



Neutral Citation Number: [2015] EWHC 2358 (Fam)

Case numbers omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 August 2015

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

In the matter of X (Children)
In the matter of Y (Children)
(No 2)

Mr Simon J G Crabtree (instructed by the local authority) for local authority A
Mr Karl Rowley QC (instructed by Stephenson Solicitors LLP) for MX (mother of X1, X2,
X3, X4)

Miss Ayeisha Khandia (of Fountain Solicitors) for FX (father of X1, X2, X3, X4)
Miss Linda Sweeney (instructed by AFG Law) for GX (the children's guardian of X1, X2, X3,
X4)

Mrs Jane Crowley QC and Miss Rhian Livesley (instructed by the local authority) for local
authority B

Mr Karl Rowley QC (instructed by Stephenson Solicitors LLP) for MY1 (the mother of Y1,
Y2 and grandmother of Y3, Y4)

Mr Karl Rowley QC (instructed by Linder Myers Solicitors LLP) for MY2 (mother of Y3, Y4)
FY2 (father of Y3 and Y4) appeared in person

Miss Julia Cheetham QC and Miss Elizabeth Morton (instructed by Temperley Taylor) for
GY (the children's guardian of Y1, Y2, Y3, Y4)

Mr Alex Ustych (instructed by the Government Legal Department) for the Ministry of Justice
(MoJ)

Hearing date: 3 August 2015

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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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division :

1. This is a short footnote to the judgment I handed down in these proceedings on 30 July 2015: *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam). I shall take the judgment as read.
2. In accordance with the directions referred to in paragraphs 94 and 96 of that judgment, MoJ filed its submissions on 31 July 2015. So far as material for the purposes of this judgment, the following basic points were made by MoJ:
 - i) In drafting the protocol in place between HMCTS and NOMS to provide radio-frequency (RF) tagging in family proceedings, officials did not foresee that tagging in family cases would be extended to GPS tracking. Indeed, so far as MoJ is aware, the GPS tagging proposed in the present case is unprecedented. The current contract does not envisage use of GPS tagging in family cases. Any such expansion of the scheme would require contractual changes.
 - ii) MoJ does not consider that it is within the court's powers to order MoJ or NOMS to bear the cost of providing GPS tagging.
 - iii) "The consensus of those responsible for managing electronic monitoring arrangements within MoJ (and consulted as part of preparing these submissions) is that the perceived advantages of GPS tagging over RF tagging do not necessarily align with the actual level of additional protection offered. The Court will no doubt carefully consider whether the additional logistical demands, cost and intrusiveness of GPS tagging is justified by any advantages over RF tagging."
 - iv) Based on the cost of the current service, GPS tagging costs significantly more – over 6 times more per subject per annum – than RF tagging. However MoJ does not suggest that the costs implications alone should stand in the way of measures the court considers necessary to safeguard children's welfare in this case.
3. That said, MoJ's submissions went on to make clear that:
 - i) MoJ is committed to assisting the court in protecting the children's welfare/best interests.
 - ii) MoJ is prepared to facilitate GPS tagging arrangements *in this particular case* if considered appropriate by the court.
 - iii) However, if GPS tagging was to be ordered in this case, this, being a new requirement, would raise a number of operational considerations and the necessary arrangements would take time to put in place. The court should take that into account when setting time frames.
4. MoJ went on to spell out that the stance taken by it in this case, and the submissions made, are limited to this case only; and that its agreement to facilitate GPS tagging in this particular case (if considered appropriate by the court) is without prejudice to its

position in any other cases and is not intended to suggest that the power to order it to do so exists.

5. However, MoJ's willingness to facilitate the use of GPS tagging in this case did not extend to its being prepared to underwrite the costs. Its submissions on the point were as follows:

“If the main purpose of the GPS tag is to allow the children to return to the family home and this is done by consent of the parties, MoJ would invite consideration by the parties to these proceedings of the cost being shared between them on an agreed basis. Alternatively the Court may wish to consider what if any powers it has to require the cost to be paid by one of the parties to the proceedings.”

6. By the time the matter came on for hearing before me on 3 August 2015, Mr Alex Ustych, on behalf of MoJ, was able to tell me on instructions that it would take approximately a fortnight to put all the arrangements in place for GPS tagging. He was also able to say that, having considered its position further since filing its submissions, MoJ was willing, if I took the view that there should be GPS tagging, to meet the cost *in this case* without having recourse to any of the parties for any payment.
7. That, as he made clear, was entirely without prejudice to MoJ's position as I have summarised it in paragraph 2 above, and is not to be treated as a precedent in any future case. In particular, the fact that MoJ is willing *in this case* to *agree* to meet the cost does not mark any departure from its fundamental position that the court has no power to order MoJ or NOMS (or, I assume, EMS) to bear the cost of providing GPS tagging.
8. Mrs Crowley, on behalf of local authority B, and Mr Crabtree, on behalf of local authority A, submit that for good reason, as explained in my previous judgment, I concluded that GPS tagging should be part of the package of protective measures; that, despite what is said by MoJ, the evidence summarised in that judgment demonstrates that GPS tagging provides additional security and protection as compared with RF tagging; and that the children in both cases should therefore remain in foster care until GPS tagging can be put in place. The additional delay, if very regrettable, is nonetheless required if the children's safety is to be adequately protected.
9. Miss Cheetham, on behalf of GY, and Miss Sweeney, on behalf of GX, agree that there should be GPS tagging once that can be arranged. But they voice the concerns of both guardians about the adverse consequences for the children of their continuing separation from their parents, made worse in recent days by the uncertainty as to whether, and if so when, they may, as at least the older children had been led to believe, be going home. They submit that on balance the best course is for the children to return home now, protected in the meantime by RF tagging, to be replaced by GPS tagging once it can be put in place.
10. Mr Rowley, on behalf of MX, MY1 and MY2, Miss Khandia, on behalf of FX, and FY2, are all content with what is proposed by Miss Cheetham and Miss Sweeney.

11. Mr Ustych points out that what is proposed by Miss Cheetham and Miss Sweeney will involve separate installations and fittings of the RF equipment and, subsequently, of the GPS equipment, and therefore some additional cost. But MoJ is content for me to proceed on that basis if, in my judgment, this is the appropriate way forward.
12. I remain of the view that, in the light of the evidence I heard, GPS tagging affords a greater measure of security and protection than RF tagging and that, in principle, the package of protective measures which requires to be put in place should include GPS tagging. To that extent, I agree with Mrs Crowley and Mr Crabtree. On the other hand, I share the concerns expressed by both guardians as to the adverse impact on the children of their continued separation from their parents, even for a period which, it would seem, may be for as little as only a fortnight or so. Accordingly, I agree with the solution they propose. The reduction in the level of security afforded by RF tagging for that comparatively short period is, in my judgment, adequately counter-balanced by (a) the benefit to the children of returning home now, with its corollary that the uncertainty will now be at an end and (b) the additional curfew period which Mr Rowley has proposed for so long, but only for so long, as the RF tagging is in place.
13. The order I made in the X case was in the following terms (orders in very similar terms being made also in the Y case):

“UPON THE RESPONDENT MOTHER indicating to the Court that she is willing to confirm her intention to abide by each and every one of the provisions of this Order by solemnly taking an oath to that effect on the Quran

AND UPON THE RESPONDENT MOTHER consenting in the interim to being subject to a radio frequency electronically monitored curfew until the installation of a GPS tag

AND UPON THE COURT BEING SATISFIED that, notwithstanding the basis upon which this case has had to proceed, namely that there are reasonable grounds for believing that the mother was intending to travel to a war zone with the children when she was prevented from boarding an aeroplane with them, the balance of harm favours returning the children to their mother’s care in the interim on the footing that the following order ensure that any risk of flight is reduced to an acceptable level and the risk of harm contained

AND UPON the local authority agreeing to institute the port alert procedure with the police with a view to ensuring that all four children’s names are placed on the ‘stop list’

AND UPON it being understood by the mother that, irrespective of any possible penal consequences of any breach of the following orders, the effect of her intentional breach will be that the children shall be removed from her care (by the police or the local authority) and the prospects of their returning home thereafter will be very much diminished

AND UPON it being understood that nothing in this Order is intended to prevent the police exercising any powers which would otherwise be available to them, including, in particular, their powers under section 46 of the Children Act 1989

AND UPON it being recorded that the Ministry of Justice anticipates that it might take up to two weeks to put in place the necessary arrangements for GPS tagging in respect of the mother

AND UPON it further being recorded that the local authorities known in these and the similar proceedings as A and B will take the lead in discussions with the Ministry of Justice concerning the implementation of the tagging arrangements and will keep the other parties informed

AND UPON the Ministry of Justice having indicated to the court through counsel that it will fund radio frequency and GPS tagging thereafter in this case for the mother, without prejudice to its position in any other case and effectively indemnify the local authority in respect of the costs thereof within these proceedings and beyond if necessary

IT IS ORDERED THAT:

1. The interim care orders made on 2/4/15 are hereby discharged

PURSUANT TO THE INHERENT JURISDICTION

2. The children ... shall be made Wards of Court during their minority and until further order to the contrary. For the avoidance of doubt, for the purposes of any foreign administrative or judicial authority considering this order, that means that the children are, immediately upon this Order being made, protected by the High Court of England & Wales and that no important step in their lives can be made without permission being granted by the High Court of Justice of England & Wales.

3. Care and control is vested in the local authority until it receives confirmation from EMS or the MoJ or NOMS that the radio frequency tagging of [the mother] is installed and operational and confirmation from the notary receiving her oath that [she] has sworn on the Quran to abide by the terms of this Order

4. Upon the local authority receiving the said confirmation, the local authority shall cease to have care and control and care and control will be vested in [the mother].

