

TRANSCRIPT OF PROCEEDINGS

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Neutral Citation No [2019] EWHC 2175 (Fam)

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

The Royal Courts of Justice
Strand

Before THE HONOURABLE MRS JUSTICE THEIS

IN THE MATTER OF

R v P (No 2)

MR A PERKINS appeared for the Applicant Father

MISS H HOLLMANN appeared for the Respondent Mother

MISS S JAFFAR appeared for the Child

**JUDGMENT
14th MARCH 2019
(AS APPROVED)**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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. This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

MRS JUSTICE THEIS:

Introduction

1. The court is concerned with two applications relating to a little girl, X, age 7. She lives here with P, her mother and her second husband and their child, her father, R, is in Lithuania.

2. The two applications before the court are, first, the mother's application to change X's surname to that of her second husband. Originally it was to replace X's current surname, but her revised position is for X's current surname to be retained as a middle name, thereby continuing that connection with her father's surname. The second matter is the father's application, under article 21 of The Hague Convention, for an order that he could spend time and have contact with X. X is a party to the applications and is represented by her Children's Guardian, Miss Odze, through Miss Jaffar. Both parents are represented today; the father by Mr Perkins and the mother by Miss Hollmann. The court is extremely grateful to Miss Hollmann for agreeing to represent the mother pro bono, until Miss Hollmann's recent agreement to do that the mother has been unrepresented in these proceedings. She has had the very helpful assistance of a Mackenzie Friend who has a detailed knowledge of these proceedings.

3. The parties have been able to reach agreement about a number of matters. In particular, the father agrees that he should participate in a programme, that we have been given details of, to help address his previous behaviour and the details are in the letter from the Lithuanian Central Authority. The programme is to address domestic violence and to ensure that those who have dealings with the father are protected from that in the future. Secondly, the parties have agreed that arrangements will be made so that the father and the paternal family can send gifts and cards to X three or four times a year for her birthday, at Christmas, at Easter and the start of the school term in September. They have also been able to agree arrangements so that the mother will make X available to receive emails and gifts and cards from the father and the father's family. The mother has agreed also to encourage X to acknowledge receipt of these communications and gifts to the father and the father's family and the mother has also agreed to inform the father in relation to important events in X's life. There is also an agreement to have an exchange of photographs and the mother has agreed to keep the photographs safe and make them available for X on a continuing basis.

4. The matters the parties have not been able to agree about are the mother's application to change X's name and, secondly, whether the father should have details as to where X goes to school and details in relation to her general practitioner.

Relevant Background

5. The background to the parties' relationship is set out in a very long judgment that this court gave in 2017 at the conclusion of the proceedings brought by the father under The Hague Convention seeking X's return back to Lithuania (*R v P 2017 EWHC 1804 (Fam)*). In refusing that application I set out in the judgment the background and the reasons and refer to that judgment for the detail of the background. Both parents are Lithuanian nationals, they married in 2010, X was born in 2011, and they separated in August 2012. There were detailed proceedings in Lithuania relating to the father's

violent and threatening behaviour both to the mother and X between 2012 and 2015. There were also proceedings in Lithuania relating to the father's contact with X. In particular, there was an incident in the trampoline park that I describe at paragraphs 34 and 35 of my judgment, where the court in Lithuania that had to consider this issue concluded that the father on that occasion had avoided giving X back to the mother, pressed her strongly and the child was returned to the mother only after applying physical force to the father. The court in Lithuania also noted about this incident caused X fear and psychological discomfort and had a negative impact on her. The mother said that it was as a result of the father's behaviour that she left Lithuania with X and came to this country in October 2015. The father last saw X on 21 September 2015. The mother has formed a new relationship in this jurisdiction, has remarried and, as I have said, is living with her second husband, X, and their child from that marriage.

6. In refusing the father's Hague application in 2017 I dealt with the father's behaviour, as follows at paragraph 138:

“Whilst there is of course a history of the father being punished for any breaches by the Lithuanian courts for his actions, what is of more concern to this court is the lack of recognition now by the father of his actions in the past and, in particular, their impact on X which, in my judgment, supports the mother's fears that he cannot be trusted to comply with undertakings that he offers or compliance with orders made by the courts in Lithuania.”

