



Neutral Citation Number: [2024] EWHC 263 (Fam)

Case No: LU22P00176

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2024

Before :

MISS KATIE GOLLOP K.C
SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

	Mrs R	<u>Applicant</u>
	- and -	
	The Mother	<u>1st Respondent</u>
	- and -	
	E By Her Children’s Guardian	<u>2nd Respondent</u>

Ms Shárin Diegan (instructed by **Advocate**) for the **Applicant**
Ms Lubeya Ramadhan (instructed by **A&N Care solicitors**) for the **1st Respondent**
Ms Georgia Mitropoulos (instructed by **National Legal Service Solicitors**)
for the 2nd Respondent

Hearing dates: 8, 9 and 10 November 2023
Judgment Handdown 12 February 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on Monday 12th February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS KATIE GOLLOP K.C SITTING AS A DEPUTY HIGH COURT JUDGE
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.

Miss Katie Gollop K.C :

1. On 10 November 2023, at the end of a two and a half day fact-finding hearing in this contested, private law application for a Special Guardianship Order (“SGO”), I made the order sought and gave a brief judgment. I also circulated a draft my letter to the child at the centre of the application, who I will call Elena, so that all parties – but particularly her mother - could tell me if there was any part of it that caused them anxiety before it was given to Elena later that day. There was not and the parties were grateful for the tone adopted, which was one of sympathy for all. I now provide my reasons for making the order.
2. It was urged upon me by the applicant and the Guardian that it was in Elena’s best interests for me to provide very a full, detailed and comprehensive judgment in relation to each of the respondent mother’s allegations of alienation. I do not agree. I do not think that a judgment of that sort is in Elena’s welfare interests now and I think it unlikely to assist her in future. The extremely unhappy situation that has arisen affects three generations of this family and is likely to remain a source of pain for some time. Much healing is needed and it is better, in my judgment, to go no further than justice requires.

The Parties

3. Elena is now aged 12 years and she is a Ukrainian national. She is represented by her Children’s Guardian. The person applying to be her Special Guardian is her maternal aunt, who I will refer to as Mrs R. The application is opposed by Mrs R’s sister, Elena’s mother (“the mother”). Mrs and her husband attended court in person as did the mother and her partner.
4. Mrs R (the older of the two sisters) and the mother are now in their forties. They were born and raised in Ukraine, where their parents still live, and they have one other sibling, a brother. Mrs R moved to England in around 2012, married Mr R, an Englishman, and has lived here with him since. Neither of them has a child. Mrs R is a teacher in a secondary school.

5. Prior to the war in Ukraine, the mother had lived all her life there. She also married Elena is the only child of the marriage (neither of her parents had any other children). Her father died in 2018 when she was six years old. His death was preceded by illness and the mother was also unwell at times so that Elena spent periods of time in the care of her maternal grandparents. In 2019 the mother started a new relationship and she, her partner (they married in September 2022), and Elena lived together in Kyiv from May 2020 until March 2022.

Representation

6. The applicant was represented by Ms Diegan, the respondent mother by Ms Ramadhan, and Elena's Guardian by Ms Mitropoulos. I was grateful to each for their excellent written and oral advocacy and the sensitivity with which they approached the hearing. Ms Diegan was representing Mrs R pro bono on the instructions of Advocate (formerly the Bar Pro Bono Unit) having already provided her with free representation at a large number of hearings. Mrs R could not have managed these proceedings unrepresented and the court owes Ms Diegan a significant debt of gratitude.

Evidence

7. I had two bundles of documents running to around 1,700 pages in total. I had Position Statements from all parties. I heard oral evidence from the mother (with the assistance of an interpreter), Mrs R and Elena's Guardian in that order. The Ukrainian Consul, Mr Yurkin, attended remotely as he had done on previous occasions and provided me with information, not given on oath. I was very grateful for his assistance.

The Mother's Application to Adjourn

8. At the outset of the hearing, the mother applied for an adjournment. She submitted that the evidence was incomplete in that medical assessments of the proposed Special Guardians and immigration advice from the Home Office was outstanding. Further, that no order should be made on Mrs R's application until the court had heard from Mr Yurkin. She had spoken to him and thought it possible that he would advise that

the consent of Ukraine would be required before I could make any order separating a child outside Ukraine from her parents. Mr Yurkin was hoping to receive something in writing from the appropriate authority by 9 November 2023 and to attend himself that day.

