



Neutral Citation Number: [2023] EWHC 1613 (Fam)

Case No: FD23P00177

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

-

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/06/2023

Before :

MRS JUSTICE JUDD

Between :

BD
- and -
BJ

Applicant

Respondent

Lubeya Ramadhan (instructed by **A & N Care Solicitors**) for the **Applicant**
Tadhgh Barwell O'Connor (instructed by **Lyons Davidson Solicitors**) for the **Respondent**

Hearing dates: 15th, 16th June 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 29th June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Judd

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.

Mrs Justice Judd :

Introduction

1. This is an application by a father for a return order with respect to a four year old child (B) to Canada pursuant to Article 12 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The application is dated 29th March 2023.

Background

2. The mother was born in the United Kingdom and the father in another European country. When the mother was in her mid 20's she moved to live in England. She met the father when she was volunteering in Canada, and they kept in touch. She returned to Canada in 2011 and the parties were married in 2013. Their daughter was born in 2018. There were some difficulties in the marriage for which they sought counselling, but things became worse during 2022. They agreed to travel to England for a period of time to work on their marriage. The father says the agreement was for a period of six months, the mother that it was more open ended. Whilst the parties had had extensive discussions about spending some time in England, when it came to it the final decision was made quite suddenly and possibly at a time of some turmoil after the father confessed that he had had an affair with a colleague.
3. The mother and child left Canada in early September 2022 with a signed agreement from the father that the consent was for B to be removed for six months (until 1.3.23). The intention was for the father to come to England as well, and this he did, arriving some two weeks later. At first the mother and B stayed with a friend, with the father staying nearby. In October the mother signed a six month tenancy on a property in the area in which she had lived before she went to live in Canada. The parents continued to live separately whilst each hoping to save the marriage. In December the parties sold their home in Canada, with furniture going into storage. The father lost his job.
4. There is a significant dispute between the parents as to what was agreed between them throughout the six months from September to March. The mother says she believed the initial agreement between them was that the stay in England was intended to be open ended, albeit temporary, but that in January the father told her he was happy for her and B to remain permanently and that he intended to stay too. She said they continued to have discussions along these lines until March and so that when he issued the application for a return order in April she was taken by surprise.
5. The father, on the other hand says that the agreement was only ever for them to come to this country for six months. The house in Canada was sold but only so that they could buy another in a different area. He says he never agreed that B could remain here permanently. On the contrary, he said in his statement that he told the mother in December he was concerned she was intending to stay against his wishes, and told her many times thereafter that he wanted B to return to Canada in March.
6. The father's case is that the mother wrongfully retained B in England after 1st March which he said was the agreed date for return. The mother argues that by 1st March B was habitually resident in England so the Convention does not apply. In the event that her case on habitual residence does not succeed she invites me to find that the father

consented and/or acquiesced to the retention and that I should exercise my discretion to refuse to order a return.

The hearing

7. I read all the documents in the bundle provided to me and the position statements of each of the parties. I heard the parents give oral evidence on the first day, and then submissions from counsel thereafter.

The law

Habitual residence

8. The question of habitual residence has been considered by the Supreme Court and Court of Appeal on many occasions, most recently in Re A (A Child)(Habitual Residence: 1996 Hague Protection Convention) [2023] EWCA Civ 659.
9. In Re B (A Child)(Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam), [2016] 4 W.L.R. 156, paragraph 17 Mr Justice Hayden summarized the leading authorities to date on habitual residence:-
 - i) *The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A v A, adopting the European test).*
 - ii) *The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasized that the factual inquiry must be centered throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, In re L).*
 - iii) *In common with the other rules of jurisdiction in [Council Regulation \(EC\) No 2201/2003](#) ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the practical connection between the child and the country concerned": A v A , para 80(ii); In re B , para 42, applying [Mercredi v Chaffe \(Case C-497/10PPU\) EU:C:2010:829; \[2012\] Fam 22](#) , para 46.*
 - iv) *It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (In re R).*
 - v) *A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In re LC). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence, which is in question and, it follows the child's integration which is under consideration.*
 - vi) *Parental intention is relevant to the assessment, but not determinative (In re L, In re R and In re B).*

