



Neutral Citation Number: [2023] EWHC 3475 (Fam)

Case No: 1664-4555-5241-3925

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th November 2023

Before :

Double-click to add the Judges name

Between :

VS

Applicant

- and -

KS

Respondent

Ms Perrins (instructed by Hughes Fowler Carruthers) for the **Applicant**
Mr Hale KC (instructed by Pillsbury Winthrop Shaw Pittman) for the **Respondent**

Hearing dates: 7, 8 September, 30 October 2023,
Draft Judgment 13 November 2023

Approved Judgment

This judgment was handed down at 10.30am on 20th November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives on 23rd February 2024.

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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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Arbuthnot:

Application

1. This is a dispute between the applicant wife (“the wife”) and the respondent husband (“the husband”) about where their divorce proceedings should take place. The husband started proceedings in Monaco on 16th February 2022 whilst the wife started proceedings in London on 30th September 2022, seven months later.
2. The proceedings were paused in this jurisdiction when on 13th December 2022 the husband applied for a stay of the wife’s petition for divorce and her financial applications. I granted the wife a Heman injunction on 31st March 2023 and gave a written judgment.
3. The question for the Court now is whether the husband’s application for a stay of the divorce and financial remedy proceedings in this jurisdiction should be granted. The husband’s position is that it should be, the wife’s is that it should not.
4. The hearing was listed for two days on 7th and 8th September 2023. Unfortunately, the evidence took longer than expected and the wife’s evidence was adjourned to 30th October 2023.
5. I had numerous statements from the husband and wife which included text or WhatsApp conversations between the parties about where they were to live. I had the judgment given on 30th March 2023 by the Monegasque Court on jurisdiction. I had expert reports on matrimonial law in Monaco from Maitre Sarah Filipi instructed on behalf of the wife and one from Ms Celine Martel-Emmerich on behalf of the husband. I also had their responses to additional questions.
6. I heard evidence from the husband and from the parties’ experts in the first two days and I heard the wife’s evidence and the parties’ submissions on 30th October 2023.
7. One issue became of concern; the experts agreed that the husband had launched a fault-based divorce procedure in Monaco under Article 197 Of the Civil Code. They agreed that this might affect the financial outcome for the wife. On 9th October 2023, the husband’s Monegasque lawyers sent an open letter to the wife’s lawyers indicating his intention to proceed on the no-fault procedure of Article 198 of the Civil Code if the wife would agree to proceed under the same provision in Monaco. For the 30th October 2023 hearing the husband provided the Court with further information.
8. In the event, in submissions, Miss Perrins and Mr Hale KC urged me, were I to grant the stay, to do it on a conditional basis that neither the wife nor the husband should proceed with the divorce and financial proceedings in Monaco on the basis of fault. If one or the other were to do that, then this Court could reconsider its decision.

Issues

9. The wife’s case as set out in her divorce application was that this Court had jurisdiction as “both parties to the marriage or civil partnership were last habitually resident in England and Wales and the applicant is habitually resident in England and Wales and has resided there for at least one year before the application was made”.

Law

Discretionary Stay

10. There is a two-stage process. Where I find, as I do, that I have jurisdiction in respect of divorce proceedings, it does not follow that the Court should exercise it.
11. Paragraph 9(1) of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 provides the following for Discretionary Stays:

“9(1) Where before the beginning of the trial or first trial in any matrimonial proceedings ... which are continuing in the court it appears to the court—

- a. that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
- b. that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.”

12. The balance of fairness is considered in paragraph 9(2) of Schedule 1 of the 1973 Act:

“(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed”.

13. HHJ Hess helpfully summarised earlier authorities in the recent case of *SA v FA* [2022] EWFC 115 in paragraph 20:

“20. Guidance on how these statutory provisions should be applied can be found in the judgments in, for example, *De Dampierre v De Dampierre* [1987] 2 FLR 300, *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 and *Chai v Peng* [2014] EWHC 3519 (Fam). The following principles emerge from these judgments and which are relevant to the present case:-

- (i) Fairness and convenience depend on the facts of each case and all the circumstances have to be considered. The court should take a broad view of all the facts and circumstances, not just those directly relating to the litigation.
- (ii) The court will consider what is the ‘natural forum’, that is the forum with which the parties have most real and substantial connection. These will include not only factors affecting convenience and expense (such as the availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside and carry on business (per Lord Goff in *Spiliada* (supra)).

