Neutral Citation Number: [2018] EWHC 66 (Admin)

Case No: CO/4870/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2018

Before :

MR JUSTICE TURNER

- -

Between :

AS	**Appellant**
- and -	
CIRCUIT COURT IN POZNAN (POLAND)	**Respondent**

- -
- -

Mary Westcott (instructed by **Lansbury Worthington Solicitors**) for the **Appellant**
Daniel Sternberg (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing dates: 8th November 2017

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Approved Judgment

Mr Justice Turner :

INTRODUCTION

1. The appellant brings this appeal against the judgment of District Judge Ashworth of 19 September 2016 the effect of which was to grant a request that she be extradited to Poland to serve a sentence of imprisonment for offences she had committed in that country. Permission to appeal, limited to matters falling within the scope of Article 8 of the ECHR, which relates to rights to a family and private life, was granted by Whipple J on 20 December 2016. The appellant's identity has been anonymised in this judgment in the interests of her two children whose circumstances are central to the determination of the issues between the parties. She will, therefore, be referred to as AS.

THE BACKGROUND

2. The procedural background to this appeal is of a labyrinthine complexity which would reward neither rehearsal nor close scrutiny. It goes back a very long way. The factual background can be shortly summarised.

3. AS is a Polish notional who used to work in Poznań in west central Poland. Her employment involved the preparation and presentation of documents for the purposes of obtaining holiday benefits. Over a period of about four years between 2002 and 2006, AS repeatedly created and used forged documents to obtain pay-outs for herself and others to which neither she nor they were entitled. In this way, she accumulated benefits for herself to a value of about £1,250 and for others to a value of about £2,600.

4. Shortly after the frauds came to an end, AS left Poland and settled down in the UK where she was later joined by her son, L, who is now nearly thirty years old. She has always maintained that she came to the UK for a better life after she had split from and divorced her husband. However, the District Judge was to conclude that her real reason was to evade prosecution for fraud in her native Poland. Bearing in mind the chronology, I consider that his finding on this issue was one that he was entitled to reach.

5. It was not long after her arrival in the UK that AS started another relationship with one PS. They never married but, nonetheless, went on to have two children together: Z, a girl now nine years old and A, a boy now six years old.

6. AS's past began to catch up with her when, on a visit to her native Poland in July 2010, she faced questions about the frauds she had carried out before she had left to live the UK. On 17 May 2011, AS attended the Polish Embassy in London to face further questioning. She admitted her offences and, in her absence and as a result of a plea bargain, on 22 August 2011 she was sentenced to serve a term of 14 months in prison which was suspended for three years. It was a condition of the suspension that she should pay a sum of about £1,000 by way of compensation in regular instalments to be completed on 30 August 2012.

7. AS did not pay the compensation and, as a result, she was required to surrender to custody in Poland on 23 December 2013. A very long time later, on 14 June 2016, a European Arrest Warrant was issued.

8. In the meantime, AS's domestic circumstances had deteriorated significantly. After the birth of A, PS started to drink heavily and AS became the victim of domestic abuse at his hands. They split up early in 2016, leaving AS as sole carer for the children but with PS maintaining weekly contact.

THE DECISION BELOW

9. The District Judge is to be commended for his clear and coherent judgment that follows the balance sheet format in accordance with the guidance given in the case of Polish Judicial Authorities v Celinski and others [2016] 1 W.L.R. 551.

10. In summary, the District Judge found the following factors to weigh in favour of extradition:

    i) The public interest in honouring extradition arrangements is very high;

    ii) AS left Poland as a fugitive;

    iii) The decisions of the judicial authority of a Member state should be given respect;

    iv) The offences committed by AS were not trivial;

    v) AS had failed to honour the deal in which, as she well knew, the payment of compensation was a pre-requisite to avoiding an immediate custodial sentence;

    vi) AS did not cooperate after her breach. Indeed, she moved address without informing the Polish Court;

    vii) If AS had been subject to the jurisdiction of England and Wales, her conduct would have been likely to have led to a sentence of imprisonment;

    viii) There were three other potential carers for her children in the event that she were to be extradited.

11. He found the following factors to militate against extradition:

    i) AS had a difficult domestic history involving domestic abuse;

    ii) Extradition would have an adverse impact on the children;

    iii) When the payments were due, AS was reliant upon PS for money but this was over a period when, rather than supporting her, he was abusing her. In the event, she had made some payments toward the total sum outstanding;

    iv) AS had committed no criminal offences in the UK;

v) Although AS did not go to Poland to state her case, her written submissions at the time may well have been disregarded because they arrived one day after the relevant procedural period;

vi) The offences had been committed over a decade earlier.

