

ENGLAND AND WALES / JUDGMENT

Medway Council v MI & Ors

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

This judgment was delivered in private. The judge has given leave for an anonymised 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. Neutral Citation Number: [2017] EWFC 59 IN THE FAMILY COURT SITTING AT ROYAL COURTS OF JUSTICE Case No: ME15C01275 Royal Courts of Justice Strand, London, WC2A 2LL Date: 03/02/2017 Before: MRS JUSTICE THEIS DBE

- ----- Between: Medway Council
- and - MI
- and - CI
- and - IE
- and - E, V, M, A, and C (by their Children's Guardian)
- ----- Applicant 1 st Respondent 2 nd Respondent 3 rd Respondent 4 th – 8 th Respondents Ms Celeste Irvine (instructed by Medway Council) for the Applicants Ms Sandra Folkes (instructed by Bassets Solicitors) for the 1st Respondent Mr John Tughan Q. C. & Ms Victoria Miller (instructed by GT Stewart Solicitors & Advocates) for the 2nd Respondent Ms Poonam Bhari (instructed by VLS Solicitors) for the 3rd Respondent Ms Joanne Porter (instructed by Atkins Hope Solicitors) for the 4th – 8th Respondents Hearing dates: 25th – 27 January 2017 Judgment 3rd February 2017
- -----

Judgment

Mrs Justice Theis DBE:

1. These proceedings concern the future care arrangements for five children; E 16 years, V 14 years, M 11 years, A 10 years and C 9 years. The children all currently live with MI, she is the mother of E, V and A. Their father is PJ, who has taken no part in these proceedings. M and C's mother is IE and their father CI. 2. IE and CI live in Country A and plan to remain living there. MI and the children originally came here from Country A on a time limited visa. MI has made an asylum application for herself and all the children to remain here. That

application is outstanding, the Secretary of State for the Home Department (SSHD) is aware of these family proceedings, the LA has liaised with them and I understand they are awaiting the outcome of these proceedings. Any decision I make is founded on the welfare of these children, in accordance with the provisions of section 1 Children Act 1989 (CA 1989). The determination of the immigration applications is entirely a matter for the SSHD.

3. This judgment should be read together with the fact finding judgment dated 4 August 2016 (the August judgment) where I concluded the children had suffered or were at risk of suffering significant harm and the threshold criteria pursuant to s 31 Children Act 1989 (CA 1989) was established. Those findings included CI's abduction of M and C from Country A without IE's consent, MI being complicit in the abduction, both CI and MI failing to arrange for M and C to have contact with IE for over three years, CI and MI obtaining false documents relating to M and C (including birth certificates) to enable M and C to enter the UK and remain here, CI sexually assaulted V, MI failing to protect V by continuing to have contact with CI following V's disclosures and failing to register the children in a school for over 10 months. The threshold findings in full are set out at the end of this judgment.
4. Following that hearing a number of assessments have been conducted, or updated. There is a parenting assessment of MI for all five children, CI and carers in Country A put forward by CI for M and C and Mrs and Mrs AM, IE's sister and her husband, the maternal aunt and uncle of M and C who live in Scotland. The parties' positions
5. There is no dispute between the parties that E, V and A should remain in the care of MI under a child arrangements order. This is supported by the LA and the Children's Guardian. Whether they remain living here or in Country A will depend on the outcome of their asylum applications.
6. Future placement of M and C remains in issue. The competing proposals can be summarised as follows:
 - (1) CI seeks M and C's return to Country A to live with him. If that is not felt possible he puts forward Mr and Mrs AW to care for them. Mr AW is a lawyer, has known CI for many years and advises CI in relation to his business interests. They have one child who lives in the US. CI's eldest daughter SI would provide some assistance, although she intends to start a university degree soon. CI's proposals are not supported by any of the assessments, neither the parenting assessment of him, or the assessment undertaken of Mr and Mrs AW by Ms C, an Independent Social Worker. CI also proposes that M and C could live with IE in Country A; that is not supported by IE.
 - (2) IE does not seek the return of the children to her care. She supports their placement with her sister and brother in law in Scotland, Mr and Mrs AM. They have been positively assessed as Special Guardians. Placement of M and C with them is supported by the LA and the Guardian. CI supports this over MI if the children are not to return to Country A.