9. The application was opposed by the applicant and Elena's Guardian. Their jointly and strongly held view was that Elena needed a speedy conclusion to the proceedings and certainty about her future. She had endured around a year and a half of interrogation by professionals, and the knowledge that she was the focus of court proceedings. In October 2023, she had told the Guardian that worry about the outcome of the court case was making it difficult for her to concentrate on her schoolwork. Whilst she had previously been keen to meet the judge, and had indeed met Arbuthnot J in August 2023, she did not want to meet the judge who would make the final decision. In the Guardian's opinion, Elena was suffering from significant frustration, litigation fatigue and a degree of anger that her wishes and feelings were not being accorded respect. Finally, the outstanding information was likely to come in during the course of the hearing and the Ukrainian Consul could update the court when he gave evidence.
10. I refused the application to adjourn. It was quite clear that Elena's welfare required that the application be determined without delay. I considered it appropriate to hear the evidence and adjourn pending receipt of further documentation if need be. In the event, the outstanding immigration information, medical assessments of Mrs and Mr R, and the position of Ukraine were all available before closing submissions.

Elena's Arrival In England and Her Disclosures

11. After the Russian Federation invaded Ukraine in February 2022, the mother, her partner and Elena escaped the bombing of Kyiv where they lived and went to the countryside. The mother decided that for her safety, Elena needed to leave Ukraine.
12. She contacted Mrs R and asked if Elena could stay with her in England. This was a request that came out of the blue for Mrs R. She had first met her niece in October 2019 when Elena was seven years old. The mother was unwell at the time and Mrs R had travelled to Ukraine to help with her admission to hospital. Since then, Mrs R and Elena had spoken on the phone but had had no opportunity to become close. Mrs and

Mr R readily agreed to accommodate Elena whilst the situation in Ukraine was unsafe.

13. On 6 March 2022, the mother took Elena to the coach station so that she could make the journey to Poland with relatives whilst the mother stayed in Ukraine. For reasons that will be explained, that was the last time the two of them were together physically. Mrs R arrived as quickly as she could and took over care of Elena two days later. They spent some time in Poland making necessary preparations and arrived in England on 22 March 2022. Elena has lived with Mrs and Mr R in their home – which has become her home - ever since. Soon after arrival, she started attending a nearby primary school and it is to her credit that within a short time, her English was almost fluent.

The Litigation Background

14. On 13 May 2022, the mother sent Mrs R a text message suggesting that she intended to take Elena to Ukraine for a holiday. On 16 May Elena told a teacher that her mother had been unpleasant on the telephone said that she had to return to Ukraine. On 18 May 2022, at an ex parte hearing, Mrs R was granted permission to apply for a Child Arrangements Order that Elena live with her, and a Prohibited Steps Order was made. Elena was made a party, a Children’s Guardian was appointed, and the proceedings were transferred to the High Court. Later that month Newton J made her a ward of court. A three day final hearing was listed to start on 6 March 2023.
15. There were many hearings in the eighteen months between May 2022 and the final hearing before me. The proceedings were expertly case managed by the Circuit Judge at Elena’s local court, in combination with judges sitting in this court.
16. On 19 and 20 May Elena made further complaints about her mother and not feeling safe. The school treated these as a safeguarding matter and made a referral to CAMHS. Within the assessment that was completed in July 2022, Elena made disclosures of harmful treatment from her mother and maternal grandparents whilst she was in Ukraine.

17. On 30 July 2022, Elena and her mother had video contact which Elena attended from a contact centre. It was unsatisfactory for each of them. Elena has not seen or spoken to her mother since. In the months that followed, professionals worked with Elena intensively to support her to agree to resuming contact.
18. In November 2022, following permission from the court, a clinical psychologist, Dr A, provided an in-depth, expert assessment report of Elena with an evaluation of the ability of her mother and Mrs R to meet her needs. This was in preparation for the March 2023 final hearing.
19. On 7 February 2023, the Guardian filed a report indicating that the contact work with professionals was showing small but promising signs of bearing fruit. Though initially adamant that she wanted nothing to do with her, Elena had recently agreed to read an e mail from her mother and had written a reply. The Guardian noted that she seemed much more positive and open minded about contact than she had done.
20. Then, on 24 February 2023, the mother made an application under the 1980 Hague Convention On The Civil Aspects of Child Abduction (“the Hague application”) for an order for Elena’s summary to Ukraine. At a hearing on 6 March 2023, which the mother attended remotely from that country, Newton J stayed the Child Arrangements Order proceedings and vacated the final hearing. A Guardian from the Cafcass High Court team was appointed. The Hague application was dismissed with the mother’s agreement on 22 June 2023 and this Court declared that Elena was habitually resident in England and Wales. (The mother has since explained that her purpose in making this application was to take Elena to a safe country, such as Poland, not back to Ukraine. Elena remains unconvinced).
21. In the Guardian’s view, the mother’s decision to make the Hague application did considerable further damage to her relationship with Elena who had been eagerly anticipating a March end to the court proceedings. It cemented her distrust of her mother, entrenched a view that her mother was not listening to her and wanted to remove her to Ukraine against her will, and derailed the progress that had being made with contact. It also caused Elena to disengage from professionals.

22. By this time, the mother and Mrs R had filed many, lengthy and detailed statements some of which contained allegations of alienation made by the mother against Mrs R and Mrs R's response. In compliance with an order made at the pre-trial review, they filed statements dealing specifically with the allegations and the response to them and a Scott schedule was drawn up. These documents have been very helpful. I start with the fact-finding matters and then consider the SGO application and the issue of contact between Elena and her mother.

Fact-finding: the allegations of alienation

23. The allegations and the response to them from the schedule with, where appropriate, relevant oral evidence are as follows:

1. Mrs R provided Elena with false narratives about Elena's life:
 - a) After Elena's arrival in England, she falsely claimed the agreed plan was that Elena would live in the UK for 3 years;
 - b) Mrs R's own trauma was overlaid into Elena's experiences;
 - c) Mrs R caused professionals to receive false information that did not reflect Elena's true experiences.

Response: Denied generally. As to a), it was the mother who led Elena to believe she would remain in the UK for 3 years, not Mrs R.

2. After Elena's arrival in England, Mrs R immediately reduced contact and removed Elena's Ukrainian phone so that all contact between mother and daughter had to go through Mrs R.

Response: Agreed that contact reduced. That was because of increasing tension then breakdown in the mother-daughter relationship, not as a result of reduction imposed by Mrs R. Mrs R did not remove the phone: Elena handed it over after an argument with her mother. Mrs R had done all she could to support communication.

3. On being informed of the mother's intention to come to England, Mrs R applied for an ex parte order to prevent her arrival.

Response: Mrs R agreed she made the ex parte application but denied that she did so to prevent the mother's arrival in England. The purpose was to stop the mother from taking Elena to Ukraine for a short holiday, as she had said she wished to, as Ukraine was not a safe country.

In oral evidence, the mother accepted that she had said sent a text message about taking Elena to Ukraine for a holiday. She said this was an attempt to lull Mrs R into believing that she agreed to Elena living in England for three years; her real intention was to take Elena to Poland, not Ukraine which accepted was unsafe.

4. Mrs R has not promoted or encouraged mother-daughter contact. Four complaints were itemised.

Response: Denied. Mrs R had promoted and encouraged contact. She had complied with all relevant court orders and professional advice. Court orders for interim contact directed that contact occur in accordance with Elena's wishes and feelings. Elena did not wish to have contact with her mother, respond to communication from her, or have photos sent. Mrs R had to respect that. Progress with contact had been made but the Hague application undid that. When Elena attended virtual contact with a list of questions, the questions were entirely her own and not influenced by Mrs R.

5. On a specified date Mrs R attempted to prevent the mother from coming to the UK by falsely stating that the mother's visa had been cancelled.

Response: Admitted. Mrs R considered it necessary to lie to protect Elena in circumstances where the mother, the maternal grandparents, and the mother's partner had sent threatening, aggressive communications to Mrs R, and Elena had been exposed to the situation when abuse was shouted at Mrs R down the phone after she advised the adults of the Prohibited Steps Order application.

6. Mrs R blocked the mother on a messaging platform.

Response: Admitted. Mrs R did so on the advice of the police after receiving numerous abusive and threatening messages from the mother.

7. Mrs R blocked the mother on all internet accounts and platforms.

Response : Denied. Mrs R blocked the mother on one platform and did not return messages sent via another. She did not have access to other platforms. At all times, the mother was able to e mail her.

In oral evidence, the mother accepted that e mail communication between them was always possible.

8. In England, Elena, who was baptised into the Orthodox faith, had been encouraged to join a Catholic church and was thus being deprived of her Orthodox and Ukrainian heritage.

Response : Denied. Elena had not known she had been baptised and had not been to church with her family when in Ukraine or taught about any faith.

In England, she had expressed a wish to join a church choir and Mrs R had supported that. The mother had been sent pictures and messages about her participation in the choir and expressed no disapproval until months later, around the time of her Hague application. Elena was free to explore Orthodox Christianity if she chose to.

In oral evidence, Mrs R said that they always celebrated European Christmas on 25 December as well as the Orthodox festival on 7 January and at Easter, they baked special Ukrainian breads. There was a Greek Orthodox church nearby and she would encourage Elena to visit it. Elena attended Ukrainian club at school and loved it. Mrs R told me that she herself has Ukrainian national dress and when I asked whether she might obtain national dress for Elena, she immediately embraced that suggestion. (In my letter to her, I told Elena that Mrs R had promised to buy her a national costume.)

9. Mrs R prepared/coached Elena for meetings with professionals. There were three itemised complaints about a meeting with a psychiatrist and a social worker.

Response : Denied. No influence was exerted. Mrs R supported Elena with such meetings but did not coach her. Elena did her own preparation. At Elena's request,

she sent one written note so that Elena did not have to repeat her story to a further professional.

10. Mrs R isolated Elena from her Ukrainian family. Two complaints were made concerning grandparents on each side.

Response : Denied. Despite encouragement from Mrs R, Elena did not wish to have contact with her maternal grandparents. Mrs R had facilitated contact with her paternal grandparents and not restricted that or blocked them for any reason. In evidence, Mrs R said that Elena had a photo of her parents and the frame broke during the journey from Poland to England. Therefore, she bought a silver frame for the picture.

11. Mrs R had inappropriately spoken to Elena about adoption. Mrs R had not discouraged her from calling them “mum” and “dad”.

Response : Adoption allegation denied. Elena had raised adoption and Mrs R had said that was not appropriate as she had a mother. Elena had spoken about adoption in response to comments from her mother along the lines that Elena would not be her daughter if she wanted to remain in England.

“Mum” and “dad” allegation partially accepted. There was no discouragement initially (Mrs and Mr R simply did not respond if Elena called them mum and dad). When the behaviour persisted, Mrs R obtained professional advice from a social worker and on advice, immediately put appropriate boundaries in place. Since that conversation, Elena understood and had since called Mrs and Mr R aunt and uncle.

24. Some of the allegations relate to discrete matters but the mother’s central and overarching allegation is the first one. Simply put, the mother’s position is that Elena’s disclosures were unreliable. She had not been badly treated in Ukraine by the mother, her partner, or her maternal grandparents in any way. The mother alleges that Mrs R had fabricated stories and poisoned Elena’s heart and mind with them. The reports of harmful care were all made up and part of a deliberate campaign on the part of Mrs R to alienate Elena from her mother and detach her from her extended family in Ukraine and her Ukrainian heritage.

25. Having watched and listened to them in the witness box, I had no hesitation in rejecting the mother's evidence and preferring that of Mrs R on all matters in dispute. An allegation of a deliberate campaign of alienation raises the question of motivation. In oral evidence, the mother said that she had given this a lot of thought and had arrived at the following conclusions:

(i) A financial interest. She said that in 2021, Mrs R had told their mother that their house in England was mortgaged and re-mortgaged with a condition that if the debt was not paid off in full after eight years, they would be evicted. However, in English law they could not be evicted if they had a minor in the house. Mrs and Mr R also got all sorts of benefits as a result of Elena living with them and these benefits took the financial burden off them.

(Pausing there, Mrs R told me that the mortgage is easily affordable for them (she and Mr R work full time), the value of the house exceeds the mortgage by some distance, and they receive £90 each month in child benefit. I am entirely satisfied that their actions in respect of Elena are not motivated by money).

(ii) Mrs R simply hated her. That could be because she had always lived in Ukraine near to their parents and had the chance to be close to them. Mrs R had never had that as she lived far away and she was jealous.

(iii) Revenge. Their mother had seen pictures of Mr R on the internet and told her that Mr R looked like Elena's father. This reminded the mother that when she and her late husband started dating, at around age 17, Mrs R liked him and maybe taking Elena was a form of revenge.

