



Neutral Citation Number: [2020] EWHC 1782 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 June 2020

Before:

MRS JUSTICE GWYNNETH KNOWLES

Between:

WX

Applicant

- and -

YZ

Respondents

And

K

(BY HER SOLICITOR GUARDIAN, JB)

Mr Aidan Vine QC and Mr Edward Bennett (instructed by **Dawson Cornwell**) for the
Applicant

Mr James Turner QC and Miss Katy Chokowry (instructed by **Bindmans LLP**) for the First
Respondent

Mr Henry Setright QC and Miss Charlotte Baker (instructed by **Goodman Ray**) for the
Second Respondent

Hearing dates: 22-24 and 29 June 2020

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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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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.

Approved Judgment**Mrs Justice Gwynneth Knowles:**

1. The Applicant [“the mother”] and the First Respondent [“the father”] are the separated parents of the Second Respondent [“K”], aged 13 years. This is the final hearing of the mother’s application for K’s summary return to Poland pursuant to the 1980 Hague Convention on the Civil Aspects of Child Abduction or, alternatively, pursuant to the inherent jurisdiction. The mother’s application was issued on 29 January 2020, just over four years after the father wrongfully removed K from her mother’s care in Poland, where she was habitually resident, using an Algerian passport for her which he had acquired covertly.
2. It is a sad fact of K’s life that she has been litigated over by her parents since 2013. She has been the subject of first instance and appellate judgments in Poland; the subject of two English High Court judgments, that of Roberts J in 2015 and that of Hayden J in 2016; and she has also been the subject of judgments by the Algerian courts. This case is a perfect example of the damage done to and experienced by children in international abduction cases, a fact often overlooked by many involved in this work.
3. This judgment is somewhat shorter than it might have been, because of developments during the hearing. In summary, the mother conceded that, in the light of K’s objections to a return to Poland, her applications could not succeed. She invited me to give her permission to withdraw those applications and this judgment explains why I now do so. It will be apparent from the contents of this judgment that she is to be commended for the painful and difficult decision she made about this litigation. Her decision was solely attributable to the love she has for K and to a sincere respect for K’s wishes to now remain living in England.
4. This judgment also serves another and equally important purpose, namely, to provide a considered account of what has happened to K whilst in the care of her parents. It will be the foundation for the legal proceedings about K’s contact with her mother which will be initiated once the Hague Convention proceedings have concluded. K will be able to read it to understand, as a young person, what might have been less evident to her when she was much younger. I hope that she finds it helpful.
5. Hague Convention proceedings are summary proceedings in which, because it is anticipated that another court will be seised of proceedings concerning a child’s welfare, the court is discouraged from making findings of fact. I have had this firmly in mind when setting out past events but, where it seemed to me permissible and necessary to do so, I have come to some limited factual conclusions.
6. I have read a significant bundle of documents and considered a number of case authorities to which I was directed in argument. I am very grateful to the advocates who appeared before me: their written and oral submissions were founded not only on a deep understanding of the Hague Convention and its attendant case law but also on a real sympathy for the human beings embroiled in this uniquely difficult case.