- (iii) A stay will only be granted where the court is satisfied that there is some other available forum having competent jurisdiction which is the appropriate forum; that is to say where the case may be tried more suitably for the interests of all parties and the ends of justice. It is for the party seeking the stay to prove the existence of some other available forum which is clearly or distinctly more appropriate (per Bodey J in *Chai v Peng* (supra)).
- (iv) If the court decides that there is no other available forum which is clearly more appropriate, then a stay will (almost certainly) be refused (per Bodey J in *Chai v Peng* (supra)).
- (v) If, however, the court concludes that there is some other available forum which is clearly more appropriate, then a stay will ordinarily be granted unless the applicant who resists the stay can show that a stay would deprive him or her of some legitimate personal or juridical advantage, or can show some other special circumstances by virtue of which justice requires that the trial should nevertheless take place here. If the applicant succeeds in showing this then the court must carry out a balancing exercise considering all the broad circumstances of the case, in order to determine the stay application, i.e. to decide where the case should be tried in the interests of the parties and the ends of justice (per Bodey J in *Chai v Peng* (supra)).
- (vi) A stay should not be refused simply because the applicant will be deprived of some personal or juridical advantage if the court is satisfied that substantial justice will be done in the available appropriate forum (per Bodey J in *Chai v Peng* (supra)).
- (vii) The mere fact that one party might be likely to achieve a better outcome in one forum than the other cannot be decisive. As Lord Goff said in *Spiliada* (supra): "Suppose that two parties had been involved in a road accident in a foreign country, where both were resident, and where damages are awarded on a scale substantially lower than those awarded in this country, I do not think that an English court would, in ordinary circumstances, hesitate to stay the proceedings brought by one of them against the other in this country merely because he would be deprived of a higher award of damages here."

Lies

14. I have found as set out below that neither party has been entirely truthful in certain aspects of their evidence. When considering what the husband and wife have said, I have kept in mind the principles set out in *R v Lucas* [1982] QB 720, that just because a party is not truthful about point (a), it does not mean that they are not being truthful about point (b). It is particularly apt in this case. One of the reasons for untruthful evidence in this case may be to make it appear there is either more or less connection to a particular jurisdiction. A rather more charitable explanation is that there has been a reinterpretation of events because of wishful thinking or with the benefit of hindsight. I consider the truthfulness or otherwise of the parties' evidence and the reasons for what they say below.

Evidence

Background

15. I set out below a background taken from the parties' statements. The early parts are mostly agreed, the focus of the dispute has been on the family's recent living arrangements from 2019 onwards.
16. Both parties were born in the former USSR. The wife moved to France from Russia when aged 14. She became a model and travelled including to London. The husband was or is an entrepreneur with interests in a number of businesses. More recently he had been undertaking charitable works. Both parties have been married before. The husband twice and the wife once. The husband has four older daughters and the wife one, who is referred to in this judgment as "B".
17. The husband was based in Monaco from 2006 and in 2007 acquired a renewable residency card. He owns a substantial family home in Monaco where he had been living with his older children for a number of years before his marriage to the wife.
18. In 2010 the wife started renting the one-bedroom flat in London that she retains and which B has been using. B weekly boarded in England while school age and later went on to university in London. A storeroom has been converted recently for the parties' daughter's use.
19. In about April 2011 the couple started seeing each other. The husband rented a flat in London to see if he liked it. He did not. The wife divided her time therefore between Monaco and her flat in London.
20. The relationship between the husband and wife faltered at some point in 2013 before starting up again in the summer of 2014 when the wife moved in with the husband in Monaco. At about the same time, the husband purchased a luxurious home in Malibu, California. It was then refurbished.
21. The wife became pregnant, and the husband and wife married in Monaco in March 2015. There is a dispute between the couple as to whether there was a contract that the wife agreed to indicating that they would submit to the Monegasque legal regime in the case of separation. The marriage certificate suggested that they were questioned before witnesses during the Civil Ceremony when the couple said that they had no prenuptial agreement and that "they intend to be subject to the Monegasque marital property regime".
22. Their daughter, referred to in this judgment as "C", was born in May 2015 in Nice, France. The wife obtained a Monegasque renewable residence card on 13th July 2015. Her last residence card ran out on 12th July 2021.
23. From their marriage and C's birth, the family were based in Monaco but travelled to resorts around the world including on their yacht. It was an international marriage.

