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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.

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Case No: BM23P70048

Neutral Citation Number: [2023] EWFC 287

IN THE FAMILY COURT AT BIRMINGHAM

33 Bull Street

Birmingham

B4 6DS

Date: 8 October 2023

Page Count:

3

Word Count: 890

Number of Folios: 12

Before:

MRS JUSTICE LIEVEN

Between:

AB

- and -

(1) XX

(2) ZZ

The **Applicant** appeared as a Litigant-in-Person, with assistance from an **Interpreter**

The **First Respondent** appeared as a Litigant-in-Person

The **Second Respondent** appeared as a Litigant-in-Person, with assistance from an **Interpreter**

Approved Judgment

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MRS JUSTICE LIEVEN:

1.

This is an application for a Special Guardianship Order, made in respect of two children: C, aged eight; and D, aged six.

2.

The application is made by the children's maternal uncle, AB. The children live with their mother, and with two older children, aged 16 and 11. The father - and I believe the maternal uncle - live at a separate property.

3.

The application is made on the basis that the mother goes to college and works, and sometimes cannot collect or deliver the children to school. The father also works. So on perhaps many occasions, the maternal uncle collects the children from school and looks after them after school.

4.

The Applicant, supported by the mother and the father, say that they need a Special Guardianship Order, so that the uncle can collect the children from school and look after them.

5.

However, when I asked a few questions of the mother and the maternal uncle, it became clear to me that the real reason for this application was to support the maternal uncle's application to remain in the United Kingdom.

6.

The law on Special Guardianship Orders is set out at section 14A of the Children Act 1989. The maternal uncle does not fall within section 14A(5), as a person who is entitled to apply for an SGO and, therefore, leave must be granted.

7.

It is clear, both from the statute and the case law, in particular *Re S* (Adoption Order or Special Guardianship Order) [2007] 1 FLR 819 and *Re T* (A Child: Refusal of Adoption Order) [2020] EWCA Civ 797, that Special Guardianship Orders are important orders, in order to give greater permanence for the child and greater security in a placement. It is wholly unnecessary for a Special Guardianship Order to be made in order for a family member to be able to collect children from school or to look after them at home. Such arrangements are extremely common in the United Kingdom and are no possible justification for the making of a Special Guardianship Order.

8.

Indeed, it would be disproportionate, and a misuse of both court and local authority resources, to allow such an application to proceed on this basis. All that needs to happen, for the uncle to be able to collect the children from school, is for the mother and father to write a letter to the school, saying that the uncle has permission to collect the children.

9.

Further, it is apparent to me, from asking questions of the mother and the maternal uncle, that the true purpose of this application is to present evidence to the Home Office to support the uncle's immigration case. That is an abuse of the Special Guardianship Order jurisdiction.

10.

I am publishing this judgment, because it has been drawn to my attention that the Birmingham Family Court has had a number of similar applications. It is therefore important to have clarity about the correct approach.

11.

In those circumstances, I refuse leave for this application, and it should not have been brought.

(See separate transcript for proceedings after judgment)

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(This Judgment has been approved by the Judge.)

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