Background

7. What follows is an account of the pertinent background, with comment and observations where necessary.

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8. The father was born in Algeria and came to live in England in September 1983, where he pursued his education and obtained postgraduate degrees from Reading University. He has been based in the Reading area throughout the time that he has spent in England since he commenced his tertiary education. He obtained British nationality in about 1997, since when he has had dual Algerian and British nationality. His career has been that of an academic and a writer. He is a moderate but sincere follower of the Islamic faith. The mother was born in Poland and has Polish nationality. She too has a university education.
9. K's parents met in 2004 when the father was visiting Poland in connection with his career. During 2006 a relationship between them developed and, later that year, they went through an Islamic ceremony of marriage in Poland. K was born in Poland in 2007 and has British and Algerian nationality. In about August 2008 K and her parents relocated to Reading in the United Kingdom, where they lived as a family. Both parents had paid employment and shared in the care of K. In September 2011 K started primary school in England. From time to time, she had holidays in Algeria with both her mother and father separately and holidays in Poland with her mother.
10. In September 2012, the father travelled to Oman to take up a teaching post and it appears that the mother and K were meant to join him there in December 2012. However, the mother and father quarrelled, and the mother admitted that she was having an affair with another man in Poland. On 17 November 2012, the father returned to England to find the mother and K had gone to Poland. It appears that the mother told K that they were going on a trip to London, thereby concealing from her that she would be leaving her father, her school and her friends to relocate abroad. K's statement to the court made clear her sense of shock at both arriving in Poland, a place she described as "... a completely new world for me. It was sudden and strange...", and at her mother being untruthful with her about where they were going. It is beyond dispute that K's mother had removed her wrongfully from this jurisdiction, where K was habitually resident, and that this removal was in breach of the father's rights of custody.
11. The father tried unsuccessfully to persuade the mother to return K to England. In 2013, he began Hague Convention proceedings by which he sought K's return from Poland to England. On 4 September 2013, the District Court in Plock found that there had been a breach of his custody rights and granted the father's application. The mother appealed and on 16 January 2014 the Regional Court in Plock upheld the appeal, finding that the mother had established a defence to the breach of the father's custody rights under Article 13(b) of the Convention. Having had the benefit of a psychological assessment of K and the mother having indicated that she was not prepared to return to England herself, the Polish appeal court held that "*depriving the child of her mother's care will cause the child great emotional harm, which will affect her entire life*". On 18 June 2014, the Polish Court made an order that K should live with her mother.
12. On 30 July 2014, the father applied to the English court for K's return to England, in accordance with Articles 11(6)-(8) of Brussels IIA. The father instructed solicitors during those proceedings, but he appeared in person at the final hearing. In connection with the father's application, a Cafcass officer, Mr Power, travelled to Poland to assess K's circumstances and make recommendations. Notwithstanding the mother's behaviour in abducting K in the first place, Mr Power acknowledged that matters had

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moved on and concluded that K's welfare needs were best served by remaining in Poland with her mother, the country she had (by that point) lived in for about two years. K appeared to have settled well in Poland and was subsequently described by Roberts J in March 2015 as having been completely absorbed into her local home, school and community in Poland. As is clear from her statement to the court, K does not have a wholly positive view of her life in Poland. She accepts that she probably appeared happy and was close to her mother in the same way that she now is close to her father, but it was not until she lived in Algeria that she realised how unhappy she had been in Poland. She has memories of being bullied at school in Poland and she did not feel as if she fitted in. Those unhappy experiences do not appear to have been something of which her mother or K's school were aware though I note that the mother removed K from her previous school in Poland because of alleged bullying.

13. On 12 March 2015 Roberts J refused the father's application. She found that K was habitually resident in Poland, and ordered that she should continue to live with her mother until further order of the Polish court. Further, Roberts J made a prohibited steps order preventing the father from (i) removing K from Poland, and (ii) removing her from the care and custody of the mother, save for agreed contact. The father attempted to appeal that decision but was unsuccessful in doing so.
14. Shortly after her abduction to Poland, K began having indirect contact with her father via telephone and Skype. This took place almost every day until about March 2015 when, according to the father, the frequency of contact decreased to about weekly. The material available to me suggests that this contact does not seem to have been satisfactory for either parent and, if that is right, I doubt that it was very satisfactory for K either. Additionally, K saw her father in August 2013, December 2014 and December 2015. All these visits took place in Poland when father and daughter had an opportunity to spend time with each other over several days.
15. In December 2015, the father travelled to Poland to have contact with K. During that contact, in flagrant breach of Roberts J's order, he removed K from Poland to Algeria. This was, without doubt, an abduction. The father acknowledged in his most recent statement, dated 26 May 2020, that he had not sought the consent of the mother to take K to Algeria. He took K to Berlin and from Berlin they flew to Algeria. Before leaving Poland, the father asked K if she wanted to go to Algeria to see her cousins and she said that she did. At that time, K had no idea that she would not be returning to Poland and to the care of her mother. The father's most recent statement suggested that he had initially intended the trip to Algeria to be a holiday. However, after about two or three weeks of being in Algeria with K, the father said that he decided it was in her best interests for K to remain there.
16. In January 2016, the mother applied to the court in Plock for further orders in relation to K. The court held that it was "*conclusively proved*" that K had been "*abducted by her father outside of Poland*". On 28 April 2016, the mother applied to the English court for K's return to Poland. On 3 May 2016, Roberts J made a without notice location order which was executed when the father arrived in England on 7 May 2016 to collect belongings and pay bills which he owed in respect of his accommodation here. The order made by Roberts J on 25 May 2016 recorded that the father agreed in principle that K should be living with her mother in Poland and that she was living in Algeria. I note that the father now disputes that he then agreed K should be living with her mother, as he believed K should remain in Algeria where she was thriving.