- vii) *It will be highly unusual for a child to have no habitual residence. Usually a child loses a pre-existing habitual residence at the same time as gaining a new one (In re B).*
 - viii) *In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (In re B —see in particular the guidance at para 46).*
 - ix) *It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (In re R and earlier in In re L and Mercredi).*
 - x) *The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child to be fully integrated before becoming habitually resident (In re R) (emphasis added).*
 - xi) *The requisite degree of integration can, in certain circumstances, develop quite quickly (article 9 of Brussels IIA envisages within three months). It is possible to acquire a new habitual residence in a single day (A v A; In re B). In the latter case Lord Wilson JSC referred (para 45) to those “first roots” which represent the requisite degree of integration and which a child will “probably” put down “quite quickly” following a move.*
 - xii) *Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (In re R).*
 - xiii) *The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, “if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former” (In re B supra).*
10. In the case of Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention) 2020 EWCA Civ 1105 Moylan LJ endorsed this summary but suggested that bullet point (viii) should be omitted as it might distract the court from the essential task of analysing the situation of the child. Whilst the see-saw analogy could assist, it should be approached with caution.

11. In *Re A (A Child)(Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA Civ 659 the Court of Appeal cautioned that ‘some degree of integration’ is not of itself determinative of the question of habitual residence which is a question of fact requiring consideration of all relevant factors.

Consent and Acquiescence

12. In *Re G (Children) (Abduction: Consent/Discretion)* [2021] EWCA Civ 139 the Court of Appeal reiterated the following principles in relation to consent:-
- i) The removing parent must prove consent to the civil standard. The inquiry is fact-specific, and the ultimate question is: had the remaining parent clearly and unequivocally consented to the removal?
 - ii) The presence or absence of consent must be viewed in the context of the common-sense realities of family life and family breakdown, not that of the law of contract. The court will focus on the reality of the family's situation and consider all the circumstances in making its assessment. A primary focus is likely to be on the words and actions of the remaining parent. The words and actions of the removing parent may also be a significant indicator of whether that parent genuinely believed that consent had been given, and consequently an indicator of whether consent had in fact been given.
 - iii) Consent must be clear and unequivocal, but it need not be given in writing or particular terms. It may be manifested by words and/or inferred from conduct.
 - iv) A person may consent with the gravest reservations, but that does not render the consent invalid if the evidence is otherwise sufficient to establish it.
 - v) Consent must be real in the sense that it relates to a removal in circumstances that are broadly within the contemplation of both parties.
 - vi) Consent that would not have been given but for some material deception or misrepresentation on the part of the removing parent will not be valid.
 - vii) Consent must be given before removal. Advance consent may be given to removal at some future but unspecified time or upon the happening of an event that can be objectively verified by both parties. To be valid, such consent must still be operative at the time of the removal.
 - viii) Consent can be withdrawn at any time before the actual removal. The question will be whether, in the light of the words and/or conduct of the remaining parent, the previous consent remained operative or not.
 - ix) The giving/withdrawing of consent by a remaining parent must have been made known by words and/or conduct to the removing parent. A consent and/or withdrawal of consent of which a removing parent is unaware cannot be effective.
13. Mr. Barwell O'Connor submits that there is no authority as to consent in a retention case, but invites me to apply the principles by substituting the word retention or

retaining for removal/removing and ‘remaining parent’ to ‘allegedly consenting’ parent.

In *Re H (Abduction: Acquiescence)* [1997] 1 FLR 872, Lord Browne-Wilkinson set out the following applicable principles:

“(1) For the purposes of Art 13 of the Convention, the question whether the wronged parent has ‘acquiesced’ in the removal or retention of the child depends upon his actual state of mind. As Neill LJ said in Re S (Minors) ‘the court is primarily concerned, not with the question of the other parent’s perception of the applicant’s conduct, but with the question whether the applicant acquiesced in fact’.

(2) The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent.

(3) The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law.

(4) There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced”.

14. Lord Browne-Wilkinson also suggested that judges should be slow to infer an intention to acquiesce from attempts by the wronged parent to effect a reconciliation or to reach an agreed voluntary return of the abducted child.
15. In the case of *Re W (Abduction: Acquiescence: Children’s Objections)* [2010] EWHC 332 Black J (as she then was) concluded that a father had not acquiesced in circumstances where he had travelled to the UK and remained there for a few months attempting to salvage his relationship, during which he had lived with the mother and children for a time. Further, in *Re G (Abduction: Withdrawal of Proceedings, Acquiescence and Habitual Residence)* [2007] EWHC 2807 (Fam) the President of the Family Division, Sir Mark Potter, held that the withdrawal of a first set of proceedings under the Hague Convention did not amount in law to the equivalent of an adjudication, or species of waiver or estoppel preventing the taking of fresh proceedings after an abortive attempt at reconciliation. It should be noted that in that particular case the order setting the withdrawal proceedings had specifically recorded that the father did not acquiesce in the wrongful retention of the child by the mother.

Submissions

16. On the father's behalf Ms Ramadhan submits that B remained habitually resident in Canada throughout the period with which the court is concerned. She was born in Canada and had lived there all her life. The family lived together in their own home. The parents were working and B was at nursery. The parents had selected a school for her, albeit B needed to be baptised before she could take up that place. B, like her parents, was very much integrated into a social and family life which revolved around their church and seeing friends. She was registered with a doctor and dentist and was never taken off any list when she was in England. Whilst the family home was sold, the parents intended to buy another closer to where they worked and none of their furniture or household effects were moved to England. B only had such of her personal possessions as could be carried on the plane. There was little pre-planning for the visit here. Neither parent had any significant family here, and the father had very few links indeed.
17. In this country neither parent worked. B attended what was called 'Forest School' from September to December but this was only for one morning a week and accompanied by a parent. She attended nursery from 1st February but this was only from 9 until 2 twice a week. The family did not live together as they had in the past. The tenancy on the home where B lived was only for six months. The mother's job remained open for her when she returned and the father was actively looking for jobs.
18. Ms Ramadhan also submitted that the father never agreed or acquiesced to B remaining in England. She points to the evidence of the letter in December, the voice note in mid-March and the messages passing between the father and family friends about what had happened during meetings between them all as all supporting her case that the father continued to seek the return of B to Canada, something that the mother refused to accept.
19. The mother's case is that the agreement between them as to leaving Canada was not merely for a period of six months, but open ended. She said that despite what he said in the letter of 2nd December he did not maintain this in conversations between them. Shortly after that letter was sent the father lost his job in Canada. In early January 2023 there was a discussion between them when the father was emotional as a result of everything that had happened, and at that point he agreed that she and B could remain in England. She maintained that they agreed the house in Canada could be sold because the parties were not sure what the future held and they had not agreed to buy another property in Canada. She said that here the father had helped her with furniture that she bought for the home she had rented, and that he visited the forest school and nursery. She denied that the father had mentioned legal proceedings in March and said she only found out about this in April. She said that she did not listen to the voice note left on 16th March.
20. On her behalf Mr. Barwell O'Connor submits that B was habitually resident in England by February 2023 and certainly by 1st March. By that point she was living with her mother in a rented home where she had been for the last four months and could live there indefinitely. Most of her clothes, books and toys were with her. She was attending nursery. She spent time with her cousins who live in the home counties, and visited maternal relatives on occasion. She also had visits from the paternal family. She attends church locally, is registered with a GP and dentist and had her childhood immunisations not long after she arrived. She had attended dance and drama classes.

21. B had not attended so many activities in Canada, partly because of her age. Due to Covid, church services had been suspended so the family had not attended together very much. There are no family members living there although there are friends. The family home in Canada had been sold, and they currently have nowhere to live. Nor would they attend the same church if they returned because of everything that had happened. So B had lost most of her ties with Canada by the relevant date. She had 'graduated' from her previous kindergarten in Canada and would have to go to a new school if she went back.
22. Mr. Barwell O'Connor also submits that the father consented to B staying in England during the conversation that took place in January and that I can infer this was so from the parties' conduct. In his written submissions he sets out a number of matters which he says are relevant for that determination, including the decision for B to start nursery on 1st February, that the father was looking for jobs, that he agreed the mother could buy a trampoline for B, and that the father made no requests or demands for B to return to Canada by 1st March and indeed the first time that he did so was on 16th March – albeit his voice note is framed as more of a request.