(iv) Child envy. The mother told me: "*Mrs R wanted to have children but couldn't have any and maybe this is why she wanted to take my daughter away from me. I have a wonderful daughter who is intelligent, beautiful, smart and of course Mrs R was very happy when she got this child and doesn't need to change nappies and of course just wanted to keep her for herself.*"

(Mrs R told me, and I accept, that neither she nor her husband had ever had any desire to have children. They were childless by choice. The SGO application was prompted by Elena's needs, not a newfound wish on their part to acquire a child).

26. In cross-examination, the mother made the alternative suggestion that rather than Mrs R having concocted false stories of harmful treatment and indoctrinated Elena with them, Elena might be the source. She said: *"My daughter can lie, she can lie whenever she wants something, I think it is normal for her age. So possibly this is why she made all this story up and told Mrs R and Mrs R supported her and now my daughter believes it"*. She described her sister as *"a cruel person"* and said, *"I hate her with my whole heart for what she did."*
27. The mother relied heavily on Dr A's November 2022 expert report. Dr A had interviewed the mother, Mrs and Mr R, one of Elena's teachers, her social worker, and a professional at the contact centre where the video contact session had taken place. She recommended that Mrs R have therapy to help her understand her own traumatic childhood experiences and how those might impact on her ability to understand Elena. As soon as she read this recommendation, Mrs R organised and underwent therapy. Dr A also expressed the concern that Mrs R may have sought "consciously or unconsciously" to influence information about Elena with the result that potentially inaccurate information had been recorded and then repeated.
28. By the time of the final hearing before me in November 2023, Dr A's report was a year old. Much had happened in that year, in particular the Hague application had increased the distance between Elena and her mother. The professionals who had had developed relationships with Elena and Mrs R over time, and these included her social worker and her first and present Guardians, did not credit the mother's suggestion that Elena's disclosures were intentional fabrications by Mrs R, nor that Mrs R had consciously influenced Elena.

29. The reliability or otherwise of Elena's disclosures does not arise for determination in these proceedings. The professionals had formed no view in that regard and did not consider that it would have been appropriate for them to attempt to do so. They considered that her disclosures were Elena's truth. The possibility of past unconscious influence of Elena by Mrs R cannot be discounted but the mother's allegation is one of deliberate alienation. I am entirely satisfied that that did not occur. I also find that in difficult circumstances, Mrs R has done all she can to encourage Elena to love, see, write and speak to her mother, and to stay in touch with her grandparents on both sides. I find that she has also fostered Elena's Ukrainian roots and her linguistic and cultural links to her homeland. I am confident that she will continue to all these things to the best of her ability, taking into account Elena's wishes and feelings.
30. Although the standard of proof is the balance of probabilities and I found each of the allegations not proven by the mother to that standard, I make it clear that in my judgment none of her allegations, save where admitted, has any basis in reality. It does not follow that I consider the mother to have been untruthful: I do not. She spoke with passion and almost palpable sincerity, barely pausing for breath, and the words poured out of her at a speed with which the interpreter could scarcely keep up. It was obvious that she was convinced of the truth of what she was saying. In her mind, there was no harmful care in Ukraine, until she set foot in England Elena had been a loving child who told her mother that she loved her several times a day, and the three of them had been a happy family. In this context a plot orchestrated by her sister, or story telling on the part of her daughter, were the only possible explanations. Mrs R is, I believe, very far from being a cruel person but the situation is undoubtedly cruel for this mother whose overwhelming love for her only child has no current outlet.

The Position of Ukraine

31. On 10 November, I was provided with a letter from Mr Yurkin. It was, he said, "*the position of the Ukrainian side*" which he asked me to take into account. The letter stated that as the mother was not deprived of her parental rights and properly fulfils her parental duties, there were no legal grounds for refusing to return the child to the mother. Mr Yurkin told me that there is no equivalent of a Special Guardianship Order in Ukraine, so far as he was aware.

