstani community to speak of in Exeter. She has one close friend and has made some other less close friends from the NCT classes. She misses her family in Kazakhstan desperately. She has been recommended for antidepressants by her GP.

26. Her case is that she would only find personal contentment, and reasonable employment commensurate with her level of education and her skills, if she were to be permitted to return to Kazakhstan. In Nur-Sultan she would have access to an apartment which she owns together with her brother. Plainly, if it were not to be that apartment there is no doubt on the evidence that she would be able to obtain reasonable accommodation elsewhere in the city. Plainly, on the evidence were she to return to Kazakhstan she could obtain stimulating and reasonably paid employment. Plainly, on the evidence she would have the comfort and benefit of regular contact with her sister and brother, as well as her parents who will in the reasonably near future be moving from Uralsk to Nur-Sultan.

27. However, a move back to Kazakhstan does not seem to have been always her position because she has raised with the father the possibility of a relocation within these shores, specifically to London. In London there are far greater employment opportunities for a person in her shoes. Moreover, there is a significant Kazakhstani community in London.

28. In her first statement dated 30 May 2018 the mother said this:

> "If I remain in Devon I expect to have to settle for minimum-wage work. I would find this very demoralising given the hard work I have put into my education. I would also then struggle to maintain myself and A and pay for childcare… In time I would consider moving to London if I was able to find a job there. I have already mentioned this possibility to [the father],

> but his response was that he would not allow me to live further than half an hour's drive away from [redacted]. I feel he is being completely unreasonable and is holding me to ransom using A.
>
> …
>
> I am concerned about how I would cope if I had to stay here. As mentioned above, I continue to feel that [the father] seeks to belittle and undermine me when we see each other at handovers. I find this very distressing, particularly as I am so far away from my support network. I feel that [he] is trying to control me using A. The fact that he would not even consider or discuss the idea of me moving to London for better job prospects says a lot."

29. The father did not specifically traverse this in his evidence in response, nor did he deny it from the witness box. However, it is fair to say that his formal resistance to the mother's application has been to her application to take A out of this country rather than resistance to an internal relocation. Thus, in his first witness statement dated 29 June 2018 he stated:

> "A needs a situation where she sees both her parents on a regular basis which requires both parents to be in the same country or at least much closer than Kazakhstan which is a seven hour flight away making regular visits impossible."

30. Were her application to be granted, the mother's proposal for the father's contact with A is that for the immediately arising phase, which will endure until 2023, he should spend around 70 days a year with his daughter of which about half would be in Kazakhstan. Now, contact between father and daughter in Kazakhstan is a pallid substitute for contact between father and daughter at the father's home in England. It would have to be out of a hotel, or an Airbnb. The mother has proposed that she or her family would provide accommodation to the father but on due reflection I do not consider this to be very realistic. Similarly, the proposal that there should be a very regular WhatsApp video contact is a very poor substitute for the essential human interaction that direct contact allows. It is for these reasons that the Guardian has opposed the mother's proposal. She wrote two very thoughtful reports and gave measured and persuasive evidence from the witness box. In *Re G (Leave to Remove)* at [30] Lord Justice Thorpe recorded the judge's findings in that case about that mother's proposal for block holiday contact, similar to that proposed in this case, as follows:

> "He was perfectly satisfied that the proposals advanced by the mother were of such substance and regularity that there was no appreciable risk of the essential nature and quality of the bond between father and children being lost or diminished."

31. I asked Mrs Perryman if in this case she felt that the mother's proposals would give rise to an appreciable risk of the essential nature and quality of the bond between the father and A being lost or diminished. Her clear answer was that in her opinion there

was indeed such an appreciable risk, and I agree. Is that a price worth paying, in order to give the mother the personal contentment, and functional fulfilment that she so ardently craves?

32. My answer to that question, at least at the present time, is no. My conclusion is, at least until an internal relocation has been offered to the mother and has been authentically and in good faith tried and failed, that the mother's proposal for the contact between the father and his daughter is objectively unreasonable and contrary to A's best interests.