The evidence of the parents

23. The parents each gave evidence via CVP, the father from Canada and the mother from her home. By the order of David Lock KC of 7th June, their oral evidence was directed towards the issue of consent, acquiescence and any matters which were relevant to the date at which the court should assess the child's habitual residence but not the facts underlying habitual residence itself. The oral evidence was therefore relatively short although it did inevitably involve some matters which were relevant to habitual residence as well as the matters to which it was principally directed.
24. I should say at this point that the father's English is excellent but it is not his first language. In assessing his evidence I have been careful not to attach too much weight to particular descriptive words that he used when giving evidence.
25. In his written evidence the father was clear that the agreement to come to this country was only for six months, and indeed that he would not have signed the consent form otherwise. He said that the mother did not listen to things she found uncomfortable and put her 'own truths on the reality'. He said the reason they came to England was so the mother could obtain trauma counselling. He said that he brought up the topic of returning to Canada constantly and that he could only think the mother refused to listen or was lying when she asserted otherwise.
26. In his oral evidence the father said that six months was the period of time they had discussed for their trip to England, because they were both taking six months from their jobs. When he was given the agreement to sign by the mother he made some changes to it, particularly to add to the section entitled 'Travel Dates' a date of return, namely 1st March. He said that he believed there needed to be an end date and that this was agreed. He also said that he had agreed with the mother that the dates could be adjusted so that if things went well in the UK they could make other decisions and change the document. He wanted to make sure he could come back to his job.
27. Once they had arrived, he said that the mother was not communicating with him about returning and that this was why he became concerned that she planned to stay, and

that in those circumstances he would be separated from B. That was why he asked the mother to book flights in his letter of 2nd December. In January 2023 they had had a discussion when walking in the park and he was very emotional because he had lost his job, his vocation, and he was not sure where he was going from there as his dream was falling apart. Whilst the mother was very happy in the UK at that point, things were very hard for him. He denied ever saying that he would be happy for B to remain here, albeit he accepted that not going back to Canada at that point was a distinct possibility so far as he was concerned. He was in the process of wondering whether he wanted to go back to Canada as opposed to somewhere like his country of birth but denied telling the mother he was looking into getting a visa at that point, or that he looked for work here.

28. He was adamant that he brought up the subject of a return to Canada regularly during the period between January and March 2023, but that it was only in March during the course of a discussion about visiting his country of birth that the mother told him that she had been advised not to leave the UK that he realised that she had no intention of going back to Canada. The sale of the house had progressed because they wished to live in a different area on their return and some household goods had been sold because it was practical to limit the amount of their belongings put into storage.
29. The mother's oral evidence very much followed what she had said in her statements. She said that although the father's affair brought the plan of coming to England to the forefront it was something they had been considering for some time. They had agreed to sell their house so they did not have to pay mortgage costs at the same time as being in England, and had also agreed to sell some of their furniture. She denied that there was a plan to buy a property in a different area to the one they had been in before. In particular, she said that their agreement had been to come for six months or maybe a year (or even permanently), and that she had taken two years' leave of absence from her job. On the original form she had filled in, she had stated that the father would be joining them for six months, because she knew he was hoping to go back to his job.
30. The mother denied that the father had repeatedly brought up the return to Canada in conversations either before the letter on 2nd December or afterwards. When she received the letter she did not respond because she considered that the best thing would be to talk about it face to face. Events, however, soon intervened when the father found out he had been dismissed from his job. She said that in their conversation in January 2023 that he had said that he was happy to stay in England and that he had filled out an application form for a visa to enable this.
31. Finally, the mother said that she was not aware that the father was going to bring legal proceedings until she received the summons in April. She said she did not listen all the way through the voice message the father sent her on 16th March.
32. Although I consider that both parties were inclined to see things from their own perspective, leading them to focus on matters which they consider support their respective cases, I found the mother's evidence to be more reliable than that of the father. His oral evidence often differed in tone and emphasis to what he said in his statements. I do not find that the documents he produced support his case that the topic of a return to Canada was repeatedly discussed by them between January and March in particular, and it is significant that the description in his statement of the

contents of the voicemail of 16th March to the mother was inaccurate. It did not contain a reference to legal proceedings under the Hague Convention as he asserted. In fact the transcript records the father saying ‘as we agreed I just want to go back to Toronto after six months here’ and going on to say that he was moving forward with this and ‘place a request’ as he put it ‘for us to go back as a family or for at least [B] to be returned’.