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17. On 27 June 2016, the mother's Hague Convention application was discontinued, on the basis that K was not present in the jurisdiction. However, Hayden J made K a ward of court and ordered the father to cause K's return to Poland by 4 July 2016. Hayden J refused to return the father's travel documents to him, on the basis that to do so would allow the father to return to Algeria and thereby effectively prevent the enforcement of both the order for K's return and the Polish court order. Notwithstanding Hayden J's decision, the father left this jurisdiction, defeating the bench warrant for his arrest issued by Hayden J on 8 July 2016. At a hearing before Judd J on 4 February 2020, the father accepted that, in breach of the passport order, he had obtained a further document from the Algerian embassy and then travelled to Algeria. On 25 October 2016, Moor J made a freezing order against the father's NatWest account.
18. On 29 January 2016, the court in Poland had made an order that, if K was located anywhere in the European Union she should be placed in "*institutional care*", pending collection by her mother.
19. Almost contemporaneously with proceedings in the English court, an application was made to the court in Algeria apparently by the father's sister on or about 29 June 2016 for a custody order, confirming that K lived in Algeria and that the mother's custody of her had been terminated. The application asserted that the father had removed K from Poland with the consent of the mother and that her allegation of abduction against the father had no basis in truth. It is now clear from the father's own admission that this assertion was wholly untruthful. No reference was made in the application to either the 2016 English proceedings or to the January 2016 Polish order. The father stated that he had not approved either the application or the statement made to the Algerian court before these were lodged as he was still in England at that time. I note that he did not subsequently rely on these documents in the later proceedings in Algeria.
20. In October 2016 the mother applied to the Algerian court for "*temporary visitation*". On 10 November 2016, the Algerian court made an order that the father must allow the mother to visit K every Friday and Saturday from 9 am to 5 pm. I infer that there were difficulties with the effectiveness of that order as, on 8 February 2017, the mother applied for the appointment of a judicial officer to accompany her to the father's home to supervise handover in order that contact in accordance with the court's earlier order could take place. On 9 February 2017, mother was assigned the use of two judicial officers to accompany her to the father's home.
21. However, on 11 February 2017, the father made his own application for protective measures to guard against an abduction of K at the forthcoming visit by the mother. As a result, the Algerian court made an order on 14 February 2017 that the mother should have contact with K at the father's home. On 20 March 2017, the mother applied to the Algerian court to enforce the Polish and English judgments. It appears, according to the father's most recent statement, that K spoke to a judge at some point between February and June 2017 in connection with the mother's application. On 4 June 2017, the Algerian court dismissed the mother's application.
22. K's experience of life in Algeria is overwhelmingly positive even though she had to learn the language from scratch on arrival and had to adjust to separation from her mother. Like Ms Roddy, the Cafcass officer assigned to this case in February 2020

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and then acting as K's Guardian, I have come to the view that K has underplayed the effect of her separation from her mother and the difficulties she faced at the beginning of her time in Algeria. I do not think that is attributable to her father's influence but it is a way of coping with and rationalising what happened to her without being disloyal to the parent who was caring for her in that country. K said in her statement that "... as a young child you trust your parents to do the right thing; you do not even think to question them and I did not...". That is a powerful statement which explains how K was forced to adapt herself to sudden and unforeseen changes of carer and country. The coping mechanism I have described was, in due course, overlaid by K's own happy experiences of life in Algeria. In her statement, K explained how much she loved being at school in Algeria, loved the culture and loved being surrounded by her father's large extended family. Though K remembers frequent, almost daily, Skype or telephone calls with her mother, her mother's perception is a little different. Contact was not infrequently facilitated by the father on his own phone, which deprived mother and daughter of privacy and there was something of a stop/start feel to indirect contact in that it would take place for a while and then abruptly cease, often for lengthy periods. What is clear is that direct contact failed and, after spring 2017, the mother chose not to visit K in Algeria. K is critical of her mother in this regard, but her view has been shaped without any real understanding of the obstacles her mother faced in trying to maintain direct contact in Algeria.