2019 onwards

24. In about August 2019, the family went to Malibu. The wife applied for a US Green Card whilst the husband funded a business to support her application. I accept that the husband was intending to spend time in the US if a Green Card had been obtained.
25. On 7th September 2019 the husband flew back to Monaco. There is a dispute as to why it was that the wife stayed out in Malibu. The husband said it was because of C's asthma whilst the wife said the Malibu house was their new home. At that stage I find it was unlikely that it was intended to be a permanent family home. On 12th December 2019, the wife and C returned to Monaco and Europe for Christmas before returning with the husband on 10th January 2020. On 23rd January 2020, the husband returned alone to Monaco.
26. On 4th March 2020, California declared a state of emergency due to Covid, this lasted in one form or another until 21st December 2020. During this time the wife and C remained in Malibu and it became their home. The husband was in Monaco. Between 15th and 17th June 2020, he was hospitalised with a heart condition. He then could not travel for some months.
27. On 18th October 2020 the husband went from Monaco to Malibu. He said, and I accepted that their US E2 visas were about to expire on 1st November 2020, which meant that if they then left the US they could not return for some time. Between 18th October 2020 and the summer of 2021, the family remained in Malibu.
28. In the summer of 2021, the application for a Green Card was refused and an appeal against that decision failed. The parties knew then that they could not live in Malibu or in New York which had been another plan.
29. I find that thought was being given by the parties, to the wife and C's return to their Monaco home as on 24th March 2021, A small flat was rented for a year from 1st May 2021 in Beaulieu-sur-Mer in France. On 7th April 2021 insurance was obtained for the flat. The plan then was for C to go to school there and a flat was needed to show the family resided in France. Beaulieu-sur-Mer was about 15 minutes away from Monaco. The wife's case is that this was one option if the preferred options of a school in London failed. The husband's case is that he thought the school place was for September 2021.
30. I have seen email exchanges with a school in London that indicated on 29th April 2021, according to the husband's Personal Assistant, that the family was, "considering relocation to London this summer". The PA asked whether they had a place for C. By 25th May 2021 C had obtained a place at the school. On 17th June 2021, the husband and wife signed their acceptance that C would take up the place offered. In September 2021, she went there.
31. From the evidence in the texts or WhatsApps exchanged between the husband and wife, the wife started looking for rental houses in London in May. On 2nd June 2021, the wife and C flew to London.
32. In July 2021, the parties decided that the wife and C would apply for settled status in England. On 12th July 2021, the wife and C's Monaco residency cards expired and were not renewed. On 13th July 2021, the wife received indefinite leave to remain in England. C received hers on 25th August 2021. The husband had made no such application and nor had the wife on his behalf.

33. In August 2021, the wife found a five-bedroomed house to rent in London, (“the London property”), with a pool, gym etc. There are WhatsApp messages exchanged on 6th August 2021 between the husband and wife which make it clear that he knows about the house hunting. It seemed that their relationship was on-going. He tells her to “do as you like, the most important thing for me is to be close to you”.
34. On 11th August 2021 the husband paid rent of £404,953 in advance (£34,000 per month) for the period from 1st September 2021 to September 2022. He paid an additional £115,700 in advance for the period September 2022 to November 2022.
35. Between 9th and 17th October 2021, the husband joined the wife and C in London.
36. On 4th November 2021 the state of the relationship which was clearly having its ups and downs is shown by the husband saying to the wife in WhatsApp conversations that he wanted to fly at 9 or 10 “if you will accept me”. The wife reassured him. He then asked if the gym equipment he had bought had been delivered to the house.
37. The husband stayed with the wife and C in London for six weeks between November 2021 and January 2022.
38. On 14th January 2022, the husband sold the home in Malibu.

Pre-Proceedings and Proceedings, in brief

39. From 26th January 2022 to 15th February 2022, the wife gave instructions to Mishcon de Reya. The invoice for £2349.60 said it was in relation to a divorce. It was sent to the wife who sent it on to the husband.
40. The wife told the Court that she sought advice in relation to C as she had concerns the husband might remove her from her care. This was denied by the husband. Clearly it would be impermissible for the Court to draw inferences or conclusions regarding what advice was being given by Mishcons at any time and I do not do so.
41. From then on, there were monthly bills from Mishcon de Reya LLP with a gap in the summer. From 25th March 2022, the invoices included fees for advice from a silk.
42. On 16th February 2022, the husband filed his divorce petition in Monaco. The wife’s evidence was that this came as a great shock. I did not accept that to be the case. She was well aware of the state of their relationship and had been so concerned that she said she had been worried that the husband would remove C from her care.
43. On 27th April 2022, as part of the procedure in Monaco a conciliation hearing was due to take place but it was adjourned by agreement to 5th October 2022.
44. During the period between April and September 2022 the parties attempted to reconcile, genuinely according to the wife, in a deceitful manner according to the husband. The family had a series of luxurious holidays during C’s school holidays. These trips included Easter in Peru, a half term in Paris and summer in Sardinia and in Canada.
45. On 23rd May 2022, the husband wrote to the wife saying: “Is everything alright? I have gotten the invoice for the house in London for the period of September December. Just like we agreed I pay. Nothing changed with you?”