33. Taking into account the evidence I heard and read I conclude that the original agreement between the parents was to come to England together as a family for a period of six months albeit both parties agreed that this would be kept under review. The father felt he should put in a return date on the document he signed but this did not mean it was written in stone. The mother thought that six months would not be enough but the time was fixed mostly around the father’s leave of absence from his job and his visa. Nonetheless, as the father agreed in his oral evidence, he understood that he and the mother would review what should happen so far as their return was concerned as they went along. The parties’ main focus at this time was to work on their relationship.
34. The mother clearly did not regard 1st March as a rigid date from the start because she entered into a tenancy agreement on 20th October for a period of six months, ending in late April and renewable thereafter. She paid six months’ rent in advance. She bought furniture and the father helped he move some of it into the house. I accept that she was happy to be in England and that there was some tension between the parties as to what each of them wanted. As the weeks went by the father became concerned not to let things drift, and in the absence of the mother being willing to discuss going back to Canada he wrote her the letter of 2nd December asking for a deadline of 17th March for a return. I accept the mother’s evidence that she preferred to discuss the note he sent with her in person rather than in writing but as it happened, other events overtook this.
35. It is clear that the loss of the father’s job was a great blow to him albeit it should not have been completely unexpected given he was under investigation as to his relationship with a former colleague. This undoubtedly did lead him to question where his future lay, and that of the family. He said that the discussion revolved around whether he wanted to go back to Canada as opposed to his country of birth but did not agree that the mother and B could remain in England. I find it very unlikely that the topic of the family remaining in England did not come up in the course of such a conversation as it was very obvious to the father that this is what the mother dearly wanted. I accept the mother’s evidence that the father did say words to the effect that he would agree to them remaining in England, and also that he looked at jobs both in England and Canada after the discussion in January. When this was followed by the completion of the sale of the house and the sale of some of the contents this fortified her in her view that they were going to remain in England for the foreseeable future.
36. When the father went to Canada at the end of January to finalise the sale, it was only a few weeks before the day he asserts that was fixed for them to return. There is no evidence that either he or the mother were looking for accommodation for themselves and B despite the closeness of this date.

Discussion and conclusions

Habitual residence

37. The issue of habitual residence in this case is finely balanced. B was born in Canada and until she came here in September 2022 had lived there all her life. She is a Canadian citizen. Although her parents are not Canadian nationals they had lived in Canada for many years and had met and married there. They each worked and were very engaged in the church community, and it was therefore an important part of B's life too. B attended nursery or kindergarten for a year, and she was integrated into a social life with her parents, friends and other children. The parents owned their own home and had stable jobs.
38. All these things are indicative of significant roots in Canada, albeit there were no members of the wider family living there.
39. At the time of the departure to England in early September 2023 the intention of both parties was that the move to England was temporary. Although they had spoken of going to England on several occasions in the event there was not much pre-planning at all. The parties were not fully in agreement with the length of time but the discussions they had centred around six months. B's toys, clothes and bedding were brought, but possessions or furniture were not shipped over. The family home was being sold in Canada but plans to buy another were on hold. After they arrived the parties initially stayed with friends, and unlike the mother and B, the father never obtained independent accommodation. Neither parent obtained a job in this country and the father never obtained more than a visitor's visa. All these factors point to the temporary nature of the stay here. Of course, it is B's situation that I am concerned with, but with such a young child her position is very much dependent on that of the parents.
40. The mother was returning to an area she knew well, having lived there for a few years before settling in Canada. She had friends there although neither party had family locally and the father had no connections to the area at all that I know of.
41. Certainly, for a while, B's roots in Canada predominated, whilst her parents stayed with friends and she began to attend church and engage in activities. Whilst there can be no doubt the mother settled easily, it was not a familiar place for B or the father and it was intended to be temporary. B was not living with both her parents together as she had been in Canada.
42. Things did change gradually, however. In October 2022 B's position became more stable with her move to a rented home with her personal belongings around her and furniture being bought. From all the evidence the move was proving very positive for the mother, which would inevitably have had an effect on B. In my judgment the early roots put down in the autumn of 2022 became firmer in the new year. The effluxion of time for such a young child and her increasing familiarity with the busy life of activities she was leading would undoubtedly have an effect on her. The mother was clearly very happy to be here, and had re-engaged with friends and the life of the church, a life which very much included B. B lived with her mother but her father was a daily presence in her life.
43. At the same time, it seems to me that the family roots in Canada were weakening. The father had lost his job and was wondering where his future lay. He was very