12. Having set out this balance sheet analysis, the District Judge went on to conclude that the factors in favour of extradition outweighed those against and made the order which forms the subject matter of this appeal.

13. The appellant has levelled a considerable number of criticisms of the judgment of the District Judge. However, for the purposes of this appeal, my analysis will be confined to the issue of the application of Article 8, to which Whipple J rightly limited the grant of permission. I would add that, in my judgment, the Article 8 point is, indeed, one of central importance the resolution of which is such as to determine the outcome of this appeal regardless of the merits (or demerits) of the other matters raised in the skeleton arguments of the parties. I proceed on the basis, therefore, that in all other respects the District Judge's findings of fact are to be treated as being unassailable.

THE LAW

14. The scope of the operation of Article 8 considerations within the extradition jurisdiction generally was considered by the Supreme Court in HH v Italy [2013] 1 A.C. 338 and is accurately summarised in the headnote thus:

> "…although there might be a closer analogy between extradition and the domestic criminal process than between extradition and deportation, the court had still to examine the way in which extradition would interfere with family life; that the question was always whether the interference with the private and family lives of the extraditee and members of his family was outweighed by the public interest in extradition; that the constant and strong public interest in extradition that the United Kingdom should honour its international treaty obligations, that those accused of crime should be brought to trial and those convicted should serve their sentences and that safe havens for fugitive offenders should be eradicated, carried great weight, but the weight would vary in the particular case according to the nature and seriousness of the crimes involved; that delay since the commission of the crimes might both diminish that weight and increase the impact on private and family life; that, while the public interest in extradition would outweigh the article 8 rights of the family unless the consequences of the interference with family life were exceptionally severe, exceptionality was not a test; that it was inappropriate to treat extradition cases as falling within a special category which diminished the need to examine the way in which the process would interfere with the individual's right to respect for his family life; and that, in considering article 8 in any case where a child's rights were involved, the child's best

> interests were a primary consideration, even though they might be outweighed by countervailing considerations."

EVIDENCE OF ARTICLE 8 IMPACT OF EXTRADITION

15. The District Judge had evidence concerning the family history from Michelle Grant of the Local Authority in the form of a report dated 19 August 2016 and made pursuant to section 7 Children Act 1989.

16. The author gave a full history of PS's chronic alcohol abuse and recorded that, following his departure from the family home, the children had lived with their mother as the primary carer for about five months with visits from PS taking place on Sundays. The children did not stay over with their father over this period. Ms Grant concluded that the safety and well-being of Z and A could only be secured if that situation continued and that PS should not return home unless he had successfully completed treatment for his alcoholism and had worked on addressing his propensity for domestic violence.

17. In considering how the children were likely to be affected by the extradition of their mother, Ms Grant concluded that PS was unable to play a more supportive role until the alcohol and violence issue had been satisfactorily addressed. Bearing in mind the earlier serious disruptions to the children's lives, she considered that the continuity in the care from their mother was crucial. In this regard, although the local authority would, in the event of her extradition, have responsibility for finding a suitable placement for the children, such a course would not be in their best interests.

18. In her report, Ms Grant referred to a risk assessment relating to PS which had been carried out by Dr Newman the results of which were set out in a report dated 6 June 2016. The District Judge did not see the report of Dr Newman but the report of Ms Grant did not misrepresent the broad thrust of his serious concerns over PS's alcohol abuse and domestic violence and the pressing need for these issues to be addressed.

19. Also before the court, was a report dated 30 August 2016 from Dr Pettle, a consultant psychologist specialising in child and family mental health. She concluded that Z, although not suffering from any clinical disorder, was a guarded child who was emotionally vulnerable. A, in contrast, suffered from significant speech and language problems. He presented as a troubled child, anxious and demanding of attention. In the event that his mother were extradited, Dr Pettle predicted that his academic, psychosocial and emotional functioning would almost certainly be detrimentally affected and that any alternative carers would find his anxieties difficult to manage.

20. Dr Pettle considered the options for alternative care. These included: PS returning to Poland with the children with support from their extended family, the children being looked after by, ET, their godmother who lived in Kent and foster care. She concluded that all of these options "involve a significant degree of disruption and, given the children's life experience thus far, further upheaval may result in long term consequences for their psychological adjustment, emotional development and capacity to trust in relationships." She went on to state that the departure of their mother for over a year would be a devastating experience for both children.

21. In her evidence before the District Judge, AS said: "If I were to be extradited, I don't know whether the children would go to [ET] or to their father or back to Poland with their paternal grandmother. I am not sure if any of the options are good, they have been through so much recently. If the children had to stay in the UK, I would prefer [that] they were looked after [ET] with the help of their father. The children would be safe with their father… but he only rents a single room. He needs to complete the alcohol and domestic violence course. He is a good father but he should finish the course as he is violent to me (not the children). I do trust him about the children which is why he is with them today."