46. On 21st June 2022, the wife wrote to the estate agency terminating the tenancy of the London property. She asked that £218,050 be refunded. Her evidence was that the husband was going to pay her the money saved so she could rent a smaller home. That may well have been his intention before she applied to the London courts. On 10th September 2022 the wife and C moved to the wife's rented flat at a different London address. The rent she paid there was £2450 per month.
47. On 30th September 2022, the wife had made her application in London for a divorce and on 11th October 2022 she made an application for financial remedies.
48. On 19th October 2022 in Monaco, following the husband's notification that reconciliation had failed, the wife issued an application challenging Monaco's jurisdiction to hear the husband's application to divorce. On 17th November 2022 the husband issued his application, 'on the merits' in Monaco.
49. On 27th January 2023, the substantive argument in relation to the wife's challenge to the Monaco's Court's jurisdiction took place in Monaco.
50. On 30th January 2023, a First Appointment took place before the Central Family Court. The husband applied for a stay. The case was allocated to the High Court and the husband was directed to file and serve a statement in support by 20th February 2023.
51. On 2nd March 2023, the wife's English solicitors sent a letter to the husband asking that he provide financial support, £30K a month was to cover rent etc. and an assurance that the husband would pay C's school fees. He was also asked to reimburse legal costs incurred in both jurisdictions.
52. On 30th March 2023, the Monaco Court decided it had jurisdiction to rule on the divorce of the parties. The Acting Public Prosecutor who appeared argued that Article 40 of the Monegasque Code of Private International Law applied and established jurisdiction on the basis that the last "common domicile of the spouses" was in Monaco and the husband's current residence in Monaco.

The Monegasque Judgment of 30th March 2023

53. The wife's argument in the Monaco proceedings was that the family had decided to take up residence in California before moving in June 2021 to London. The husband's case was that he had never transferred his domicile to the US. They maintained their respective positions before this Court. The Monegasque Court found that the husband's nine-month stay in Malibu did not establish domicile but was a temporary residence. It decided there was no common marital home in the US. This decision cannot be faulted.
54. The Court in Monaco then considered the wife's evidence that the family moved to London on the husband's initiative. It noted she was the only one to return her residence card. The Court considered the wife's evidence that the husband was shown as the tenant in the London property. The Court found that the husband only stayed in London between 9th and 17th October 2021 and then for six weeks in November/December 2021.
55. The husband told the Monegasque Court that he never intended to take up residence as could be seen by his failure to invest in real estate unlike in Malibu and Monaco. A comfortable house did not prove his domicile. In the Monaco proceedings, the husband said he had consented to C's schooling in London.

56. The husband produced texts exchanged between the couple in August 2021 in the Monegasque proceedings which showed that he was not going to move to London as a permanent residence. The wife said she would look for somewhere smaller to live in. “I thought you were going to live here”. The husband responds: “Yes I told you I would come and try. We have already talked about it. It’s just that I’m not going to move there as a permanent residence”.
57. The Monegasque Court accepted that the wife wanted to live in London after the US. It found the husband initially supported this. The Court noted that the couple were experiencing difficulties in their marriage with ups and downs, and it was difficult for the Court to “clearly see the intention of each”.
58. The Monegasque Court observed with perspicuity that although the husband initially supported and assisted the move to London, the distance between the couple “both geographical and sentimental, gradually got the better of the project”. The husband came to realise this, and the wife and C remained living in London supported financially by him. He visited them but never made London his home.
59. Having heard submissions from the parties’ lawyers and from the acting Attorney General, the Monegasque Court found that the parties’ last marital home had been Monaco. They never had a common domicile in Malibu or London. The husband “never had the will to transfer his residence outside Monaco and he still resides there”. The wife did not appeal that decision. The husband’s two visits to London and another four days in June 2022 for his daughter’s wedding, did not establish a habitual residence in England and Wales. In my judgment, the Monegasque Court’s judgment cannot be faulted.

Expert evidence

60. I had the reports from the Monegasque lawyers, Maitre Sarah Filipi for the wife and from Ms Celine Martel-Emmerich for the husband. I also had their responses to additional questions. There was not much that the experts disagreed about.
61. They agreed, significantly in my judgment, that if a fault-based divorce under Article 197 of the Monegasque Civil Code was obtained then there was a discretion to award a ‘compensatory allowance’ to the spouse said to be at fault, but any financial settlement would be lower than in a non-fault based divorce.
62. The two Monegasque lawyers also were agreed on the following:
 - If a divorce was obtained on a no-fault basis (Article 198 of the Civil Code), it had to be by agreement.
 - If both parties agreed on a section 198 divorce the Judge would have to proceed on that basis.
 - A spouse could get orders to obtain information about finances.
 - The divorce in Monaco would come before a financial settlement. It would be followed by the consideration of the ‘compensatory allowance’.
 - A monthly amount is initially paid to maintain lifestyle, this changes after the divorce to the compensation which is a lump sum.

- The size of the compensatory allowance would depend on the wealth of the creditor, the parties' health and ages, the property, the housing requirements of the spouse, the duration of the marriage and the difference career choices made.
- The lump sum is to ensure that the wife continues with the same lifestyle as before. It is worked out monthly then multiplied depending on the length of the marriage, lifestyle, and life expectancy of the person etc
- The lump sum had to be paid within five years. It could take the form of property.
- There is a separate financial arrangement made for children which is called the 'child contribution'.
- If there was no jointly owned property then the valuable home in Monaco would be considered to belong to the husband.
- The proceedings in Monaco were to a great extent paper based.

63. They did not agree on the following:

- The potential length of any proceedings in Monaco. Maitre Filipi said that if not agreed they could take up to three years whilst Ms Martel-Emmerich said 18 months to two years was to be expected. I did not consider the length of proceedings a significant factor.
- Another difference in their evidence or a difference in understanding of their evidence was in relation to whether the wife and C would have had access to interim measures including financial support in Monaco whilst the proceedings were continuing. My note of the evidence was that the wife could have obtained interim financial support in Monaco but her English lawyers decided to apply for financial support in the High Court.

Submissions

64. The husband relied on the following evidence and arguments in favour of a stay:

- a. When the wife issued her petition, divorce proceedings had been ongoing in Monaco for seven months.
- b. Monaco was where the parties were last habitually resident together and this Court should respect the Monaco Court's decision which was not appealed, that the last shared domicile of the husband and wife was Monaco.
- c. The husband was a Monegasque resident when he filed the divorce petition.
- d. The husband had not been habitually resident in London recently, if ever.
- e. The wife's ties to London were limited.
- f. The wife had taken part fully in the Monaco proceedings.
- g. She has her own specialist family lawyer and contested the jurisdiction.
- h. The wife's application to contest Monaco's jurisdiction was a tactic to give her time to establish a ground for seeking to invoke the English Court's jurisdiction. The wife's application was forum shopping.

- i. The wife could have asked for interim financial measures from the Monaco Court but did not do so.
65. The husband made the following submissions about the experts' evidence:
 - a. The Monaco system was as fair as our own. The wife could not suggest that she would not obtain justice from the Courts.
 - b. The proceedings were, and would be, conducted in French. The wife speaks French fluently unlike the husband.
 - c. The wife has a specialist Monegasque lawyer.
 - d. The husband's proceedings had a seven-month march on the ones in this jurisdiction.
 - e. During the seven-month period, the wife had taken part in the conciliation process.
 - f. The wife had not appealed the decision on jurisdiction made by the Monegasque Court.
66. In summary the husband relied on the expert evidence and contended that it was not a finely balanced case. The proper and fair forum to resolve the dispute was the Monegasque Court.
67. The wife in her submissions relied on the following evidence to show that England was the appropriate jurisdiction for these proceedings:
 - a. There were strong family connections to England.
 - b. The wife had had a one-bedroom rental flat in London since 2010.
 - c. The wife's older daughter, B, lives in the flat, she was educated in England and has lived here for many years.
 - d. Between 2011 and their marriage in 2015, the husband and wife lived between London and Monaco.
 - e. Between 2015 and 2019 they lived between Monaco and Malibu.
 - f. The wife relied on a calendar which showed how often the couple travelled extensively. Between 2015 and 2019, they spent more time travelling than living in Monaco.
 - g. The husband had produced no evidence of family life in Monaco.
 - h. Between July 2019 and June 2021, the family's main residence was in Malibu. If anywhere the main base of this family was most likely Malibu.
 - i. In June 2021 the wife and husband made a joint decision to live in London.
 - j. The family's daughter, C, had been educated in English.
 - k. The school that C had been assessed for in New York had a sister school in London which C was now attending.
 - l. It was better for the English Court to determine the financial remedy proceedings as an English Judge would have a better idea of the costs of living in London.
68. The wife made the following submissions about the experts' evidence:

- a. Ms Celine Martel-Emmerich was not an objective witness. She had contacted Maitre Filipi to suggest they enter into discussions about the financial settlement. The Court should be wary about accepting her evidence.
 - b. The delay in the proceedings which would be greater in Monaco, up to three years to conclude if not agreed and then one to two years on top if appealed.
 - c. The proceedings in Monaco would be conducted in French which is not a language spoken by the husband.
 - d. The wife would not be able to cross examine the husband or his witnesses about any financial disclosure.
 - e. The ‘compensatory allowance’ would be at best a needs-based assessment.
 - f. The wife would not be able to make any claims to property held in the husband’s sole name.
69. Overall, the wife submitted that the husband had failed to discharge the burden on him to show that Monaco was the more appropriate forum. There was no ‘real and substantial connection’ with Monaco in the context of this marriage or the family unit as a whole. The husband had produced no evidence of where his significant assets were held, to the extent that there was evidence, it is that he has assets in the US and possibly France and Switzerland. Miss Perrins contended that there could be assets in England which are unknown to the wife.
70. His application for a discretionary stay should fail but even if the husband could establish a prima facie case in favour of Monaco, a stay should be refused because the wife would not receive substantial justice there.