32. In addition to the contents of the letter, I also take into consideration the very difficult situation facing Ukraine. Following invasion, many of her children have been forced to flee their country. As the war has now lasted for two years and no-one knows how or when it may end, there is an obvious risk that some of the children who have found safety overseas may become established there and not return. Further that while living away from their homeland, they may lose their Ukrainian roots.
33. No party suggested that Mr Yurkin's letter prevented me from making either the order sought by Mrs R or the Child Arrangements Order ("CAO") preferred by the mother. Had they done so, I would have been unable to accept that submission not least because this court has already declared that Elena is habitually resident in this jurisdiction and at the time of the final hearing, she remained this court's ward (see *In re J (a child) (FC)* [2005] UKHL 40 at paragraph 22). I also note Lord Justice Macfarlane's guidance in *Re H (A Child) (Appeal)* [2016] 2 FLR 1171 at paragraph 88: "*In a private law case, whilst the fact of parenthood is to be regarded as an important and significant factor in considering which proposals better advance the welfare of the child, the only principle is that the child's welfare is to be afforded paramount consideration.*"
34. Nevertheless, Ukraine's position demands careful consideration. Comfort can be taken from two factors. First, Mr Yurkin described Elena's situation as "*extraordinary*". Given his experience and position, that suggests that my order in this case is either exceptional or a rarity. Second, I am satisfied that Mrs R, who was born, raised, and has spent most of her life in Ukraine, will make sure that Elena does not lose her Ukrainian culture, religion, heritage, or her first language which is Russian.
35. I must also say something about the immigration context. Elena has a three year visa issued in March 2022. Solicitors for the Guardian made many attempts to obtain clarity from the Home Office about whether her visa will be renewed in March 2025 and for how long, with no success. At the end of the hearing, the mother renewed her submission that I adjourn a final decision until that clarity was available. I did not agree. Elena is aware of the position and it is one she shares with many others. Her welfare needs are a stable present and an end to these proceedings. This court cannot

give her certainty about the future but it can, and in my judgment should, provide her with certainty about where she lives, who she lives with, and who are the decision makers in relation to her upbringing, for as long as she is in England and a child.

The Special Guardianship Order Application and Contact

36. The evidence in support of an SGO was overwhelming.
37. In a report dated August 2023, Elena's social worker said she had visited Elena every month for a year. Throughout, Elena had clearly and consistently expressed two wishes and feelings: to live with Mrs and Mr R and not to have any communication with her mother until she was ready to do so. Elena had become "*more and more settled*" in the care of her aunt and was becoming a "*self-aware young person*" with "*a very mature outlook*". She described Mrs and Mr R as "*very reflective*", willing to accept professional advice and guidance, and growing in understanding of how to care for a child who had experienced significant, negative life events, and whom they had not known well prior to her arrival. In her assessment, Mrs R was "*committed to make whatever adjustments necessary to provide for Elena's needs*".
38. In the social worker's opinion, Elena's contact with her mother had negatively impacted her sense of self and her wellbeing. She considered it essential that Elena feel in control of contact whilst being supported to know that the door would always be open. She was confident that Mrs R would be able to support and promote mother-daughter contact whenever Elena felt ready. She made recommendations for indirect contact and continued provision to the mother by Mrs R of written updates about Elena's everyday life. Her clear recommendation was that Local Authority involvement cease as it was no longer in Elena's best interests. Those lay in the conclusion of proceedings, and an order that she remain living with her aunt.
39. As explained, the author of the final Cafcass Case Analysis, dated 20 October 2023, has been Elena's Guardian since March 2023. When preparing to write the final report, she reviewed all of the available documents which included Dr A's assessment, the Local Authority s37 report and addendum report, notes of a professionals' meeting, an assessment of the Special Guardianship Order in respect of Mrs and Mr

R, and consideration of the relevant support plan. She had had repeated communication with the mother and Mrs R since March 2023 and ensured that her analysis was up to date by meeting them in person shortly before completing it. She had had virtual and in person meetings with Elena, last speaking to her in a video call on 18 October.

40. She described the change in Elena's presentation depending on the topic of conversation: relaxed, excited, confident when talking about school (which she loved and where she excelled) and her home life on the one hand, more rigid, frustrated and angry when asked to discuss her life in Ukraine, her mother, and the court case on the other. Also continuing distrust of her mother who she still suspects of wanting to take her back to Ukraine. She wanted her mother to apologise to her for the treatment she experienced in Ukraine within the extended family. She knew her mother did not accept her account of this and was angry at being called a liar. The Guardian explored with her the possibility of Mrs R influencing her feelings and disclosures. Elena's response was that her thoughts and feelings were her own. She confirmed that Mrs and Mr R encouraged her to talk to her mother (which she found annoying) and that Mrs R asks her to participate in compiling the fortnightly updates sent to her mother. This was something she had started to do.
41. Elena told the Guardian that if forced to see her mother, she would run away. She did not think another conversation would either help her or help her mother to accept her need for distance. She said she had told her mother how she felt during their video call but her mother had not listened and instead tried to force her back to Ukraine. Elena was confident that in time, she and her mother would rebuild their relationship but she wanted that to happen at her pace, in her way, and at a time of her choosing. The court case made her feel anxious and stressed; she wanted it over. She could not imagine living anywhere other than with Mrs and Mr R. She felt safe with them and able to be a child which was what she wanted.
42. The Guardian's assessment of Mrs and Mr R was in line with that of the social worker. She noted Mrs R's work on her own trauma and also noted that any risk of her childhood experiences influencing Elena was mitigated by the presence of Mr R, who