- (3) MI seeks to retain the care of M and C, if that is not possible she agrees to their placement with their aunt and uncle, Mrs and Mrs AM. No other party supports M and C remaining with MI, even as a fall back option. The evidence
7. The court heard oral evidence from HF (who conducted the parenting assessment of MI and CI), SB (the allocated social worker), Mr AM (the maternal uncle), Dr Stubley (Lucy Faithfull Foundation), Ms C (Independent Social Worker), CI, Mr AW (carer in Country A proposed by CI), MI and Mr Cooper (the Children's Guardian). CI joined the hearing by video link from Country A. Relevant background
8. The detail is set out in the August judgment. CI, IE and MI are Country A Citizens. IE remains living there, MI has been in the UK since August 2011 and CI returned to live there in December 2016.
9. CI and IE married and had two children M and C, they separated in about 2008. Following separation the children lived with IE. CI formed a relationship with MI who had three children E, V and A. According to my findings, CI obtained false birth certificates for M and C to show MI as the birth mother and sought visas to come to the UK using those false documents and MI was complicit in these actions. Visas were granted for MI and the children, they came for a short trip in 2011 and returned here in January 2012. MI's visa was to enable her to study and was limited to two years. CI had a multi entry visa for 5 years from September 2011 until September
2016. CI runs a general trading business based in Country A with business interests abroad including the UK, Country B and Country C. IE did not learn the children had come to the UK in early 2012 until after they had left, she understood they had gone to attend CI and MI's traditional marriage in December 2011. She was expecting them to be returned to her care in January 2012 to enable them to return to school. When she contacted CI he told her they had come to the UK to start a new life. CI and MI failed to facilitate any contact between IE and M and C until September 2015, since then the children have enjoyed regular skype contact with IE.
10. MI and the children lived in the UK with frequent visits from CI. In January 2015 V made allegations of sexual abuse against CI, he was arrested and released on bail to the family home. V, M and A had been placed with foster carers, but were returned to the family home after V's ABE interview on 30 January 2015. By then CI had returned to Country A. In July 2015 CI is charged with offences against V, remanded in custody and the LA issued care proceedings. In October 2015 MI made an application for asylum, which included all 5 children.
11. In February 2016 CI was acquitted in the Crown Court of sexual offences against V and DNA tests confirmed CI and IE are biological parents of M and C.
12. Following the three week contested fact finding hearing in July and August I made the findings summarised above and set out at the end of this judgment.

13. CI had been the subject of extradition proceedings relating to allegations of fraud in Country A, those proceedings were discharged on 10 November 2016. CI returned to Country A on 14 December 2016 by way of an emergency travel document, which confirmed he had overstayed his visa.
14. Apart from three occasions in August, September and December CI has not had contact with M and C since January 2015 when V made her allegations. The records of two of those contacts were available to the court.
15. IE has remained living in Country A. Following a gap of three years skype contact between her and M and C was established in September 2015, both M and C now have skype contact with her when they want, which appears to be almost daily.
16. M and C have had two face to face contacts with Mr and Mrs AM when they visited them and stayed in the area over two weekends. The reports of the contact were positive and the AM's and the children have remained in regular skype contact since.
17. All the children are relatively settled in MI's care and, understandably, wish to remain living with her. M has recently passed her 11 plus and if she remains with MI would be going to a grammar school in the area. Assessments and Updated Evidence
18. Parenting assessments of CI and MI do not support placement of M and C with CI but are positive in relation to MI.
19. MI's first assessment was between September and October 2015. The updated assessment was carried out in August and September 2016. In that assessment she demonstrated limited acceptance of the courts findings, in particular about her knowledge and involvement of M and C coming to this country without the consent of IE and with false documents. Ms F, who carried out the assessment, whilst acknowledging that MI can provide for the children's day to day care her concern is that as a result of the deception of the authorities by MI and CI in the past 'they will have little regard for professionals involved in the care proceedings now'. Ms F considers MI has the capacity to care for and protect E, V and A, but not for M and C due to her concerns regarding the risks from CI's behaviour if they remain in her care, the difficulties that are likely to arise in dealing with MI's involvement in their removal from Country A and their mother's care and the risks inherent with MI's lack of honesty with professionals in the past. CI has expressed strong views that the children should not remain with MI, and has made a number of threats towards MI and her family. The assessment recommends a professionals meeting to identify whether a plan could be developed to enable M and C to safely remain in MI's care.
20. CI's updated assessment was carried out between August and September 2016 it does not support placement of M and C with him. CI co-operated with the assessment, but made it clear he did not accept any of the findings made by the court. He expressed those views in forceful terms, he regards MI as 'evil and it is her evil that has caused this'. Ms F reported she found the CI's behaviour during their sessions controlling, he would change the subject