Discussion

71. In terms of where the family lived when, the husband and wife gave conflicting accounts of where their main residence was. I found neither of them to have been wholly truthful. Having considered why this is and whether it was with the benefit of hindsight, it seemed to me that both were keen for this Court to find that the divorce and financial remedy proceedings should take place in their chosen jurisdiction and some of the evidence given was to suit their purposes. That did not mean I could not rely on other parts of their evidence but in some respects, to determine where they lived when I found it more helpful to consider other evidence including contemporaneous messages exchanged between the parties.
72. I noted the husband said in the Monegasque divorce petition that “from April 2021, his spouse suddenly (“brutalement”) left the marital home and moved to CALIFORNIA in the UNITED STATES and subsequently to the UNITED KINGDOM from the summer of 2021” (page 128 Monaco proceedings bundle). This led to the claim that the divorce should be granted under Article 197 of the Civil Code on the grounds of the wife’s sole fault. I found the husband exaggerated what the wife had done. This was not a sudden or unexpected move on her part.
73. Another inaccurate claim made by the husband was that in the Monegasque proceedings in October 2022 he said he feared the wife abducting C to Russia. The husband said that the

wife took C to Russia without his permission. It was clear from photographs of C on an aeroplane sent by the wife to the husband that he knew she was going there.

74. In his second witness statement of March 2023 in these proceedings the husband said the wife's connections to London were tenuous. I noted that he did not mention that the wife had rented a flat in London since 2010 although he said B lived here. I accepted the wife's connections to London were not strong but in not mentioning her flat, I find he was not being entirely forthcoming.
75. I did not accept that the husband believed that C was going to attend school in London remotely. The wife sent a WhatsApp message on 17th June 2021 telling the husband that C had been accepted at the school. I noted that the wife sent the husband a photograph of C in her school uniform on 6th September 2021. I did not accept the husband's evidence that he did not know that he was signing a document accepting a place at the London school, but I did accept that the husband wished that the family would return to Monaco at a later time for C to go to the school there. The husband said what he did about the London school to play down his knowledge of the wife's plans to go to London.
76. In terms of the wife. I did not accept her account that the family, including the husband, became resident in Malibu and that it was their intention for it to be their main family home from the beginning. It was always going to be dependent on the wife obtaining a Green Card.
77. I found that the husband bought it as a second home, which was within reach of his office in San Diego (not an easy reach admittedly). It became the home of the wife and C for two years because in 2020, Covid prevented them from leaving. I accepted the husband's evidence (and the finding of the Monegasque Court) that it became his temporary residence for nine months when the husband had a visa issue and before they heard that the wife had not been granted a Green Card. Had the wife been granted a Green Card, the wife and C would have remained in the US, probably moving to New York.
78. I had reservations about the accuracy of another piece of evidence given by the wife. She said the husband knew she had not renewed her and C's residence cards for Monaco in July 2021. I did not accept that was the case. The husband's reaction to questions in relation to the residence cards was vivid and appeared genuine. He was angry that she had allowed this to happen.
79. In terms of the move to London, the wife had provided messages exchanged between them which made it clear that she made the decision to come here. The husband said: "I hope you know why I stayed in the US. Let me remind you to try to do everything so that you and [C] can get a green card or a visa with a future possibility to get a green card. And then to move to New York. At least this is what had been our plan. Now I don't understand, you are no longer planning this option and only thinking of London? Please let me know. I am not a marionette".
80. I found that the wife had not finally decided where they were going to go after the US and for that reason in March and April 2021, she obtained a place at the nursery in France and a small flat which would give them residence in France and enable C to go to school there. By July 2021 when she allowed her Monegasque residence card to lapse, she had decided not to return to live there.