7. I made an order at the conclusion of those proceedings in March 2017 that included a provision at paragraph 10 that, until the Lithuanian court took any other measures as it considered appropriate, there were arrangements made for the father to be kept updated about X and for there to be regular email correspondence between them. That contact, for disputed reasons, has not taken place.

8. The mother made an application in January 2018 seeking two orders. Firstly, a prohibited-steps for an order preventing the father from removing X from this jurisdiction and, secondly, seeking an order that her surname is changed. That application came before me for directions on 19 April, 17 May, 11 July and 25 July last year when I gave directions for the mother to file evidence in support of her application, directions for service and engagement by the father in the application and also joined X as a party to those proceedings. The father, in fact, issued his application under Article 21 of The Hague Convention on 9 October and I made directions on both applications on 1 November. The father accepts that this court had substantive welfare jurisdiction to decide welfare matters in relation to X. I made directions for the evidence to be filed and for there to be a report by Miss Odze.

9. The application came back before the court on 25 January when all the information had been filed and today's hearing was listed to deal with two matters: one, whether the court can determine the applications by the parties for child arrangements orders and the mother's application to change the last name of the child on the information currently before it, or whether it is likely to be assisted by determination of further factual issues; and, secondly, if a further hearing is required, a time estimate and directions required to effect the same. At that time, the mother was still unrepresented. Through the assistance of the court, she was put in contact with Miss Hollmann who agreed to take on her legal representation and has represented the

mother today. All parties agree I can determine the issues today and no party seeks any further hearing.

Submissions

10. I have read the position statements filed by the parties, the updated statements from the mother and the father, the court bundle, and I have heard the submissions from the parties' legal representatives. All parties agree that the court is concerned with making decisions relating to the welfare of X and the court is guided by what are in X's paramount welfare interests having regard to the matters set out in the welfare checklist in section 1(3) Children Act 1989.

11. In relation to the application for a change of surname, Miss Jaffar in paragraph 17 of her helpful position statement has outlined the relevant considerations the court should consider following the case in *Re W, Re A and Re B, change of name, [1999] 2FLR 930* at 933F. It is agreed that only some of those matters are relevant, namely on any application the welfare of the child is paramount and the court needs to consider such matters as whether the matter that may arise in the future as well as the present, to give consideration to the reasons for changing or seeking to change a child's name. If it is based on the fact that the child's name is, or is not, the same as the parent making the application that does not generally carry much weight. In addition, Mr Perkins has referred me to the case of *Re F [1994] 1 FCR 110* where the Court of Appeal allowed an appeal, observing that the change in a child's surname is not to be taken lightly and that changing the child's name is a matter of importance.

12. On behalf of the father, Mr Perkins, seeks to have information in relation to X's school known to the father as well as details of her general practitioner. In paragraph 30 of his position statement he submits that the court needs to consider that the most recent finding in relation to the father's behaviour by a court of misconduct was in September 2014, that he has complied with orders to date, he was present in this jurisdiction in November 2018 and has not taken any steps to locate the mother or find any further information that would identify where she is. The father knows the mother may be in London and he knows of the identity of the mother's husband through Facebook, but Mr Perkins says there is no evidence that the father has taken any steps to seek to identify where they are. The emails that he wrote to the mother in November 2018 were direct, he said, and polite and they asked for details in relation to X's school and, when the mother refused to give that information, the father did not take any further steps in relation to that. Mr Perkins says all of this is to the father's credit and to redact any identifying information in relation to X's school is a disproportionate interference with the father's Article 8 rights, especially when the father offers undertakings not to attend the school unless it has been agreed in writing by the school and the same protective measures are offered in relation to the identification of X's GP.

