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Case No: FD22P00083

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

IN THE MATTER OF THE CHILDREN ACT 1989

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 16 February 2022

Before :

MR JUSTICE PEEL

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Re B (A Child)

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Georgia Bedworth (instructed by Russell-Cooke LLP) **for the Applicant**

Hearing date (by Microsoft Teams): 15 February 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Peel :

Introduction

1.
I am concerned with an application relating to the exercise of parental responsibility under the Children Act 1989 in relation to the property of a minor (to whom I shall refer as “B”).

2.

I gave judgment on an application of the same type on 11 December 2020 in **Re AC (A Child) [2020] EWFC 90.** In that judgment, I attempted to provide guidance on the substantive principles that should govern such applications.

3.
In this judgment, I give further guidance on one aspect of the substance of such applications and also on a number of points of procedure.

The application

4.
By Form C100 dated 4 February 2022, B's mother has applied for a Specific Issue Order under s8 of the Children Act 1989 authorising her:

i)
To accept a French inheritance on B's behalf; and

ii)
To enter into a valid contract for sale of a French property on B's behalf.

5.
B, who is of an age where his views command profound respect, has stated in unequivocal terms that he supports the application. B's adult sister, who is a respondent to the application, has also stated that she agrees to it.

The background

6.
B is 17 years old. In 2013, tragically, his father died. At the time of death, B's father owned a property in France. He died intestate in France. As a result, under French succession law, the property passes in equal shares to B and his adult sister. B is habitually resident in England. It is necessary, under French law, for the heir (in this case B) to accept his/her succession to a French estate. As a minor, B is not able to do so. If he were resident in France, his surviving parent would be able to accept succession on his behalf by a straightforward, essentially administrative, exercise by application to the juge des tutelles. Because he is not resident in France, the French juge des tutelles has declined to accept jurisdiction.

The 1996 Hague Convention

7.
Article 1 of the 1996 Hague Convention on the Protection of Children states that:

(1)
The objects of the present Convention are -

a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

b) to determine which law is to be applied by such authorities in exercising their jurisdiction;

c) to determine the law applicable to parental responsibility;

d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;

e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term ‘parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Article 3 states that:

“The measures referred to in Article 1 may deal in particular with –

…….

(g) the administration, conservation or disposal of the child’s property”

Article 5 states that:

“The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child’s person or property”.

8.
In this case, the English court has jurisdiction by reason of B’s habitual residence in this country.

Parental responsibility and property

9.
In **Re AC** I said as follows:

“17. Section 3 of the Children Act 1989 provides as follows (omitting sub-paragraphs (4) and (5) which are of no relevance to this application):

“3. Meaning of “parental responsibility”.

(1) In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

(2) It also includes the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.”

18. Sub paragraph (1) is very widely drafted. I do not read into it any restriction to its applicability. It is all encompassing and should be construed purposively. Of particular note in this case is the emphasis on responsibilities as well as rights. Thus, M has a clear responsibility under (1) to act in AC’s interests in relation to property to which he is entitled. By (2) and (3) M has not only rights and powers, but also duties to take steps to receive or recover property for the benefit of the child. The wording of (2) and (3) plainly embraces the Property in this case, being a house in Italy in which AC has an entitlement. And in my judgment a purposive reading of subsections (1) to (3) also includes the

responsibility and duty of the person with responsibility to take steps which enable the child to receive or recover property in the child's own name , and not merely enabling the person with parental responsibility to receive or recover property in his or her own name for the benefit of the child. The former is apt for a situation like the one before me, the latter might be apt where the child has a beneficial interest in property by virtue of trust or otherwise as understood at English law.

19. The diligent researches of Ms Reed QC on behalf of M have uncovered only one reported authority which bears on this topic. In **Hays v Hays** **[2015] EWHC 3825 (Ch)** Master Matthews (as he then was), sitting in the Chancery Division, was faced with a similar factual situation. After the death of her father, and pursuant to French succession law, the minor child held an interest in a French apartment. The child's mother applied for an order to be appointed as agent for the child in order to enter into a contract for sale. The application was put forward in a number of ways, including as an exercise of parental responsibility under s3 of the Children Act 1989. The Master granted the order sought on the basis of private international law enabling him, sitting in an English court, to apply French law. The application accordingly succeeded. But, and of interest to those who practise in the field of Family Law, he concluded that he had no power to grant the relief sought under the Children Act, saying:

"25. I have no reason to doubt that the Defendant has parental responsibility for Estelle in English law. But I am not aware of any case law or other authority (and none was cited to me) to the effect that s3 authorises the Defendant to dispose of Estelle's immovable property rights. S3(3) in particular refers expressly to her being able to give a good receipt or sue for property belonging to the minor, as if that might otherwise be in doubt (cf Re Chatard's Settlement [1899] 1 Ch 712). But it is striking that there is no mention anywhere in s3 of disposal, which goes far beyond receipt and recovery. Taken as a whole, I am not satisfied at present that this section confers powers on those exercising parental authority to enter into a contract to sell immovable property on behalf of a minor.