23. By an application issued on 5 October 2018, the father sought from the English court (i) the return of his travel documents; (ii) the lifting of the restraint on his English bank account; and (iii) "*a legal basis to enable [K] to return to the UK and resume her schooling...*". At a telephone hearing on 7 November 2018, Theis J heard from the father and gave further directions. On 18 March 2019, during a telephone hearing attended by both parents acting in person, the father told Cohen J that he intended to return K to the jurisdiction when she finished school in three years' time and that he needed his travel documents because he intended to return himself to this jurisdiction in the summer of 2019. Despite expressing her concern as to whether the father's claims about K's proposed movement were genuine, the mother did not oppose K travelling to England since she did not consider it appropriate for K to be in Algeria without a parent. The transcript of the hearing does not record any overt acceptance by the mother that K should return to live in England (as opposed to Poland) or that she should remain in her father's care (as opposed to returning to her mother).
24. On 14 June 2019, again in a telephone hearing attended by both parents acting in person, the father told Cohen J that he intended to return K to England in a few years' time when she had completed middle school in Algeria. The transcript records that the mother opposed the release of the father's UK passport, but she accepted the judge's view that the restriction on this was serving no useful purpose. It appears from reading the transcript that Cohen J mistakenly believed there to be a subsisting order that K should return to England. However, the judge neither approved nor decided that K should return to live in England or that she should remain in her father's care.
25. On 12 December 2019, at a telephone hearing attended by both the mother and the father acting in person, Cohen J discharged the freezing order so that the father could secure a tenancy in this jurisdiction. The father told the judge that he would bring K to England to go to school in January 2020, to which the mother responded "*thank you*". The transcript recorded Cohen J stating that, if K came back to England, the question

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of her welfare could be looked at afresh. The father told the court that he would inform the mother in advance of his travel plans and provide, as soon as he could, every address, email and telephone number for himself and K in England. The court's order recorded the purpose of the relief the father sought (namely, the bringing of K to this jurisdiction to attend school) and that the mother had consented to the order, knowing the purpose it would facilitate. Once more neither the transcript nor the order of that date recorded any approval by or decision by Cohen J that K should return to England or that she should remain in her father's care.

26. In her statement K spoke about her father discussing a move to this jurisdiction since early 2019. Even though she was happy and settled in Algeria, K trusted her father and was excited to come to England to continue her education. The father and K travelled to England on 10 January 2020. The father informed the mother of his travel plans in advance, and confirmed to the court and the mother in an email dated 12 January 2020 his and K's contact details. K began attending school shortly after her arrival in this jurisdiction and, in his most recent witness statement, the father accepted that he encouraged K as to life in England and told her that an English judge had ordered her return to this jurisdiction. K herself stated that the father had told her the move from Algeria had been agreed and that her mother knew about it.

These Proceedings

27. The mother issued her application under the 1980 Hague Convention on 29 January 2020. On that date, a without notice hearing took place before Judd J, resulting in a collection order (together with other orders). The mother arrived in England on 2 February 2020 and the collection order was executed on 3 February 2020 at K's school. From that date, K lived with her mother, sharing a sofa bed in the home of her mother's friends. It is evident that the collection order came as a total shock to K and to her father. During her time with her mother, K did not attend school, by order of the court, it being feared that the father might attempt to abduct K from school in order to thwart the court's order.
28. The matter came before Judd J on 4 February 2020 when the father appeared in person and confirmed that he intended to continue to act in person. He accepted that he initially misled the police officers who were executing the collection order by refusing to hand over to them his passport and other travel documents. By then, K was represented in the proceedings by Cafcass Legal through her Guardian, Jacqueline Roddy.
29. On 12 February 2020, Cohen J listed a final hearing on 24-25 February 2020. In the interim, he ordered one session of supervised contact between K and her father and, additionally and despite the opposition of the Guardian and the mother, indirect contact. On that same date, Ms Roddy filed her case analysis, which concluded that, whilst K was a very bright girl who objected to a return to Poland, she should return to Poland in any event.
30. At a hearing on 24 and 25 February 2020, Leslie Samuels QC sitting as a Deputy High Court judge adjourned the final hearing to 23-24 March 2020, primarily to afford time to K to seek representation separate from the Guardian. K subsequently

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instructed a solicitor who filed a witness statement dated 4 March 2020, differing from Ms Roddy in her assessment of K. Her solicitor was wholly satisfied as to K's competence and ability to instruct a solicitor. The final hearing was then further adjourned to 25-26 March 2020. In a further report dated 17 March 2020, Ms Roddy restated her view that K should return to Poland to live with her mother.