13. Regarding the application for X's change of name, he does not accept the compromise put forward on behalf of the mother. He submits you have to look at the context of what Miss Odze sets out in her report, at paragraphs 37 and 50. Firstly at paragraph 37 she highlighted that X had told her, when she went to visit her that she has no photographs of her father or her paternal grandparents and it was clear that X had no knowledge of her paternal family as to who they are, and draws attention to the fact that she has such limited information in relation to her paternal family. At paragraph 50 of

that report, she says that she does not support the mother's application to change X's surname. She reports the mother told her that the change of name would provide her – that's the mother – with the necessary safeguards preventing the removal of X from her care if they ever travelled to Lithuania. However, she had not provided any information about that and Miss Odze said that she would consider that position if further information was provided but unless that information is provided, she does not support the mother's application. She is concerned, if the application was granted, that it would seek to further distance X from her father and her background and the reality is that, even if it is her middle name, as is being proposed by the mother, it will rarely be used in day to day life and, in reality, she will only be known by her stepfather's surname. He submits this sends the wrong message in the context of where the court and the order are trying to re-establish and build up contact between X and her father.

14. Miss Hollmann, on behalf of the mother, relies in relation to redaction of identifying information about the school and general practitioner on the findings of the courts that were made in 2014 and what I set out at paragraph 138 of my judgment in March 2017. She says there is no sign of the father recognising, or showing any recognition, of the impact of his behaviour on the mother or X. For example, in his discussions with Miss Odze on the telephone in December 2018 he made it quite clear that he disputed the findings that had been made and showed no recognition or understanding in relation to those conclusions reached by the court in Lithuania and the court here. In his statement dated 20 February 2019, at paragraph 4 he states as follows:

“I continue to not accept the conclusions made by the Lithuanian family court in relation to domestic violence involving the mother or the conclusion of the Lithuanian criminal court for the incident in the trampoline park 2014. I was not trying to take X away or abduct her on this occasion, indeed X was holding on to me so tightly that she did not wish to go with her mother and in a fit of aggression, pulled X away from me. The whole situation was extremely distressing for X, but I feel I was at no fault.”

That, submits Miss Hollmann, is contrary to what were the conclusions reached by the court in Lithuania and it is deeply concerning that there is no recognition or responsibility by the father for the impact of his actions as has been found by the court. It is hoped, albeit belatedly, that it will change with the programme that the father has agreed to participate in, because that it exactly the sort of issues that are to be addressed by that programme. He has to change, submits Miss Hollmann, if he seeks to re-establish a meaningful relationship with his daughter. Miss Hollmann said that in redacting the identifying information the mother is not saying the father should have no details about how X is doing at school, or any relevant medical information, it is just that it should not be done in a way that identifies where she actually attends which, Miss Hollmann submits, on the facts of this case is a proportionate interference with the father's Article 8 rights.

15. In relation to the application for the change of surname, Miss Hollmann submits that the mother has recognised what has been said by the Guardian and changed her position which she hoped would meet the objections by the father and the objection by the Guardian by having X's current surname as being her middle name and then having her second husband's surname as X's surname. She submits that it is in X's interests as

it accords with X's wishes when she was seen by Miss Odze. At paragraph 24 of the report she states as follows:

“Without prompting X said, and I quote: “I want to change my surname because I want to be like all my family.” About the possibility of losing her father if that were to happen, she said: “It’s okay because I still have [B], he is my stepdad, but I feel like he is my real dad, even if he is not.” When asked how she would feel if this was denied, X said: “I still would really, really want to be like the rest of my family and I will say to my mum that I want to be like the rest of my family.” Even if her father did not consent, she told me: “I would want to have my surname like my family.” I asked her whether she would keep – it would help change her mind about having email contact with her father if he agreed, X replied: “No, I still would not want to talk to him.””

16. Miss Hollmann says that it is in X's interests because it accords with her wishes and it will help increase her sense of stability and security that she has in the home that she currently lives in. She is reported by her mother as not liking having a separate name from the rest of her family and that this application, if it was granted, would better recognise X's reality of her life.

17. Miss Jaffar supports the mother in identifying information being removed from the school and the GP records that are sent to the father. Miss Odze recognises the high level of the mother's anxiety and is pleased that she has been informed that the mother is receiving support to be able to address this. Miss Odze reports that X feels safe and secure at school, that it is an important part of her emotional and educational development and should not be put at risk. It is particularly important that stability remains secure at a time when there may be steps taken to try and rebuild her relationship with her father.