or talk at length about unrelated topics. She notes she was concerned about the comments CI made about the people in his community and how they will support him 'do whatever is needed' if the children remain with MI. In their session on 31 August Ms F was particularly concerned about the threats CI was making against MI and her family if M and C were placed with her, if they were he is reported as saying 'there would be a crisis in my community – the community will go to her (MI's) house and make trouble; the Government (Country A) will intervene'. Ms F's observations of contact displayed limited ability by CI to take his cues from the children as to how he should behave towards them, even though she recognised there had been a significant gap in the contact between M and C and their father. Whilst recognising the advantages of M and C being placed with him Ms F was clear that the risks caused by CI's inability to accept the findings, his inability to meet the children's emotional and psychological needs and his dishonesty in the past made it difficult to place reliance on what he asserts now and the impact on that with professionals seeking to work with him resulted in her not being able to recommend placement of the children in his care. She re-evaluated her position following receipt of the assessment from the Lucy Faithful Foundation (LFF) that put his risk of sexual abuse in the future as being 'low', particularly in relation to his own children. In her oral evidence Dr Stubley confirmed what was set out in her report. Ms F acknowledged the LFF's expertise in relation to the assessment of sexual risk but said the sexual risk was just one aspect of the concerns relating to CI's ability to meet the children's needs. When Ms F discussed the LFF's assessment with him CI repeated that he did not regard himself as being any sexual risk to the children. Ms F shares the concern expressed in the LFF assessment about CI's threats to MI and his controlling behaviour and her conclusions in her assessment are not changed, she does not recommend placement of M and C with CI in Country A. In his oral evidence CI confirmed his position that he considered M and C's best interests would be served by returning to Country A to be in his care.

21. Mrs AM is IE's sister, she is 34 and lives in City C with her husband who is 45 years. They have two children age 4 and 2 years. They married in 2010 and Mrs AM came to the UK to join her husband. She has indefinite leave to remain here. Following a positive viability assessment Ms M carried out the full assessments, the first in February 2016 with updates in April (following discussions with the referees), May 2016 (following receipt of the PNC details for Mr AM which made Ms M re-evaluate her assessment to be negative), June 2016 (which details the additional alias names Mr AM is known as) and October 2016 (which details Ms M's discussion with the AM's about the courts findings and seeking clarity regarding Mr AM's previous convictions as a result of her discussions with the AMs she revised her conclusion to recommend an SGO). In the initial assessment Ms M sets out their personal history given to her by the AM's. Mr AM confirmed he holds a British Passport and was born in Country A, since he arrived in the UK the only time he reported he had been unemployed was when he was serving a custodial sentence from October 2002 to 2006 for importing 720 gms of cocaine into the country. Subsequent enquiries found that he had convictions under an alias name concerning the drugs offence and subsequent driving

offences in 2006/2007, which resulted in him being recalled to prison until September 2009. Ms M spoke at length to Mr AM about his failure to inform her that he had been convicted under an alias and that he had other convictions apart from the drug related one, she considered he had been reflective, had shown insight and was able to take responsibility for his actions. She considered the risks of him repeating such behaviour to be lower as a result of his changed personal circumstances and increased responsibilities. Following his release he reported that he moved to Scotland, worked for employment agencies before securing a position as a chef at the university. Since 2015 he has been running a cleaning franchise that he purchased. Whilst Ms M acknowledges the strength in their relationship she expresses the view that she remained unclear how much Mrs AM knew of Mr AM's previous criminal behaviour and sentence. Ms M concludes that she does consider the AM's would be able to meet M and C's needs and would be able to safeguard the children appropriately from any risk posed by CI. In their written statement Mr and Mrs AM confirm their commitment to care for M and C. Mr AM gave oral evidence and showed himself to be instinctively sensitive to the children's needs. He confirmed they would take professional advice about how best to manage M and C being placed with them and their contact with their parents, and would not make any decision he considered would be emotionally harmful for the children or was against their wishes. He confirmed there was schooling available for the children nearby and that they had a 'cordial' relationship with MI.

22. The viability assessment of the AWs following telephone interview in June 2016 was positive and a full assessment was conducted by an independent social worker Ms C. She did not recommend M and C's placement with the AW's. The AW's married in October 1996 and have one son age 20, who currently studies in the US. Mr AW, CI's childhood friend, is 55 years. He is a lawyer and accountant and has his own business. Mrs AW is 51 years and works as a bank manager with long hours from 5.30am to 9pm each day. Their plan if they care for M and C is the children would attend boarding school and M and C's paternal half sister, SI age 30 years, would care for them until she enrolls at university. Ms C does not recommend placement with the AW's due to their failure to accept the findings of the court, the enmeshed nature of the relationship between CI and the AWs, particularly Mr AW, the risk of the children being returned to the care of CI and their lack of availability to meet the children's needs. In his oral evidence Mr AW said he was unaware of the findings that had been made regarding CI and his view was that if CI still disputed them there should be a 're-investigation' of them. He confirmed that he had not told any of his wider family about his proposals to take on the care of M and C. Ms C did not recommend the AW's as future carers for four main reasons: their lack of insight into the risks posed by CI and that he was likely to be given unsupervised contact with the children; their working commitments and the number of carers the children would have; Mr AW's close working ties with CI and their lack of insight into the children's needs.

23. Ms B has been the allocated social worker since September 2015. In her most recent statement she recommends E, V and A remain in MI's care and M and C go and live with their maternal aunt and uncle in City C. She accepts the assessment recommendations regarding CI and Mr and Mrs AW. She recognised and weighed in the balance the cultural advantages of M and C returning to but was clear in her oral evidence that placement with either CI or Mr and Mrs AW did not meet the children's emotional and physical needs. Whilst she recognises that M and C's wishes are first to remain placed with MI she considers that Mr and Mrs AM, due to Mrs AM's biological connection with IE, are better able to offer the children emotional support, in particular in understanding why and how they have come to be in the situation they are now in. She recognised how more recently MI had permitted contact between M and C and their mother and aunt. However she considered Mr and Mrs AM are in a better position to promote contact between M and C and their birth parents. If M and C moved Ms B agreed it would be important for her to do some life story work with M and C to help them understand their recent history. In relation to contact Ms B considers there should be contact between the children and MI and limited indirect contact for M and C with CI. In her oral evidence she considered M and C needed to have some emotional stability before any direct telephone or skype contact could be considered between CI and M and C. She said the difficulties in this case are CI's non acceptance of the courts findings and the children's current wishes not to see their father. They needed to be in a secure placement, well supported and settled before contact with CI could be looked at. In her oral evidence she recognised that there needed to be effective liaison between the LA and the asylum service, who will take over responsibility for the day to day financial needs of MI and the children. Regarding the children's wishes and feelings she accepted in her oral evidence they could be influenced by MI.
24. Mr Cooper has been the children's guardian during these drawn out proceedings. He has an established relationship with the children. Attached to his most recent report each of the children have been able to set out their wishes and feelings. The letters were written at his recent meeting with them. The children had no notice he was going to invite them to do this if they wanted to. Each letter states that the children would prefer to remain where they are currently living but both M and C state clearly that if that is not possible they would like to live with their aunt and uncle in Scotland. In preparing his balanced report he visited Mr and Mrs AW in Scotland. In both his report and his oral evidence he provided a detailed analysis of the placement options for the children, with a careful evaluation of the competing considerations for each option. He recommends E, V and A remain with MI and M and C move to live with the AMs.

Legal Framework

25. The parties have helpfully been able to agree the legal framework.
26. The decisions I am being asked to make are governed by each child's welfare, which is the courts paramount consideration under section 1 Children Act 1989 (CA 1989).

-
27. An SGO order is made pursuant to s 14 CA 1989 and its effect is set out in s 14 C, which sets out the enhanced parental responsibility of a special guardian as follows: ‘The effect of a special guardianship order is that while the order remains in force—
- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).’
28. Before making a SGO the court is required by s 14B CA 1989 to consider whether to make a contact order.
29. The court has the power to make a Family Assistance Order (FAO) under s 16 CA
1989. The LA has consented to a FAO. Section 16 (1) (b) provides ‘Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring... (b) a local authority to make an officer of the authority available, to advise, assist and (where appropriate) befriend any person named in the order. The LA accept that the officer under section 16 (1) (b) is Ms B.
30. An SGO can be registered in the Court of Session in Scotland under the Family Law Act 1986, which effectively makes it an order of the Scottish Court.
31. The relevant statutory provisions are: - (a) (b) (c) (d) The Children’s Hearings (Scotland) Act 2011 The Children’s Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 (the “Transfer of Children to Scotland Regulations”) The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Savings) Order 2013 (the “Consequential Provisions Order”). Family Law Act 1986.
32. Part 1, Section 1 of the Family Law Act 1986 (FLA 1986) applies to a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such order (FLA 1986 s1 (1) (a)) and to a special guardianship order made by a court in England and Wales under the Children Act 1989 (FLA 1986 s.1 (1) (aa)).
33. The Part 1 order can only be enforced once it is registered with the appropriate court in Scotland. Section 25 of the FLA 1986 states: Recognition of custody orders: general.
- (1) Where a Part I order made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of sixteen, then, subject to subsection (2) below, the order shall be recognised in any other part of the United Kingdom as having the same effect in that other part as if it had been made by the appropriate court in that other part and as if that court had had jurisdiction to make it.

-
- (2) Where a Part I order includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) above shall not apply to that provision.
- (3) A court in a part of the United Kingdom in which a Part I order is recognised in accordance with subsection (1) above shall not enforce the order unless it has been registered in that part of the United Kingdom under section 27 of this Act and proceedings for enforcement are taken in accordance with section 29 of this Act.
34. The procedure for registration of the order is set out in section 27 FLA 1986 as follows: -
Registration.
- (1) Any person on whom any rights are conferred by a Part I order may apply to the court which made it for the order to be registered in another part of the United Kingdom under this section.
- (2) An application under this section shall be made in the prescribed manner and shall contain the prescribed information and be accompanied by such documents as may be prescribed.
- (3) On receiving an application under this section the court which made the Part I order shall, unless it appears to the court that the order is no longer in force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely—
- (a) a certified copy of the order, and
- (b) where the order has been varied, prescribed particulars of any variation which is in force, and
- (c) a copy of the application and of any accompanying documents.
- (4) Where the prescribed officer of the appropriate court receives a certified copy of a Part I order under subsection (3) above, he shall forthwith cause the order, together with particulars of any variation, to be registered in that court in the prescribed manner.
- (5) An order shall not be registered under this section in respect of a child who has attained the age of sixteen, and the registration of an order in respect of a child who has not attained the age of sixteen shall cease to have effect on the attainment by the child of that age.’
35. The procedure for making an application to register the English order in Scotland is set out in Family Procedure Rules 2010, r 32.23. In Scotland the prescribed court is the Court of Sessions [FPR 2010, r32.23 (a)]. The English order must be registered as soon as practicable.
- Immigration Position
36. The immigration position of all the children and MI remains uncertain. The history of the applications is set out in the August judgment.

37. On 4 October 2015 MI made an asylum application for herself and all five children. That application has yet to be determined. The LA have confirmed the August judgment has been sent by them to the SSHD, Ms B informed the court that she has kept the SSHD updated and they plan to make their decision following the conclusion of these proceedings.
38. Ms Cronin has provided advice within these proceedings on the immigration position of the children. She set out in that advice the desirability of MI notifying the SSHD of any inaccuracies in her application as to the maternity of M and C. It remained unclear during this hearing whether MI had taken any such steps.
39. Ms Cronin confirmed that in the event of M and C being placed with the AMs they can make an application on behalf of M and C for them to be granted leave to remain here in their care. The court having made the decision set out below steps to make such an application should be done by the AM's without delay.
40. CI's immigration position here remains uncertain. His visa expired in September
2016. He returned to Country A in December when it was noted that he was an overstayer. In his oral evidence CI said he planned to obtain a passport shortly and did not envisage any difficulties in securing a visa to be able to return to the UK. Discussion and Decision
41. The court is grateful for the extremely helpful and thorough written submissions from all parties.
42. Having considered the evidence I am satisfied that E, V and A should remain in MI's care. No other proposal is put forward, it accords with their wishes and their needs as set out in the assessments carried out. There should be a child arrangements order. The recital in the order and the care plan for these three children should specify clearly that the local Authority will continue to provide for the day to day financial support for the family until NASS takes over, to ensure there is no gap in their financial support.
43. Turning to the placement of M and C, the position is not so straightforward.
44. It is not surprising that M and C express the wish to remain where they are living. They have been in MI's care for five years. I reject any suggestion that their views are as a result of coaching by MI. Mr Cooper's evidence was clear that the children had no warning about the letters they wrote. He considered they represented their current wishes and feelings.
45. When considering their wider psychological, emotional and cultural needs there are strong arguments in favour of the placement of the children in Country A. It would meet their cultural needs, it is where their birth parents live, where the wider family are and would avoid the uncertainty caused by their current immigration status. Against that, both in relation to the placement with CI and Mr and Mrs AW, neither of those placements display any recognition or insight into the findings made by the court. In the light of the history both placement options in Country A are likely to give them a distorted view of their background, how they came to live in the UK and the roles played in that by CI, MI and IE.

Such behaviour would be very damaging to both children. CI has made clear in the assessment interviews he has participated in, in his written and oral evidence that he is simply unable to accept or show any insight into the serious findings made against him. His position remains resolute that he shoulders no responsibility for the position the children find themselves in, he puts the responsibility entirely at the door of MI who he regards as 'evil'. It is very likely if the children were placed with the AW's they would almost certainly have unsupervised contact with CI.

46. Placement with MI has the advantages of continuity of care and education but would be against the wishes of both parents which could impact on the ability of the parents to have meaningful contact with M and C in the future, in particular with CI. MI and CI's relationship remains very difficult, which is likely to adversely impact on the likelihood of future contact. I agree with the Guardian that the risk of M and C remaining with MI is that due to her limited acceptance of her actions in bringing the children here and the long period when they had no contact with their mother it may be difficult for M and C to get a clear, reliable and coherent account as to how they came to the UK.
47. Placement with the AM's has the advantage of being with a member of the extended maternal family who would support contact with the parents. The court shares the concern expressed by Ms M and the Guardian regarding Mr AW's failure to be frank when first asked about the full extent of his previous convictions and the alias he used. However it is clear from the interview Ms M had with him in September he gave what she considered was a full account. On the evidence the court has I agree with the Guardian's view that the risk to the children arising from this is low. Mr AM's circumstances now are very different, he is now married, has a young family and a relatively secure job through his cleaning franchise. He was impressive in his oral evidence, showing a sensitivity towards M and C. I have some residual concern that CI will seek to put pressure on him for contact to take place between M and C and their father sooner rather than later. Mr AM said he would take advice from the professionals about this, which I accept. However he and Mrs AM also need to make decisions themselves that have M and C's interests at their heart, and not be influenced by any requests made by CI. Each child needs to feel emotionally secure and stable and want to have contact with CI before it is even considered appropriate for it to take place. CI is going to need to re-build trust with them, which will take time and patience. In his oral evidence Mr AM said he understood why CI would want contact as he is their father but he recognised that what CI wants may not be in the children's interests, he needs to keep that distinction at the forefront of his mind. If the children are placed with them Mr and Mrs AM bear the responsibility of making sure they make the right decisions for M and C. The AM's are clearly supportive of continuing contact between M and C and their mother. The evidence demonstrates that is in their interests.
48. Having balanced the competing options for M and C's future care I have reached the conclusion that placement with the AM's under a SGO is most likely to promote their welfare. That is for the following reasons.