31. K's statement and that of her present Guardian described her life as "*collapsing around*" her when what she experienced as a positive start to her new life in this jurisdiction was abruptly altered by the collection order. K felt under pressure from her mother to tell the court that she wished to return to Poland and clearly had difficulty adapting to life with her mother in cramped accommodation in a house full of strangers to her. Whilst K acknowledged that there were some positive elements to spending time with her mother, she was upset when her mother sought to monitor her calls from her father and communications with others by installing an app on her phone which would allow her mother to see who she was calling and what she was texting. Whilst I have no doubt this was done by the mother to protect K from further abduction by her father, over time this apparent lack of trust - as K saw it - had a corrosive effect on K's relationship with her mother.
32. On 25 March 2020, David Rees QC, sitting as a Deputy High Court Judge, adjourned the final hearing to June 2020 because of (i) the logistical problems caused by conducting a remote hearing while K and her mother were in the same house and (ii) because K was reporting that she was unwell and had Covid-19 symptoms. He approved continuation of the interim arrangements for K's care, and dismissed the mother's application to take K with her to Poland pending the conclusion of the proceedings. He accepted an undertaking from the mother that she would not reinstall the "*kidguard*" app or any other application which gave her the means of monitoring K's mobile phone, electronic device or other means of communication.
33. On 28 March 2020 the mother was forced to return to Poland because, by reason of the Covid-19 pandemic, she was on the cusp of losing her job in Poland, having been granted short term leave to travel to England, and was effectively homeless here as her friends were unable to continue to offer her and K a room in their house. Her decision to return was not made willingly but was driven by circumstances over which she had little, if any, control. On 27 March 2020, K returned to the care of her father. Following his own concession at the hearing on 25 March 2020, the father has worn an electronic tag since 3 April 2020.
34. In her statement K described feeling more stable, calm and happy when she returned to her father's care. Notwithstanding what had been a difficult and emotionally intense time with her mother, K maintained her contact with her by telephone or social media.
35. The steps taken within these proceedings to remove K from her father and return her to the mother were well-intentioned and, given the father's past behaviour, prompted by an overriding desire to keep her safe from further abduction pending a decision as to jurisdiction. With the benefit of twenty-twenty hindsight, it can be seen that events conspired only to strengthen K's resolve not to return to Poland come what may. It is a tribute to K's maturity and to the love she has for her mother that, despite her frustrations with her mother and sadness at being apart from her father, she did not

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reject her mother on her return to her father's care but remains anxious to foster their relationship if this is what her mother wants.

36. Though he represented himself at all earlier hearings, the father belatedly obtained public funding so that he could be represented at the final hearing. His Answer filed on 26 May 2020 (i) disputed that the court had jurisdiction pursuant to the Hague Convention; (ii) submitted that the mother's application was an abuse of process and/or that she was estopped by her participation in the hearings in 2019 and her alleged consent to the orders made by Cohen J in 2019; (iii) that K was settled for the purposes of Article 12; (iv) that the mother had consented or acquiesced for the purposes of Article 13(a); (v) that K objected for the purposes of Article 13; (vi) that there was a grave risk of harm/intolerable situation in Poland for the purposes of Article 13(b); and (vii) that the court's discretion should be exercised to refuse a return order to Poland.