18. Regarding the change of name Miss Jaffar submits, at the time the recommendation was made in the report, it was not known then that the father was willing to undertake work to address his past behaviour. That position has now changed. Miss Odze sees the revised proposal by the mother as a good compromise, but she does not actually express any strong views in support of it. Miss Jaffar submits that we are at the beginning of a journey regarding X's relationship with her father and, if the application is refused today, it does not mean it cannot be discussed and possibly agreed later but it is important at this time that X is not left with a negative sense of her father being removed from her identity.

Decision

19. Having considered the submissions of the parties I have reached the conclusion, having considered X's welfare needs which are the court's paramount concern, having regard to the checklist that, firstly, the mother should be permitted to continue to withhold identifying details in relation to her address, information relating to X's school and her GP. And that, secondly, that the mother's application to change X's surname, in my judgment, should be refused. I have reached that conclusion for the following reasons.

20. Firstly, I accept the evidence that the school is an integral part of X's educational and emotional development and stability, it is an important aspect of her emotional and wider psychological development.

21. Secondly, the long history by the father of repeated breach of orders between 2013 and 2014, as found by me at paragraph 138 of the March judgment, has not been a conclusion that has been recognised by the father in his conversations with the Guardian on 12 December and in his statement, at paragraph 4, confirmed as recently as 20 February. The result is that he has remained, and continues to remain in my judgment, a risk to X if he should take steps to try and find her without her knowledge. I have factored and balanced the points made by Mr Perkins that the father has not done anything since 2014, he attended this country in November 2018 and, although he had some limited information, has taken no steps to find the mother or X and will give undertakings in the way that have been set out however it is deeply concerning that despite findings made in Lithuania and here, the father remained until very recently resolute in not accepting them. In my judgment, that shows little recognition or insight by him of the impact of his behaviour on the mother and X.

22. Thirdly, whilst I welcome his agreement to undertake the work in relation to domestic violence referred to in the letter from the Lithuanian Central Authority, that is extremely late and, at the moment, is untested. I sincerely hope the father will do this, will produce evidence to demonstrate a change in his behaviour and attitude and that he has effectively completed this programme because it is only if he does that that there is any real prospect of him being able to restore any relationship with X.

23. Fourthly, the mother agrees that school information should be provided, it is just the identifying information that she objects to. Therefore, in the circumstances of this case, any interference in the father's Article 8 rights are, in my judgment, proportionate when balanced against the risks that I consider there are to X if her current stability at school is put at risk in any way.

24. Fifthly, turning to the change to X's surname, whilst I recognise the revised position of the mother in some way meets the concerns of the father and the Guardian and that having this change of surname is something that X wants, but I have to balance that with X's wider welfare interests.

25. Sixthly, it is of some concern that there is nothing in the mother's home regarding the father, as recorded in paragraph 37 of the Guardian's report. The application was put on the basis, by the mother, that having the change of name would make it easier, and said to be safer, for her to travel in Lithuania. No further information has been provided about that and, in any event, the order that has been agreed between the parties can be registered in Lithuania which will give her the protection that she requires.

26. Seventhly, I cannot ignore the fact that the order agreed by the parties, this is at a time when very tentative steps are going to be taken to seek to re-establish some relationship by the father with X. Providing it meets her welfare needs, it is likely to be to her benefit to have some relationship and knowledge of him but that it only likely to take place once he has evidenced a change in his behaviour and attitude and I consider that, at this delicate time, to remove or change her surname in the way that has been suggested, as a coping mechanism for her day to day life and to make it more

convenient for her, is not a reason on its own to take such an important step. When and if she has more knowledge of the father and the paternal family, the position may be looked at again, but I am satisfied that now such a step would not meet her welfare needs.

27. Therefore, for the reasons set out above, I refuse the mother's application to change X's surname and grant the application to remove any identifying details regarding the school and GP.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge