

Putting children first: When protection trumps privacy

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#ModernFamilies

This is the latest of my posts regarding the child abduction case where the mother has refused to bring 2 young children back from the Ukraine despite being in breach of the family court's orders ([Finding my abducted child – acting quickly, thinking creatively](#)).

Mr Justice Mostyn's judgment has been published and explains his decision that the mother (Ganna Tigipko), her husband (Slava) and her father (Sergiy Tigipko) should be named in the press and their photographs printed. The Court of Appeal refused both Ganna and Sergiy's applications for permission to appeal, which is why they have both now been named in the press.

The judge was clear that his decision would be based exclusively on what is in the girls' best interests. Their interests were paramount and therefore more important than anything else.

In my earlier post I referred to the importance of the children's voice being heard by the court, and the difficulties with this in abduction cases. Mr Justice Mostyn dealt with this issue by joining the children as parties to the proceedings, and appointing a Guardian who would instruct lawyers to represent them.

The Guardian went to the Ukraine to speak with the children and ascertain their wishes and feelings. Her report was described as 'thorough and insightful' and concluded that the girls had had a secure relationship with their father but that it had been abruptly fractured.

The judge placed great weight on the submissions of those representing the children, who argued both that: the children were suffering 'profound, long lasting harm and are in an acutely harmful situation'; and that publicity was likely to supply a coercive element sufficient to bring the children back. The fact that the mother had instructed a 'phalanx of some of the most distinguished lawyers to defend her position' was seen to be indicative of her concerns over publicity.

Mr Justice Mostyn was confident that the mother's attempt to retain the children in Ukraine would ultimately fail, saying: 'I have no doubt her objective of being able to retain these children in the Ukraine throughout their minorities will fail... the Ukraine is a co-signatory with this country to both the 1996 and 1980 Hague Conventions... the Ukraine will ultimately return these children'.

Although he said it was irrelevant to his decision, the judge was clear that it is in the public interest to have much greater awareness of the 'scourge of international child abduction' and the international agreements that seek to prevent it.

The judge discussed the question of whether, and in what circumstances, can the threat of publicity be used for enforcement. An earlier Court of Appeal decision (Lykiardopulo regarding financial remedy proceedings on divorce) made clear that the question of publication should be kept entirely separate from enforcement. Whilst Mr Justice Mostyn was perplexed by the logic of this viewpoint, he was not unduly concerned as his determination was based exclusively on his evaluation of what is in the best interests of the girls.

There was also a separate application to redact some of the more scathing comments that the judge had made in respect of the mother, husband and father, from the judgment. The justification for redaction was that there are potential criminal proceedings against those parties and this judgment could impact on their outcome. However, the judge was unsympathetic to this argument, saying that any criminal proceedings were neither pending nor imminent and that the redactions would 'largely hollow out my judgment and greatly rob it of the coercive effect that it was designed to achieve'.

This case has understandably received considerable press attention and it will be interesting to see what impact it has on future cases. Of

particular note is the fact that the judge made his determination purely on what was in the best interests of the children and without reference to the mother, her husband or her father's rights to privacy, or the press' freedom of expression. Given that the Court of Appeal did not give permission to appeal, this could have significant implications for transparency issues in any cases involving decisions about children's upbringing.

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