The Parties' Positions

37. I summarise these briefly as follows.
38. The father's legal submissions were as set out in his Answer. In his final witness statement, he said that the mother had placed K under pressure to say that she wanted to live with her. He asserted that K had had daily contact with her mother since the mother left Poland. He disputed that he himself had influenced K's views about a return to Poland but expressed concern about Islamophobia, the absence of Islamic faith centres in Poland, and the Polish legal system.
39. The mother's final witness statement, dated June 2020, described the difficulties she had had maintaining contact with K in Algeria and her very real fear that her relationship with K would not be able to continue if K did not return to Poland. She disputed that Poland was an Islamophobic country and society and gave some details of the arrangements for K's schooling and psychological support should she return to Poland. She was concerned that the views expressed by K about Poland represented her father's "brain-washing" and not the actuality of her life in Poland before she was taken from there in December 2015. The mother's legal submissions took issue with those of the father in each and every respect.
40. K supported the position adopted by the father and emphasised her objection to a return and the grave risk of psychological harm flowing therefrom by reason of an intolerable situation to which she would be exposed in Poland. Her statement dated 17 June 2020 made for powerful and poignant reading. She is, as all who have met her attest, a very intelligent young person who has considerable insight into her predicament, as this extract from her statement shows:

"... I am not blind to what each of my parents have done, each of them has chosen to abduct me and each of them has chosen not to see me once I was abducted such has been their anger. But surely there comes a point where blame and anger should just be left in the past. What is done is done. I am a young adult, I need and want to enjoy my teenage years without fighting, without uncertainty about where I am going to live, and when I am going to see the parent who I don't live with..." She was desperate for the litigation to stop and made it plain that she loved both her parents and wanted to maintain her relationship with both of them. However, she was

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adamant that she wanted to remain in this jurisdiction and said that, even if so ordered, she would not return to Poland as she could not cope with or bear a life there.

The Hearing

41. At the start of the hearing, I heard the oral evidence of Ms Roddy. She was cross-examined by both the mother and the father but not on behalf of K.
42. Ms Roddy confirmed that, on her own initiative, she had made further enquiries prior to receiving K's statement and the updating statement of her Guardian the week before this hearing began. However, her letter to the court dated 18 June 2020 had been written without sight of those documents. What follows is a summary of the salient points in her evidence.
43. Ms Roddy reported two telephone conversations with K, one in May and one in June shortly before this hearing. K had reported in May that she had daily contact with her mother during which her mother would say how much she wanted K to come back to Poland. K told her mother that she did not want this and reported that her mother had said it was her choice. When Ms Roddy spoke to K last week, she was not so insistent that her mother had said the choice to return was hers. What was clear was the strength of her opposition to a return to Poland and thus Ms Roddy was concerned that K would hold her mother responsible if she were ordered to return. Ms Roddy described how K had been caught between her parents: the time with her mother in early 2020 had allowed her to get used to her mother once more but then this was disrupted when her mother left and she returned to the care of her father.
44. Ms Roddy reported that K had told her that she spoke with her mother on most days and that her father encouraged her to communicate with her mother even when she was doing her homework and might not wish to do so. K denied being brainwashed by her father and pointed out that her account of her life in Poland was her own lived experience and not the experience of either her mother or her father. She would like her mother to visit her in the UK for contact and she was concerned that she would be retained in Poland if she visited her mother there. However, she was clear that she intended to travel to Poland unaccompanied when she was older to see her mother and her extended family, and that she also wished to travel to Algeria to see her family there.
45. Ms Roddy was of the opinion that K's abrupt and unexpected return to her father in March 2020 had made a successful return to Poland almost impossible to achieve. K had had so many losses, adjustments and changes of care arrangements that she could not countenance the loss of her father once more. Care with either parent carried risks, but Ms Roddy explained that her present recommendation for K to remain in England was the least worst alternative for a girl who had already had to negotiate so much harm. She opined that K had a confidence that her mother would not desert her, come what may, but was less confident in her father. If K remained in England, her mother would feature in her life through contact. However, if she returned to Poland, K's past experience was that her father would be unable to sustain contact with her.
46. K was at a developmental stage where she was owning her own thoughts and had a fuller sense of her rights, autonomy, and opinions. Despite the difficulties, living with her mother in early 2020 had been an invaluable opportunity for K to reconnect with

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her mother. K was absolutely clear that she loved both her parents and wanted them both to feature in her life. Ms Roddy thought K would hold her father to account if his actions interfered with her rights and her desire to build on the relationship she has with her mother. However, K had been consistent in her refusal to return to Poland and the strength of her objection had increased during the proceedings.