had no such adverse background. She took into consideration Elena's "*extraordinary progress*" in the English language, her dedication to her education and her wish to be a surgeon, and her hobbies. These factors were good evidence of a child who was settled, happy, and well placed to fulfil her considerable potential.

43. In her October 2023 conversation with the Guardian, the mother suggested that Elena could be placed in, for example, foster care or else should return to her care. The Guardian considered that further upheaval and change were not in Elena's best interests and she could not see how a return to her mother's care could work given Elena's present position. She recommended that Elena remain with Mrs and Mr R, that there be an SGO rather than a CAO, and that the proceedings conclude. She could see no solution to the problem of lack of contact with the mother other than to respect Elena's wishes and feelings whilst continuing to encourage communication. At the final hearing, the mother now accepted that it was appropriate for Elena to continue to live with Mrs and Mr R but contended that a CAO was appropriate.
44. In the Guardian's analysis, one of the main benefits for Elena of an SGO as opposed to a CAO was the avoidance of further litigated disputes between the mother and Mrs R, as Mrs and Mr R would be able to make decisions. The Guardian drew attention to the fact that within these proceedings there had been disagreement about Elena's secondary school. Agreement was reached at the door of the court but by that time, there was delay in securing a place and anxiety for Elena. The other notable benefits were the additional security and stability provided by an SGO, and the fact that it would last until age 18.

Decision

45. I accept the recommendation of the Guardian and agree that a Special Guardianship Order is more in accordance with Elena's welfare interests than a CAO for the reasons she identified.

Contact

46. Despite Elena’s clear and consistent wishes and feelings, the mother’s position on contact was unchanged at the final hearing. She believes that a face to face meeting is imperative because it is the key that will unlock all barriers. Her present inability to prioritise her daughter’s needs above her own is apparent from what she said in oral evidence:

“Let me meet my daughter and if I cannot change her mind then I will leave her alone and leave her with Mrs R. Until I see her whilst she keeps passing all this information to social workers, my mother’s heart will never believe this. Mrs R doesn’t let her see me because she knows my daughter will want to be with me.”

“24/7 Mrs R puts this into my daughter’s mind, she alters her reality. I wonder how she’ll live with this. This is why I’m insisting on a return to me.”

“I can give her an apology a thousand times, even for that which isn’t true, and kneel in front of her – as a mother I know how to solve it – but I need to be able to see my daughter – she needs to be rebalanced to go into a zero state.”

47. The mother had no clear plan for how any meeting could or should be achieved given Elena’s strong opposition. She seemed to think that the adults around her should simply “get a grip” (my expression), command her to attend and she would do so. The professionals working with Elena, and those who have case managed these proceedings, have taken the view Elena should have with her mother only such contact as she wishes and feels she wants to have. I share that view. Elena is not subject to undue influence and her Guardian and social worker tell me that she is a child who knows her own mind in this regard. There is a high risk that forced contact, even if that could be achieved, would do more harm and no good. Conversely, if the mother is able to respect Elena’s desire for distance, and her wish that she be allowed to determine when, where and how contact is restarted, then there is a good chance that in time trust and contact will be restored. At present, there is no identifiable, practical alternative.

Conclusion

48. I found all of the mother's allegations of alienation not proved. In addition to making the SGO, I discharged the wardship order, varied the prohibited steps order and extended it to 2028 when Elena will be 16, ordered that Mrs and Mr R will hold her passport and travel documents, and directed that an unanonymised copy of this judgment be provided to the Secretary of State for the Home Office and Mr Yurkin.
49. I said to Elena in my letter to her that when we cannot speak to our mum, that hurts us. It is greatly in Elena's welfare interest, and that of the whole family, that she is in communication with the person who loves her most in the world. Giving her the time, space and control she needs before she can take the first step will be testing for the mother. This court wishes them both well and commends the compassionate, generous hearted actions of Elena's Special Guardians.

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