81. The wife's intentions about London can be seen in messages exchanged between the parties. She provided an undated text message, one where the husband tells her to attach him to her application for settled status in England. He tells her "Don't fuck with my head". She did not apply for him. I found that for her the relationship was ending and she was making choices for her and C but not for the husband.
82. The state of the relationship fluctuated. When the wife sent a message to the husband on 6th September 2021, he asked whether this was her telephone number. On the same day, it is clear that he is reluctant to come to London as he then says: "Alright will come will be helping you to go shopping and to furnish the house. Good night".
83. On 20th September 2021, the relationship is warmer with the husband saying the wife has forgotten about him and she says she is thinking only of him and preparing the house for his arrival by getting internet and other urgent matters ready.
84. Matters raised by the experts included the question of delay in Monaco. They disagreed about the length of time that proceedings would take: three years (Maitre Filipi) versus 18 months to two years (Miss Cartel-Emmerich). It depended on a number of factors and whether the parties would come to an agreement. I found that if fully contested they probably would take slightly longer in Monaco than in the High Court, but the difference was not such as to prefer one jurisdiction over another.
85. There was a dispute between the parties about the evidence given by the experts. My understanding was that the wife could apply for interim financial support to assist with representation and living costs. Miss Perrins did not consider that to be clear.
86. Miss Perrins criticised the husband's expert for contacting the wife's expert. Miss Celine Martel-Emmerich was cross-examined about this. She agreed that she had contacted Maitre Filipi to ask her if she was the wife's lawyer and whether they could reach an agreement on the financial consequences of the divorce. She thought Maitre Filipi was the wife's lawyer. Miss Martel-Emmerich said she did that because she was astonished that the wife had not asked for financial support. She also told Maitre Filipi that she did not consider London was the competent jurisdiction. She said she did it to speed up the process as the wife had not asked for interim alimony.
87. Miss Martel-Emmerich should not have contacted Maitre Filipi but I did not consider it undermined her evidence. It was done without an understanding of what an English Court expects of an expert. Miss Martel-Emmerich was clearly unaccustomed to the role she had been asked to play. She was sent the usual information about her role but was overtaken by her lawyer's instincts. She was in essence a Monegasque lawyer who had been asked by the husband's lawyer for her advice.
88. It was clear that she approached the case with a lawyer's hat on. Miss Martel-Emmerich said, and I accepted that she was, "astonished" the wife had not asked for an interim financial settlement. That was the aim of the conversation with Maitre Filipi, to try to cut through and speed up the process. She was wrong to do so but it was done with the best of intentions. There was very little difference in the evidence given by the two lawyers from Monaco and Miss Martel-Emmerich's intervention did not affect the evidence she gave or the weight that I gave it.

89. The wife argued that this Court has a wider power to order disclosure than the Court in Monaco. Miss Perrins said that there was not the same rigorous approach to disclosure in Monaco where, as in this case, there are large assets abroad. I found that disclosure of financial information could be ordered by the Court in Monaco. I found that an enforcement process via the Monegasque equivalent of the bailiff was available. I accepted Mr Hales' argument that his client who jealously guarded his residency card would want to comply with Monegasque Court orders.
90. Another point raised in argument by the wife was that the Monegasque system would rely on a marital contract which said that the wife was not entitled to a share of the home in Monaco. Her share would be calculated on a needs basis which was not fair in the circumstances.
91. Having considered the account of the two expert lawyers, I found that there was a system by which the financial situation of the husband could be explored in the Monegasque proceedings. The Courts in Monaco would have extensive experience of the very rich arguing about money. I accepted that any orders could be enforced by the Courts. The significance of any marital contract, if there was one, and the way the pot was to be divided up was a matter for the Court in Monaco but nothing I had read or heard lead me to consider that the wife would not be fairly treated in that jurisdiction.

Conclusions

92. Having considered the evidence, I have rejected the claim the wife made in her divorce application that both parties were last habitually resident in England and Wales. They were not. Their last marital home was in Monaco albeit I accepted the wife's evidence set out in a calendar that they travelled a great deal.
93. There was an intention to settle in the US had the application for the Green Card been successful. It was not. Thereafter it was the wife's plan to settle in London whilst the husband did not intend to leave Monaco. The wife's move to London was in the context of a marriage which was breaking down. By January 2022 the wife was consulting solicitors.
94. Apart from a failed investment many years before in a property company which bought two houses, one of which he considered living in, the husband had never bought a place to live in in London. He had bought homes in Malibu and Monaco. The husband was happy to leave his wife in charge of deciding what sort of home to rent in London. She consulted him about this. His purchase of gym equipment which was delivered to the rental house, did not indicate to me one way or another whether he was intending to live there or stay for some weeks whilst keeping himself fit.
95. The wife had had a small flat in London since 2010, she had lived there before her marriage to the husband and had stayed there occasionally with B afterwards. It was never a home for the family unit which was Monaco, followed by Malibu for the wife and C and which later became a temporary home to the husband.
96. The wife's rented London flat became her and C's home in September 2022, when she launched her divorce in London and the husband stopped financing the costs of a large house. At no time was London ever the husband's or the family unit's home.