47. Ms Roddy's evidence was measured and very insightful. It chimed with what I had gleaned from K's own statement and reinforced my impression that K was a young person wholly trapped between two warring parents, neither of whom could hear or truly accept what she wanted.
48. Following Ms Roddy's evidence, I heard submissions from counsel for the mother and the father and heard from Mr Setright QC in part. He made a powerful plea to the mother to hear and respond to K's wishes and feelings. Overnight the mother reflected and during the course of the hearing the following day, she accepted that, in the light of K's objections, she would be unsuccessful in persuading the court to order K's return to Poland pursuant either to the Hague Convention or the inherent jurisdiction. She invited me to give her permission to withdraw her application.

Permission to Withdraw: The Mother's Applications

49. MacDonal J in Ciccone v Ritchie (No 2) [2016] EWHC 616 (Fam); [2016] 1 W.L.R. 3545 helpfully analysed the jurisprudence relating to applications for permission to withdraw Hague Convention proceedings [see paragraphs 59-72]. Rule 29.4 of the Family Procedure Rules 2010 ["the FPR"] does apply to such applications and the test to be applied centres on those matters set out in r 1.1(2) of the overriding objective. As they are summary in nature, Hague Convention proceedings are not proceedings concerning the welfare or upbringing of a child, so the test is not that set out in s.1(1) of the Children Act 1989. The matters set out in r 1.1(2) include the need to deal with cases expeditiously and fairly; the need to deal with cases proportionately; the need to save expense and so on. Though all of these factors are to be applied "*having regard to any welfare issues involved*" (r 1.1(1)), welfare considerations are unlikely to feature heavily and, in most cases, will not feature at all when giving permission to withdraw a Hague Convention application as these are not proceedings concerning the welfare or upbringing of a child.
50. Applying these considerations to the mother's application, I am satisfied that I should give her permission to withdraw her application pursuant to the Hague Convention. It would not serve the ends of justice to compel the mother to pursue an application she wishes to bring to an end and which the other parties are also anxious should be resolved as soon as possible. There is a positive merit in allowing her to withdraw her application rather than going on to dismiss it. Withdrawal would not permit the mother subsequently to invite the Polish court to examine the question of K's custody pursuant to the process set out in Article 11(6)-(8) of Council Regulation (EC) No 2201/2003 [BIIA], whereas, for a period of three months beginning on the date the Polish court was notified about an order for K's non-return, such an option would theoretically remain open to her if her application were dismissed (that is if an order for non-return was made solely on an Article 13 basis). For the avoidance of doubt and in the context of Article 11(7) of BIIA, I am persuaded that an order for dismissal would operate in exactly the same way as an order for non-return. In the light of those submissions by Mr Setright QC, withdrawal is a course which is not only fair to the

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mother but is also fair to the other parties since it resolves any residual uncertainty about the availability of a remedy pursuant to BIIA. It is a course which is consonant with K's overwhelming need for an expeditious conclusion to these proceedings.

51. The mother also invites me to give her permission to withdraw her application for a return order pursuant to the inherent jurisdiction. As this is an application concerning the welfare and upbringing of a child which would involve a welfare appraisal of what was in K's best interests, s.1(1) of the Children Act 1989 applies to my consideration of the mother's application to withdraw. It will be apparent from the contents of this judgment that K urgently requires finality as to where she will be living and with whom. That will be achieved by permitting the mother to withdraw this application, as she accepts that K should be subject to the jurisdiction of this court and that she will continue to live with her father. Though the father has conducted himself in a manner inimical to K's welfare in the past, there is no suggestion that K should live elsewhere in this jurisdiction than with him.
52. I grant the mother permission to withdraw her application for a return order pursuant to the inherent jurisdiction. There will be a regime of orders which will govern contact and a review of those arrangements in Spring 2021.

Conclusion

53. K's mother took a brave and difficult decision to abandon her case that K should be returned to her care in Poland. In so doing, she listened and heard what K wanted. Going forward, both parents will need to hear what K is saying about contact and adapt themselves accordingly. She deserves that respect given the damage and losses inflicted on her by both her parents, who gave effect, in the past, to their wishes and their hurt with each other instead of putting K first. They are extraordinarily lucky that K is blessed with an intelligence and maturity which has helped her cope, for the moment, with the many losses they have each inflicted on her. Sadly, I suspect the damage to her psychological wellbeing in the long term may not be so easy to remedy and overcome. I hope I am wrong about that.
54. That is my decision.