aware of the mother's wish to remain in England and was (as I find) for some time at least open to this happening. In January and February he certainly had not fixed on an imminent return date whether it was 1st or 17th March or any day after that. The completion of the sale of the family home along with some of the contents took place at the end of January, which was only weeks from the 1st March but there was no suggestion that any alternative accommodation for the family in Canada was being sought by either the father or the mother. In any event, any move back would be to a different home in a different area (albeit not far removed from where they had been before) and a different church community (which for this family is an important part of their lives). The mother would go back to her old job but for B and the father things would be different. B did not have a school lined up in Canada, although I accept the parties had been looking into this before they left. On any return to Canada, B would be going to a somewhat different social environment.

44. The mother's optimism that the father would be prepared for them to stay here meant that she behaved in a way which strengthened the roots that were being put down. B started at a new nursery at the beginning of February, and more possessions were accumulated here (such as a trampoline). There was no expectation of an imminent move anywhere.
45. I have come to the conclusion that the weakening of the bonds that B had with Canada, coupled with the life that she was integrating into here were such that by at least late February 2023 her habitual residence had shifted from Canada to England. Whilst her life here was not completely stable in the sense that the father was much less settled than the mother and there (as I find) there was no clear and unequivocal agreement about the future, she had achieved a sufficient degree of stability and integration into a social and family environment here to put down the necessary roots at the same time as becoming detached from the old ones. I know that five months is not a long period of time, but it is a considerable proportion of B's life. For her it would seem much longer than for an adult. Even in the absence of any agreement for B to remain here permanently as opposed to temporarily, by late February it seems to me that her home was here. Nursery was going well, she was doing lots of other activities, and she was very much a part of the church community. Whether the relevant date was 1st or 17th March 2023 or the date of the application, B was habitually resident here by then.

Consent and Acquiescence

46. My conclusion as to habitual residence means that the mother's retention of B in this jurisdiction was not wrongful within the meaning of Article 3, and the father's application for a summary return order cannot succeed.
47. In my judgment it is the courts of England and Wales which are best placed to make decisions as to where B should live, and the time she should spend with each of her parents.
48. As I heard evidence and submissions as to the defences of consent and acquiescence, I will deal with this although it is not strictly necessary for me to do so. I do not find that they are made out. The mother was certainly optimistic after January that the father was not going to press for a return, and indeed allowed herself to believe that was the case, but consent and/or acquiescence must be clear and unequivocal. Despite

my findings about the evidence above, I do not find that the father's words and conduct either before or after Christmas 2022 quite reached this particular level. He was in an emotional state, particularly during the conversation in January 2023 but afterwards too. He wanted to save his marriage and, like the mother, was focussed on that. He was adamant he wished to live in the same country as B, but without getting a visa he was not guaranteed this and so would not have given his unequivocal agreement. In any event his state of mind changed in March as the hopes of saving the marriage foundered and he still needed to acquire a visa.

49. I hope that these dedicated and loving parents will be able to sit down and agree arrangements for their daughter's future together without further litigation. Both of them told me that they thought shared care with both parents living close to each other was best for their daughter. One of them will have to live in a country which is not their current first choice for that to happen so there will have to be a degree of compromise somewhere. I also hope that they will be able to make arrangements for father and daughter to spend time together this summer, as there has now been a substantial gap in their contact. If need be, any agreement can be incorporated into a court order.