49. The AM's have shown themselves to be focussed on M and C's welfare. They have shown commitment to them by the visits they have made and the continuing skype contact since then. In their discussions with Ms M, the Guardian and in their oral evidence they have displayed sensitivity in how they would manage the children's placement with them. Mr AM accepts it was wrong not to volunteer all the information about his previous convictions but his situation is now more stable and settled and the risks of him re-offending are low. Placement with them whilst involving some short term disruption in terms of the move of home and school will, in my judgment, provide the children with the best chance of long term stable care that will promote and maintain links with both the maternal and paternal family. There remains the uncertainty of their immigration applications, but that is the position whether they remain with MI or are placed with the AM's.
50. Whilst remaining with MI would have the benefit of being in accordance with their wishes and would have the continuity of care, education and remaining in the home with E, V and A it would not meet the M and C's interests. MI would be unable to give them a reliable account of how they came to be here or the lack of contact with their mother for a three year period.
51. Returning to live in Country A with either CI or the AW's would expose them to unacceptable risks. It would be against their wishes and would result in them getting a distorted picture of their background, their abduction from Country A and stay in the UK. CI would be simply unable to give them anything other than his account of events which I have found to be untrue. Whilst not doubting his love for M and C he has remained adamant in his view that the findings of this court as they relate to him are wrong and as Ms M and Dr Stubley have said CI is very vocal and forceful when expressing his views. I am satisfied that the AW's would not be able to protect M and C, they would not be available to provide consistent and reliable care for the children and would undoubtedly succumb to pressure from CI for him to be able to see the children.
52. An SGO in favour of the AM's is the order that is most likely to meet the welfare needs of the children. It will give the AMs enhanced parental responsibility to enable them to make the decisions that need to be made to safeguard the welfare needs of these two young children. There was some debate in the evidence as to the timing of any placement in Scotland. I am satisfied that the placement should take place sooner rather than later to avoid continued uncertainty, the upcoming half term holiday would seem the best time for the move to take place.
53. The LA have confirmed that they will retain financial responsibility for the family for at least a period of 12 months and then this will be subject to review, in accordance with the Special Guardianship Statutory Guidance issued in January 2017.
54. In relation to contact I have considered the position, as I am required to do under s 14B, but do not propose to make any defined contact order. I have carefully considered the submissions made by Mr Tughan Q. C. in relation to contact in particular the need for the

court to recognise the gaps in contact and to consider CI's parenting against a wide canvas. There is no need for any order regarding IE as there is no issue that her skype contact will remain in place and in the event that she is able to come to this jurisdiction, I have no doubt she will be able to reach agreement with her sister. The situation in relation to CI is too uncertain and more complex. The proposals made by Ms B have much to commend them and are set out in the SGO support plan. There should be exchanges of written communication between CI and the children after two months, once they have had a chance to get settled. This should initially be via Ms B with a view perhaps to setting up a dedicated email account that could be overseen by the AM's. Dependent on the success of that communication, it may move on to skype contact supervised by the AM's who will best be able to judge whether it is of benefit for the children. Direct contact is a commendable aim, but only if it is commensurate with the children's interests. They have to have the emotional security and stability to manage it, which is likely to take some considerable time. CI's wish for fortnightly or monthly direct contact is not in the children's interests now or in the foreseeable future.

55. There has been considerable negotiation during the hearing regarding the SGO support plan. It has been subject to revision and is now agreed between the parties. Importantly it includes financial support for the registration of the order, but remains somewhat vague about the financial support for the legal advice and support necessary for the AM's to seek to secure M and C's immigration application. It is essential further details are obtained about that and a clear commitment by the LA to support this essential part of the SGO support plan.
56. I am satisfied that the court should make a prohibited steps order (PSO) to prevent CI removing the children from the care of the AMs or from the jurisdiction.
57. The SGO and the PSO can be registered in Scotland in accordance with the procedure set out above.
58. There has been some debate during the hearing about what, if any, orders can or should be made to support the placement. Very surprisingly the LA have not made any contact with their Scottish counterpart to enquire as to the support that may be available or provided updated confirmation that school places are available.
59. Although a supervision order could be made and registered in Scotland no party advocates this as it is unclear how it would work on the ground. The LA have agreed that there should be a family assistance order under section 16, they have agreed that Ms B is the person who they will make available under section 16 (1)(b) and the persons named in the order will be the five children and the AM's. The proposal is the order should be for six months. In his closing submissions Mr Tughan on behalf of CI does not support this order being made as he submits Ms B has failed in the past to properly support contact between the children and CI. I reject that. This has not been an easy case and CI's position has been very difficult to manage. He has not been amenable to advice as to how to manage contact, as he simply

doesn't see the need for him to adjust his behaviour.

