

Friday Family Law Roundup

Sometimes it can be incredibly difficult to keep up to speed on all of the news, case law and other updates in family law, so I've decided to compile a weekly roundup of all of the important bits you might have missed!

Here's your summary of important new legal developments in the world of family law over the last couple of weeks since the last roundup, the first one of December and with only 3 more Fridays until Christmas! This one has a little bit of an international element – enjoy!

Case Law

Mahtani v. Mahtani [2023] EWHC 2988 (Fam)

- <https://www.bailii.org/ew/cases/EWHC/Fam/2023/2988.html>

- This was an application concerning the non-recognition of orders made in Indonesia which was obtained by the Husband in 2017 without notice to the Wife.
- The financial remedies order made in Indonesia stipulated that the Wife "*may not claim anything back from the Joint Property, except bed linen and personal clothing*".
- A stay was placed on the English application for divorce by the Wife and the Wife made this further application to the Court for a declaration that the divorce obtained in Indonesia was invalid, in order to lift the stay and pursue a financial remedy claim in England and Wales
- The Husband did not engage at all in the English court proceedings and did not participate in the non-recognition application hearing.
- The Court needed an expert opinion regarding the procedure in Indonesia, and found that "*If the respondent had informed the court of his true awareness of the applicant's address and whereabouts in London, then the court would have taken the proper steps to attempt to contact the applicant via diplomatic channels, as set out in the expert opinion of Mr Sriro. The decision of the court dated 7 November 2017 demonstrates that this was not done, and the case proceeded on the false basis that the whereabouts of the applicant was unknown*" [73].
- The issue of recognition was a matter of judicial discretion, and, bearing in mind the dicta of Mostyn J in *Liaw v Lee* [2016] 1 FLR 533, and the Indonesian court being misled by the Husband as to the Wife's whereabouts, the Court refused recognition and found that the marriage subsisted in English law.

Re T (Abduction: Protective Measures: Agreement to Return) [2023] EWCA Civ 1415

- <https://www.bailii.org/ew/cases/EWCA/Civ/2023/1415.html>

- This case was an appeal against two orders made under proceedings dealing with the 1980 Hague Convention (HC), one of which had been recorded as being made 'by consent'.
- Proceedings initially took place in Texas after the Mother retained the child in England in March 2023, with the Courts in Texas appointing the Father as the 'temporary sole managing conservator' of the child, and ordering that the Mother return the child to Texas by 31st May 2023, which the Mother did not comply with.
- On 22nd June 2023, the Father issued an application under the 1980 HC for the return of the child to the USA, however the Mother relied upon exceptions per Article 13(b) HC 1980 in that she raised the need for 'protective measures' to address both the risk of domestic abuse from the Father and her concern that the child would be removed from her care upon her return to the USA.
- At the hearing on those issues, the Mother had agreed to return upon conditions that the Father would not pursue legal action against her, and with the protection of the US Court through an order encapsulating the agreements made. This was an issue of dispute,

however the Court commented that they would not add any 'pre-conditions' to an order where it was otherwise agreed and they had not analysed the evidence.

- The parties were invited to draft a consent order with undertakings to achieve the protective measures requested by the Mother, without confirmation that Texas would accept the same. Issues then arose in the drafting and it was clear that there were other issues which were in dispute between the parties, together with the issues of the protective measures.
- At a further court hearing two days later, the Court made findings that it had approved an agreement reached by the parties at Court, and made an order 'by consent' that the Father's undertakings giving effect to protective measures were intended to be accepted in the Texas courts.
- The Court made observations regarding protective measures arising from this appeal:
 - i) *The requirement for the parties to address protective measures early in the process;*
 - ii) *The importance of the court identifying early in the proceedings what case management directions need to be made, so that at the final hearing the court has the information necessary to make an informed assessment of the efficacy of protective measures;*
 - iii) *The need for the court to be satisfied, when necessary for the purposes of determining whether to make a summary return order, that the proposed protective measures are going to be sufficiently effective in the requesting state to address the article 13(b) risks;*
 - iv) *The status of undertakings containing protective measures, and their recognition in foreign states;*
 - v) *The distinction between 'protective measures' and 'soft landing' or 'safe harbour' provisions.*
- The Court in analysing those considerations held that the two orders made by the Judge could not stand and the Judge had erred as follows:
 - i) *By holding the parties to what she regarded as a concluded agreement on 22 August 2023 to dispose of the application under the 1980 Hague Convention for the return of T to the USA, when the parties had not in fact reached accord on a core, fundamental, ingredient of the arrangements for T's return, namely the implementation of the proposed protective measures in Texas;*
 - ii) *By relying on Rose / Xydias to support her approach – namely, that the court could exercise a 'broad discretion' to hold parties to an agreement which was, in material respects in any event, incomplete;*
 - iii) *By failing to address adequately or at all the mother's change of position on 23/24 August, and failing to consider it on its merits;*
 - iv) *By approving two orders simultaneously (purporting to be of different dates) which were in some respects incompatible, and in others inherently defective.*
- At the end of the Judgment, the Court of Appeal also commented that it was regrettable that the parties had not been referred to the Child Abduction Mediation Scheme in this case at the outset of proceedings, per Practice Guidance: PFD: 2023 [2.9(a)].

News

'I paid £30k to protect my child from her paedophile dad' – <https://www.bbc.co.uk/news/uk-67425080>

- The Mother applied to restrict the Father's parental responsibility after he was convicted of sexual offences involving children.
- This case was one of the first to come out of the Transparency Pilot in Cardiff.
- The Mother's application was successful, and the Father's parental responsibility was 'comprehensively restricted', however it came at a high price in legal fees of £30,000 to achieve that aim.

Association of Clinical Psychologists (ACP) ordered to pay costs after intervening in a family law case mounting critique against an unregulated expert - <https://www.theguardian.com/uk-news/2023/nov/12/psychology-body-says-costs-ruling-unfair-in-appeal-on-use-of-unregulated-experts-in-england-and-wales>

- The ACP intervened in an appeal in the case of *Re C* [2023] EWHC 345 (Fam), in which the Mother sought a re-hearing, arguing that the court appointed expert was not a qualified psychologist.
- The psychologist had determined that the Mother had alienated the children, which was then the basis for their change of residence.
- The appeal judgment itself noted the importance of practitioners following the associated guidance on the instruction of experts, but after the ACP intervened and the appeal was unsuccessful, the Mother was ordered to pay costs of £26,000 to the Father and the ACP were ordered to pay £20,000 to the Father and the psychologist for mounting a case that she was unqualified and for acting in a “wholly exceptional manner” (*The Mother v The Father v Melanie Gill v ACP* [2023] EWHC 2078 (Fam)).

Chambers News

Jacqui Gilliatt provided her excellent seminar on Judicial Reasons this week – thank you all for attending. After Christmas we have a few more in the calendar. You can see the list of upcoming events here on our website - <https://www.4bc.co.uk/news-events/events/>

Sarah Barber