THE DISTRICT JUDGE'S ASSESSMENT

22. Care must be taken in cases such as these not to impose too high a burden on the court at first instance to achieve an entirely seamless and detailed judgment free of any minor blemish or inconsistency. The standard to be applied must not approximate to a counsel of perfection by the application of a minute textual exegesis.

23. In this case, however, I find that there was a stark contrast between the actual evidence regarding the children's welfare in the event of the extradition of AS, which the District Judge expressly accepted, and his distillation of this evidence when he was reaching his conclusion on the application of Article 8. In short, it is difficult to avoid the conclusion that he significantly understated the impact of extradition on the children when performing the balancing exercise.

24. In his judgment, the District Judge recorded: "The report of Dr Pettle, I accept."

25. Notwithstanding this unequivocal statement, the District Judge went on to summarise the adverse impact on the children in a way which was importantly inconsistent with the conclusions of Dr Pettle.

26. Dr Pettle's conclusion, which I repeat for ease of reference, was:

> "All of the available options involve a significant degree of disruption and given the children's life experience thus far, further upheaval may result in long term consequences for their psychological adjustment, emotional development, academic attainment and capacity to trust in relationships." [Emphasis added.]

27. In contrast, the District Judge held, in respect of A, that the extradition of his mother: "would not lead to …long term serious damage to him emotionally" Of Z, he found that: "It would of course be very upsetting for [her], but again would not cause serious harm."

28. Of course, a judge is not bound to adhere to the opinions of experts, even when they are uncontradicted by other evidence, but, having accepted that evidence unreservedly, he is not permitted fundamentally to resile from their central conclusions when performing the necessary balancing act. In this case, I find that the District Judge, having otherwise produced a judgment of commendable clarity, fell into fundamental error at the crucial point of balancing the Article 8 considerations by underestimating the likely adverse impact of extradition on the children.

THIS COURT'S POWERS ON APPEAL

29. Section 26 of the Extradition Act 2003 provides for an appeal from an extradition order to the High Court. The powers of the High Court are set out in section 27 which provides, in so far as is material:

> "**Court's powers on appeal under section 26**
>
> (1) On an appeal under Section 26 the High Court may-
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) ... are satisfied.
>
> (3) The conditions are that-
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge...
>
> (5) If the court allows the appeal it must-
>
> (a) order the person's discharge;
>
> (b) quash the order for his extradition."

30. I accept entirely the submissions of the respondent that the single question is whether or not the District Judge made the wrong decision and that, although the District Judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong.

31. In the event, however, I am satisfied that the decision of the District Judge was wrong. Not only ought he to have taken into account the expert evidence on the potential long term impact of extradition on the welfare on the children but, had he done so, he should have concluded, against the background of his other distinct findings, that in the particular circumstances of this case, extradition would mount to a disproportionate interference with the Article 8 rights of AS and, more particularly, of her children.

FURTHER EVIDENCE

32. Further information has been obtained since the District Judge's decision which strengthens further the case against extradition. In a further report from Ms Grant dated 31 January 2017, she records that PS had stopped attending his substance misuse keywork sessions and had stated that his work in the building trade required

him to work unsociable hours and so he could not look after the children. Notwithstanding some positive information relating to his relationship with alcohol, he remained, in practical terms, unavailable to be the main carer for his children. His weekly visits had continued.

33. Further enquiries of ET, have revealed further information which is set out set out in a witness statement from Ms Kwincinska, a paralegal in the appellant's solicitor's firm. ET had suffered from cancer and a nervous breakdown which prevented her from working. She and her husband had fallen into debt which she is now trying to pay off having re-started her business on a part time basis. AS has expressed concern that in her present state ET would not be able to provide proper care to the children.

34. Finally, AS has demonstrated a continuing willingness to make repayments on the debt owed under her sentence. At one stage, she believed that she had paid off the entirety of the sums due and, indeed, there was some confusion at the hearing before me as to the exact position. Suffice it to say that, at the very least, AS has shown some level of commitment to pay off what is due. It is regrettable that she has been unable to afford to instruct a lawyer in Poland to seek to resolve the outstanding position there.

CONCLUSION

35. In my judgment, the District Judge fell onto error for the reasons I have given. Taken as a whole, the evidence which has accumulated since he reached his decision has served only to strengthen my view that, in the very particular circumstances of this case, it would be unlawful to order the extradition of AS. It follows that the decision to order the extradition of AS to Poland was wrong and that this court must order the discharge of AS and quash the order for her extradition.