33. I have therefore reached the conclusion that the mother's application is premature and should fail. Instead the secondary solution should be adopted. I will set out below the terms of that secondary solution. I have considered whether the mother's application should be dismissed or stayed. The advantage of staying the application is that continued existence of the application, albeit in hibernation, would incentivise the father to cooperate with and to support fully a reasonable internal relocation plan by the mother. It would also probably assist in the provision of legal aid funding should the mother seek to renew her application. However, while it is true that FPR rule 4.1(3)(g) allows the court to stay the whole or part of any proceedings or judgment either generally or until a specified date or event, it is clear that such a power under that rule is only available for a procedural reason: see the Supreme Court Practice at para 9A-178. My reason for staying the mother's application would not be procedural, so that rule is not in play. Therefore, if the application were to be stayed it would have to be pursuant to the court's substantive power. The existence of that power is acknowledged in, but does not derive from, section 49(3) of the Senior Courts Act 1981. It is an ancient common law power, which the courts have possessed and exercised according to Lord Blackburn from "early times (I rather think, though I have not looked at it enough to say, from the earliest times)" (*Metropolitan Bank v Pooley* (1884-1885) L.R. 10 App. Cas. 210, HL, at 220-221). Where an application has been regularly made and defended it is a strong thing for the court to decline jurisdiction and it should only do so for very good reason: *Cohens v Virginia* (1871) 6 Wheat. 264, SC of USA, per Marshall CJ; *Shackleton v Swift* [1913] 2 K.B. 304, CA, at 312 per Vaughan Williams LJ; *Abraham v Thompson* [1997] 4 All E.R. 363, CA, at 374 per Potter LJ.

34. In my judgment the fact that this application has been made prematurely does not raise it over the high bar of exceptionality justifying a stay. The mother's application will therefore be dismissed.

35. The Guardian's recommendation was that if the mother's primary application were dismissed, she should nonetheless be permitted to take A to Kazakhstan for holiday periods so that she can meet her Kazakhstani family and engage with her Kazakhstani heritage. The father's position was that such permission should not be granted because there was a risk that the mother would unlawfully retain A in Kazakhstan rather than return her at the end of such holiday periods. This submission was made notwithstanding that since 1 April 2017 Kazakhstan has, as regards this country, been a full member of the Hague 1980 Convention.

36. The father's objection was based on some written evidence which suggested that corruption was rife in Kazakhstan and extended into the judiciary. I reject that evidence and do not regard it as acceptable where the country in question is a Hague

1980 member. I can see that it would be permissible to adduce evidence that an existing member of the 1980 Convention has fallen into civil collapse so that the Convention is not in effect working in that country, and one can think of two countries where that could be said to be the case. Equivalently, one can think of the situation where there is strong evidence that a long-standing member of the Convention is simply not complying with its rules. However, a vague and largely unparticularised assertion that corruption is at large generally in a state would not, in my judgment be an acceptable reason for assuming that the country in question would not faithfully apply the Convention when asked to do so. In the European Commission's Proposal for a Council Decision authorising Member States to accept the accession of Kazakhstan to the 1980 Hague Convention given on 7 June 2016 it is recorded that there had been stakeholder consultations and an experts' meeting as to the merit of accepting the accession of Kazakhstan. Further, information had been gathered by the EU delegation in Kazakhstan, as well as from the Permanent Bureau of the Hague Conference on Private International Law and UNICEF. In the view of the Permanent Bureau "Kazakhstan is a motivated State working hard with a view to implement properly the 1980 Convention." In the light of all of this evidence the Council duly accepted the Commission's proposal to authorise member states to accept the accession of Kazakhstan and this country duly did so with the Convention coming into force between us and Kazakhstan on 1 April 2017.

37. In such circumstances I conclude that it is simply not permissible for the father to assert that Kazakhstan would fail in its duties under the Convention.

38. The expert evidence on Kazakhstan law discloses that the parties may execute a written agreement under article 73.3 of the Kazakhstan Family Code for the exercise of parental rights by a parent living separately from the child. It is implicit from the expert advice that the Kazakhstan court would, on an application under the 1980 Hague Convention, treat such an agreement very seriously if not decisively. The mother and father will execute such an agreement before the mother is to be permitted to take A to Kazakhstan for holiday periods.

39. The agreed terms of the secondary solution are as follows:

    i) There will be a child arrangements order that A lives with both parents unless the mother's immigration status requires an order that A lives solely with the mother.

    ii) The current arrangements will continue whereby A is in the care of her mother from Tuesday at 8am until Saturday at 8am and with her father for all other times will continue, so long as she is living in Devon, unless the parties agree otherwise.

    iii) The mother has permission to relocate with A outside Devon within the jurisdiction of England and Wales in the event of finding suitable employment outside Devon.

    iv) Any further applications for relocation, whether internal or external, or in relation to the arrangements for A, shall be reserved to me, if available.

v) The matter is to be listed for a mention in the event of dispute as to the terms of any final order, to be vacated by agreement.

vi) There is no prohibition on the mother travelling with A to Kazakhstan for the purposes of a holiday three times per annum (and more by agreement) for a duration of up to one month on each occasion, provided that the parties have executed a written agreement in Kazakhstan in the terms of the final order pursuant to the advice of the expert. During these periods, the child arrangements under the subsisting child arrangements order shall be suspended.