5. Care and control of the said Wards shall revert to the local authority in the event that (a) there is a significant breach of the terms of this Order and (b) there is no time to apply even by telephone to the duty judge. This shall apply only in the case of an emergency and is subject to an unqualified obligation to make an application to the court immediately.
6. The United Kingdom Passport Agency is requested not to issue any passport relating to the children, or any of them, ... and should notify the local authority of any attempt by [the mother] or any other person and/or body so to do forthwith.
7. [The mother] is forbidden to remove or attempt to remove [the children] from the jurisdiction of the Courts of England & Wales until [date] or further order and shall not direct or encourage any other person to do so.
8. [The mother] having surrendered the children's and her own United Kingdom passports to the local authority, it shall not release them to her or any other person without further order of this Court.
9. [The mother] is forbidden to retain, obtain or attempt to obtain any passport, identity card or papers or any other travel document relating to herself or [the children].
10. [The mother] shall deliver up to the local authority her driving licence photocard & paper counterpart forthwith and the local authority shall not release the same to her (but may at her request to the Police or to the DVLA) without further Order of this Court.
11. [The father] is forbidden to remove or attempt to remove [the children] from the jurisdiction of the Courts of England & Wales until [date] or further order and shall not direct or encourage any other person to do so.
12. [The father] is forbidden to retain, obtain or attempt to obtain any passport, identity card or papers or any other travel document relating to [the children].
13. [The mother] shall report to [name] Police station each Saturday before 12 noon and a local authority facility to be nominated by the authority and identified to the mother within 24 hours of this order taking effect each Wednesday before 12 noon to confirm her continued presence in the jurisdiction.
14. [The mother] shall make the children (or any of them) available to be seen at any time at the request of the local authority for the purpose of assessment or otherwise.

15. [The mother] shall ensure that the children attend their respective schools during term time.

16. [The mother] shall supply to the local authority forthwith (and no later than 3 working days following receipt of Judgment) recent individual photographs of herself; the details of any social media accounts & email accounts which she and/or the children may have (if any) together with passwords; up to date telephone numbers for herself and the children & other family members with whom the children may have contact; & the vehicle registration number of any vehicles in which she and the children may be travelling.

17. [The mother] shall confirm her intention to abide by each and every of the foregoing provisions of this Order by solemnly taking an oath to that effect on the Quran before a notary and documentary confirmation of the fact of the taking of the oath shall be filed and served as soon as reasonably practicable on 4/8/15.

...

19. There is permission to the local authority to disclose this order to the [name] Police, the National Offender Management Service, EMS, the Ministry of Justice & the Central Authority of the Islamic Republic of Pakistan & its High Commission in London & consulates in the United Kingdom.

BY CONSENT IT IS FURTHER ORDERED THAT:

20. The National Offender Management Service in liaison with the Ministry of Justice [name] police & EMS, is requested to take such steps as are necessary to effect and to continue the electronic radio frequency and GPS tagging of [the mother] in accordance with the schedule of information provided below.

Schedule of information provided for the purposes of effecting and continuing the electronic tagging of a person

1. [The mother], born on [date];
2. The address of the place of the curfew is: [address];
3. [The mother] agrees to be at the said address at 3pm on 4/8/15 for the installation of the electronic tagging device;
4. The curfew shall commence on 4/8/15;

5. The curfew shall cease on 31/12/15 or on such other date as ordered by the Court and notified to the National Offender Management Service;
6. The curfew is to be in place seven days a week;
7. The hours of the curfew are to be (a) from 7.30 pm to 7.00 am and (b) between 1pm and 2pm. Requirement (b) shall cease upon the installation and fitting of the GPS tagging to the mother which shall be no later than 21/8/15;
8. The areas from which [the mother] is to be excluded pursuant to GPS monitoring of their tags are:
 - (a) Any part of the United Kingdom in excess of 16 miles from [address]; and
 - (b) Any airport within the United Kingdom;
9. If there is a breach of the curfew and/or entry within the excluded areas the persons who should be contacted are The Tipstaff and the [name] Police;
10. The Protocol comprising the said terms is to be drawn up between [name] Police, the local authority, the Ministry of Justice & EMS as soon as reasonably practicable but in any event before 21/8/15 and shall include the following provisions:
 1. The GPS tag shall log data as to the device's position once every five minutes;
 2. The GPS tag shall upload the said data once every 15 minutes.

AND THE COURT FURTHER RESPECTFULLY REQUESTS THAT Central Authority of the Islamic Republic of Pakistan & The High Commission for the said Republic in London (and its Consulates in the United Kingdom) assist the Court in the protection of the welfare of its Wards by (a) declining to issue the children ... with a passport, nadra or any other form of identification and (b) informing the local authority forthwith upon [the mother] (or any other person) applying for any or all of the aforesaid documents.”