60. I am satisfied that M and C's welfare can best be met by the court making a family assistance order for Ms B to advise, assist and befriend those named in the order. In my judgment this order should be for 9 months as this will cover the period when M will transfer to a new school in September. This will enable Ms B to be involved in supporting the move of the children to Scotland, assist in the management of contact as set out in the SGO plan and help support the AM's to manage contact in the future and access advice and support in Scotland. Her detailed knowledge of the case will be invaluable in her being able to help the children navigate the next few months. The court fully expects Ms B to take a proactive approach, it does not necessarily require regular visits to Scotland but will require consistent and regular contact with the children and the AM's for support to include the following: (1)Preparation for M and C's move to Scotland, including schooling that recognises both children's educational progress to date. (2)Indirect contact between M and C and CI after a settling in period in accordance with the SGO support plan. (3)M and C's contact with E, V and A (4)Life Story work (5)Registration of the SGO order (6)Immigration advice regarding an application for M and C (7)Liaison with Scottish authorities
61. I agree with Ms Porter's submissions that there is no need to register the FAO in Scotland as it will not need to be enforced and, in any event, it does not come under the provisions of BllR, as it does not affect parental responsibility.
62. I agree with Mr Tughan that the care plans should reflect what is set out in the SGO support plan. The best way of doing that will be to incorporate the SGO support plan as an annex to the care plan, which will cross refer to its provisions.
63. I intend to hand down this judgment on Friday 3rd February and direct the LA to file and serve by Thursday 2nd February at 10 am: (1)A transition plan (prepared in consultation with the Children's Guardian) for the placement of M and C in Scotland with a timetable of the placement, confirmation of the life story work that is going to be done and how, together with details and confirmation of school places available for the children; (2)A revised SGO plan that includes a clear commitment to financially support the AW's to make immigration applications on behalf of the children; (3)A revised care plan for M and C that incorporates the SGO support plan. (4)An agreed draft order for the court to approve, which includes a recital that the LA will continue to financially support E, V, A and MI until NASS takes over.
- SCHEDULE OF FINDINGS IN AUGUST JUDGMENT CHILD ABDUCTION
1. M and C were abducted from Country A by their Father CI on 6 January 2012 and retained in the UK.
2. MI was, at the very least reckless about whether IE consented or even knew about M and C coming or remaining in the UK. MI was complicit in the continuing retention of M and C.
3. MI provided false Birth Certificates for of E, V and V reflecting that he is their Father.

4. MI falsely represented and/or provided false Birth Certificates reflecting that she is the Mother of M and C.
5. MI admitted that she falsely represented to the Headteacher CS, that M and C were her biological children.
6. MI admitted that she informed the Headteacher CS that A, M and C were full siblings.
7. MI knew that the information on the children's Birth Certificates and Passports were false.
8. CI and MI used false Birth Certificates and false Passports to obtain Visas for the children to enter the UK.
9. MI used the aforementioned false documents to apply for herself and the children to have leave to remain in the UK.
10. MI planned to relocate to Country B with the children once her Student Visa expired in November 2015. The false Birth Certificates and passports would be used for the move to Country B.
11. MI admitted that she claimed Asylum for herself and the children utilising the aforementioned false documents.
12. CI and MI refused to allow M and C to have direct or indirect contact with their Mother IE SEXUAL ABUSE/ASSAULT OF V
13. V was sexually assaulted by CI from 2011 - 2014 by:- [a] made to perform oral sex on CI on various occasions [b] CI performed oral sex on V when she was aged 10 or 11 years old [c] CI was coming onto her [sexual advances] 'all the time" [d] V having left the bathroom, CI removed her towel and touched her breasts FINANCIAL AND EMOTIONAL ABUSE OF IE
14. CI was financially and emotionally abusive towards IE, when he arranged for disconnection of the electricity and water supply at the former matrimonial home, and he was controlling of IE about money. LACK OF INSIGHT INTO THE RISKS POSED BY CI
15. MI intended to move with the Children to Country B to live in CI's home and work in his business ventures
16. MI continued to have direct contact with CI, by visiting him in the hotels he stayed in, until he was remanded in custody in July 2015 notwithstanding V's allegations NEGLECT
17. CI and MI neglected the Children's education, in that they were not enrolled in schools from January 2012 until September 2012. Sham Marriage
18. MI entered into a "sham marriage" on the 31st October 2012 with a German national. Both MI and CI were involved in arranging this.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewfc/2017/59>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/medway-council-v-mi-and-ors-2017>

Prepared on 28 October 2026 · Esheria