vii) Subject to a Kazakhstani agreement being in place, the first such holiday may take place at end of December 2019 so mother and A can spend New Year in Kazakhstan with her family

viii) The father shall:

a) fund the reasonable costs of travel (being the cost of return travel between the mother's home and the airport in England, and direct return flights between the UK and Kazakhstan) of mother and A for two out of three trips to Kazakhstan each year starting December 2019 (estimated cost per trip £800);

b) pay the shortfall of the costs of the mother's application to renew her parental visa as and when such renewals fall due;

c) pay the costs of an agreed Kazakhstani lawyer drafting the agreement referred to at paragraph (vi) above; and

d) fund such nursery provision as is required for A to facilitate the mother's employment (subject to the mother taking advantage of any State-funded assistance in respect of child care available to her and for which she is eligible), the identity of the nursery and the precise amount of days and hours required to be agreed between the parents.

ix) Further to the undertaking given by father on 13 September 2019, the father agrees that he shall continue to make payment to the mother of £400 p.m. for maintenance in respect of A plus £7.60 each week towards her travel costs beyond mid-March 2020 pending the determination of financial remedy proceedings or other agreement between the parties.

40. Before parting from the case, I need to say a few words about its transfer to the High Court.

41. I have mentioned above the order of 7 May 2018. This is somewhat ambiguously headed:

In the HIGH COURT OF JUSTICE
FAMILY DIVISION
The Family Court at EXETER

The order records that Judge Robertshaw was sitting as a judge of the High Court (section 9) in Exeter. It further records that Judge Robertshaw had "referred the mother's application to the FDLJ, Mrs Justice Roberts who has released the case to Judge Robertshaw sitting as a Judge of the High Court (s9)."

42. Although there is no actual order made by Mrs Justice Roberts transferring the case to the High Court the case has been treated as having been so transferred by her ever since. Only a full-time High Court judge (or higher) can transfer a case from the Family Court to the High Court: see FPR rules 29.17(3) and (4). Every order made since 7 May 2018 has been headed as above; and every hearing has been before a circuit judge authorised to act as a High Court judge under section 9(4) of the Senior Courts Act 1981.

43. The order of 7 May 2018 was made shortly after the coming into force of the President's Guidance of 28 February 2018. It is possible that the Guidance was not at the forefront of everybody's minds on 7 May 2018.

44. The full title of the Guidance is: "Jurisdiction of the Family Court: Allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court."

45. Para 9 of the Guidance states:

> "It is particularly important, when a case is being heard by a judge of High Court level, that the order should accurately record whether the judge is sitting in the High Court or in the Family Court. If the judge is sitting in the Family Court, the order must be headed "In the Family Court sitting at …" and not "In the High Court of Justice Family Division." This is so whether the judge is sitting in the Royal Courts of Justice or anywhere else. Accordingly, when the judge is sitting in the Royal Courts of Justice, but in the Family Court rather than the High Court, the order must be headed "In the Family Court sitting at the Royal Courts of Justice.""

That paragraph was not followed in this case. The heading of the order of 7 May 2018 appears to suggest that the case is proceeding both in the High Court and the Family Court, although the latter reference may have been intended to be only to the geographical location of the sitting of the High Court.

46. Para 18 provides:

> "Except as specified in the Schedule to this Guidance every family matter must be commenced in the Family Court and not in the High Court."

Part B of the Schedule specifies those matters which should be commenced in the High Court even though the Family Court has jurisdiction.

47. Item 19 of Part B of the Schedule specifies:

> "Proceedings with an international element relating to recognition or enforcement of orders, conflict or comity of laws which have exceptional immigration/asylum status issues."

This was very carefully drafted. The only "international" cases which can be issued in the High Court are those which have exceptional immigration/asylum status issues. Plainly, this was not such a case.

48. Para 30 of the Guidance provides:

> "It is very important for the Family Court, which has now been in existence for nearly four years, to gain the respect it deserves as the sole, specialist, court to deal with virtually all family litigation. Except as specified in the Schedule to this Guidance, cases should only need to be heard in the High Court in very limited and exceptional circumstances."

Plainly, there were no very exceptional circumstances justifying the transfer of this case away from the Family Court to the High Court.

49. Should this case have been allocated within the Family Court to High Court judge level? Para 21 of the Guidance states that a case of "complexity" may be allocated to a judge of High Court level within the Family Court. Was this such a case? Given that Kazakhstan is a Hague Convention country I am quite sure that the criterion of complexity was not satisfied and that was no reason for this case to be heard other than at circuit judge level within the Family Court. Indeed, I struggle to understand why any relocation case, whether or not the destination country is a Hague Convention country, needs to be heard within the Family Court at High Court judge level. While these cases are difficult at a human level they are not legally or factually complex.

50. Although I have provided that this case will be reserved to me in the interests of judicial continuity, I nonetheless order that it is transferred from the High Court back to the Family Court.

51. That concludes this judgment.