26. This claim is, of course, brought in the Chancery Division of the High Court. All matters under the Children Act 1989 are assigned, by the Senior Courts Act 1981, s61 and Sch 1, to the Family Division of the High Court. So judges in the Chancery Division have little or no experience of applications under this Act. It may simply be my own lack of knowledge".

20. In this case, I am not presently being asked to authorise M to enter into a contract of sale in respect of AC's share of the Italian property. I am asked solely to authorise acceptance of his inheritance by her. **Hays v Hays** is therefore not strictly on point and I have no hesitation in concluding that, on the facts of this case, acceptance of inheritance falls comfortably within the s3 definition. It is plainly the receipt or recovery of property to which the child is entitled. Acceptance of inheritance does not amount to a disposal of property which was the s3 issue before Master Matthews.

21. It may be that once the inheritance is accepted, M will apply for authorisation to enter into a contract of sale of AC's share of the Property, in which case the dicta in **Hays v Hays** will need to be revisited. I have not received full submissions on this point; that will have to await another day. But my initial view is that the Master's interpretation of s3 was, with respect, too restrictive. If, in this case, M is not authorised to enter into a contract of sale on behalf of AC, then AC will not be able in a meaningful sense to receive or recover his property until he is 18. Of course, he will hold it, but he will be prevented from converting it into other assets which can be managed, invested or deployed in his interests. I would regard a contract of sale in such circumstances as arguably falling within the phrase "entitled to receive or recover". In any event, subsection (3) states that the rights referred to in subsection (2) "include" the right to receive or recover. The word "include" does not operate as a

limit to the powers relating to property, which powers in my provisional view include disposal of property. It offers one particular example of circumstances in which the power may be exercised (probably aimed at trust arrangements commonplace in England but not encountered in many foreign jurisdictions) but does not limit the power to that example. I see no reason why s3, read as a whole, should not be construed more widely to encompass entering into a contract of sale provided, of course, that the welfare checklist and paramountcy principle govern the exercise of that power.

22. Be that as it may, as indicated above **Hays v Hays** does not directly apply to the question before me of accepting inheritance. Should an application in respect of a contract of sale be made I will need to consider the issues raised in **Hays v Hays** at that time.

23. I am told by counsel that there have been a number of cases with facts similar to those before me and before Master Matthews in **Hays v Hays** . Because of the Master's decision on the unavailability of the s3 exercise of parental responsibility to achieve the desired outcome of a sale of the minor's property interest, applications of this nature under the Children Act 1989 are not routinely (or at all) made, whether in the Chancery Division or the Family Court. In my judgment, henceforth parties should not be dissuaded from making such applications and in the ordinary course of events they should be made to the Family Court where allocation to the appropriate level of judge can take place in the usual way."

10.
Applying the same reasoning, I am satisfied that it is appropriate to authorise the applicant to accept succession to the French estate on B's behalf, and I therefore accede to the first limb of the application.

11.
In **Re AC,** I did not deal directly with the second limb of the application, i.e. authorisation to enter into a contract for sale on behalf of a minor, as the point did not then arise. However, as is apparent from the passages of my judgment in **Re AC** cited above (in particular paragraph 21), I formed the preliminary view that such an authorisation would fall within the parameters of the exercise of parental responsibility, thereby permitting the court to grant the application, provided always that it is in the best interests of the child to do so.

12.
In this case, the second limb arises directly as the applicant specifically seeks authorisation to enter into a contract for sale of the French property. Counsel for the applicant submits that I am entitled to, and should, so authorise. I acknowledge that I have received no submissions to the contrary, albeit I have previously noted the differing view of Master Matthews (as he then was) in **Hays v Hays** **[2015] EWHC 3825 (Ch)**. Having now considered this aspect in fuller detail, and received very helpful and able written and oral submissions, I am satisfied that I do indeed have the power to authorise the applicant to enter into a contract for sale:

i)
I repeat my analysis in **Re AC.** In my judgment, my provisional view on this subject was correct.

ii)
The wording of Article 3(g) of the 1996 Hague Convention (the administration, conservation **or disposal** of the child's property) reinforces my view that parental responsibility includes the sale of property of a child [emphasis added].

iii)
A sale of property is an aspect of management of property as was explained by Chief Master Marsh at paragraph 42 of **South Down Trustees Ltd v GH [2018] EWHC 1064 (Ch).** It does not alter the beneficial entitlement; it merely converts the interest into ready money which can more easily be deployed.

iv)
Master Clark, in **Re Shanavazi [2021] EWHC 1832 (Ch),** with her considerable experience from a Chancery perspective, when faced with a similar case to this one agreed with my reasoning in **Re AC.**

13.
Having satisfied myself that I am entitled to authorise the applicant to enter into a contract for sale on behalf of B, I am persuaded that, when considering the paramountcy of B's welfare, it is in his best interests to grant the authorisation sought. The value of B's share is substantial and there are no known debts. The proposed sale is at a price of €320,000 such that B's 50% share would be €160,000 less a pro rata contribution to sale costs. At present, B can make no meaningful use of his share of the property. There is no significant link with France anymore; the family barely visit the property. B's family life is in England. B himself seeks a sale of the property, so as to assist him at university in due course, and explore other investment opportunities, including purchasing a rental property in this country. Rental income defrays some of the running costs, but does not provide a meaningful net income. A ready and willing purchaser has been identified and the evidence suggests that if this opportunity to sell is not grasped, it may become more difficult to secure a sale.

14.
I will accordingly grant both limbs of the application.

Procedural points

15.
It may assist to give some general guidance as to the appropriate procedure for these sorts of applications which, in the ordinary course of events, will be uncontested.

16.
An application of this nature, being for a Specific Issue Order, must be made in Form C100. Much of the form is not relevant to applications of this nature, but it is easy to navigate and complete.

17.
Paragraph 5(b) of Form C100 says: "Do not give a full statement, please provide a summary of any relevant reasons. You may be asked to file a full statement later". Because of the technical aspects of these applications, involving applicable law in foreign jurisdictions, and the need to avoid delay, I consider it essential that a witness statement is filed in support, setting out the circumstances in full. It is unlikely that brief reasons set out on the form will be sufficient.

18.
By FPR 2010 rule 12.3(1), every person whom the applicant believes to have parental responsibility for the child must be made a respondent to an application in private law proceedings, which includes for a Specific Issue Order. Usually, in circumstances where the applicant is one parent, and the other parent is sadly deceased, there will be no automatic respondents. It is possible to envisage a situation where another family member has parental responsibility by court order, in which case that person must be made a respondent, but such cases will be rare.

19.
It is highly unlikely that the child would need to be joined; probably only if the child fundamentally disagrees with the application, and is of an age where he/she can validly object.

20.
It will sometimes be the case that other persons are legally or beneficially interested in the relevant property. In my judgment, any third party who has, or appears to have, a legal or beneficial interest in the property that is the subject of the application should be (i) notified of the application; (ii) invited to provide confirmation as to whether they do or do not oppose the application; and (iii) reminded that they may, if so advised, make an application to be joined to the proceedings pursuant to FPR 2010 rule 12.3(3). In the present case, B's adult sister was formally made a party, and indicated no opposition in her Acknowledgment of Service. It seems to me that, in fact, it was not necessary to join her; notification of the proceedings and confirmation of her position would have been sufficient. Usually, in my view, third parties will not need to be joined absent good reason, because their rights are not generally affected by the sort of application before me today. It is unlikely that a third party would oppose authorisation to accept an inheritance, which is personal to the minor. As for an authorisation to enter into a contract for sale, that is not an order for sale; it simply entitles the applicant to enable a sale to be effected on behalf of the minor. A third party is not prohibited from opposing a sale under the relevant domestic law if he/she thinks fit.

21.
Where the child who is the subject of the application is thought to be Gillick competent, his or her views should usually be sought informally by the applicant.

22.
The applicant should claim a MIAM exemption (the C100 does not provide a specific category for exemption in cases of this nature, but in my view, it is sufficient to claim the exemption without identifying a specific category) and the court should dispense with the need for attendance at a MIAM.

23.
In **Re AC**, I concluded at paragraph 23 that the appropriate venue for a Specific Issue Order application such as this is the Family Court. That remains my view. The President's Guidance "**Jurisdiction of the Family Court: Allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court"** dated 24 May 2021 does not require that an application of this kind must be allocated to judge of High Court judge level. Applications of this nature can be dealt with by judges of District Judge or Circuit Judge level sitting in the Family Court. That, of course, does not prevent, in the usual way, the application being allocated to a judge of High Court judge level on the ground of complexity.

24.
When I first saw the application, I contemplated whether to dispose of it on paper without the need for a hearing, given that it is unopposed. I have come to the conclusion that, notwithstanding the cost and burden of legal proceedings, ordinarily it is appropriate for there to be a hearing on an application of this sort. It involves the welfare of a child. Precisely because applications of this nature are one sided, the court needs to be extra vigilant to be satisfied that the child's welfare is not prejudiced. There is an analogy with an infant approval hearing for personal injury settlements, mandated by Part 21 of the CPR, which requires a court hearing for approval of the final award. In my

judgment there should usually be a short hearing before a judge to approve the order sought, although the ultimate decision on this must rest with the judge.

25.
The first listed hearing can be, and usually should be, treated as the final disposal hearing.

26.
Finally, I observe that an application for a Specific Issue Order of this sort will, absent court order to the contrary, be heard in private by reason of FPR 27.10 rule 27.10. That is unlike the position in the Chancery Division where any application would ordinarily be heard in open court (see, for example, **Hays v Hays** and **Re Shanavazi**).