97. One of the allegations made by the husband was that the wife was forum shopping in bringing proceedings here. I noted that she had engaged with the proceedings in Monaco having consulted solicitors here. Time passed before she brought proceedings in London. In her divorce application, she said she had resided here for at least a year before the application was made. That suggested to me that a 12 month residence was thought to be significant.
98. I cannot discount that she thought she might receive a more favourable financial outcome in London and it was significant that she had not applied for any interim financial support in the proceedings in Monaco but had in London, but I found it more likely that she wanted to establish a firmer connection to this country before she started proceedings here. As a single mother of a young child, she may just have thought it would be easier for her to have on-going proceedings in London where she now lives.
99. One piece of evidence given by the wife was that she would find it difficult to go to Monaco to take part in proceedings. I did not accept that was a relevant consideration. The jurisdictional argument took place without either the husband or the wife being present. They were both represented by specialist lawyers. The evidence from the experts is that proceedings in Monaco are largely decided on written evidence and submissions. I noted too that even if the wife would have to attend Monaco on occasion, it was but a short flight to get there from London.
100. The wife's petition of divorce in this jurisdiction was based on two grounds of jurisdiction. The first that both parties were "last habitually resident in England and Wales and one of them continues to reside there". The wife argued that the balance of convenience and proper and fair forum was England and Wales and not Monaco.
101. I did not find that the husband had ever been habitually resident in England and Wales at the same time as the wife. I have set out above his very short visits to this country after the arrival of the wife and C in June 2021. I accepted of course, that the wife is now habitually resident in London.

The 'natural forum'

102. The next question was to consider where the 'natural forum' is for these proceedings. It is for the husband to show that Monaco is the 'natural forum', the one to which the parties have the most real and substantial connection.
103. The parties lived together an international life based in Monaco from their marriage to 2019. An intention to transfer their residence as a family to the US was dependent on the wife obtaining a Green Card with the husband's financial support.
104. The wife decided to move to London and the husband was content to rent a luxurious home and to pay for C's private education. He spent very little time in London, a matter of a few weeks and had not transferred his residence there before he made his application in Monaco. He was not going to become a resident of London. The relationship was failing and had completely failed within six months of the wife's arrival. I agree with the Monegasque Court's view of what happened. It was a geographical separation first in the US and then in England that led to the end of the marriage.

105. In terms of the wife's connections to this jurisdiction, it was that she had rented a small flat for over ten years. This had not been her home since her marriage to the husband. This had been her older daughter's flat in recent years, one where the wife could stay in if she wanted to. The husband had spent at most one night in that flat. There was never a family home in England.
106. In terms of the convenience of the parties, Monaco is more convenient to the husband and less convenient to the wife. London is more convenient to the wife and less convenient to the husband.
107. At one point it was said that the husband's heart problem was a reason to choose the Monegasque jurisdiction rather than the English one. That was complete nonsense. The husband spends much of his time travelling, whether it is to come to this Court to appear in these proceedings or whether it is from going on trips abroad with C. His health has had no effect on his travels.
108. Part of the evidence that a Court would need to consider is evidence of the husband's finances. The husband is a businessman with international financial interests, but his base is Monaco. During the marriage I heard of only one investment in London in a company that was going to develop two houses in North London. This investment lost money and I accepted the wife's evidence that she was not aware of any other investments in this country.
109. The wife appeared to believe the husband's extensive investments are in the US, as well as some in France and Switzerland. Arguably any witnesses who would need to be called would be accountants, business managers or personal assistants who would be local to Monaco. In terms of assets that the wife was aware of, there was the home in Monaco purchased many years before the parties married. This may or may not be something that the wife could claim to have an interest in. There was the home in Malibu sold for a reputed \$40m.
110. I was satisfied from the evidence that financial disclosure would be obtained in Monaco and that any enforcement which would need to take place in Monaco could be assured. The experts noted there were criminal sanctions that a creditor could turn to.
111. An argument raised against the husband's application for a stay was that C had been found to be habitually resident here and it was better for the financial arrangements to be considered by one Court system and a Judge who understood the English property market and the English cost of living. It was clear that C's child arrangements proceedings will continue here. It seemed to me that any information about the cost of living in London could be provided as evidence to a Judge in Monaco in the same way that it could be provided to a Judge here.
112. In my judgment, the husband has shown on balance that Monaco is the forum to which the parties have the most real and substantial connection.

Substantial injustice?

113. I go on to consider the next contention of the wife, which is that I should nevertheless refuse to grant a stay as she has shown that litigation in Monaco would cause her 'substantial injustice'. The wife has argued that she will be deprived of a "legitimate, personal or juridical advantage" if the proceedings are stayed and says she can show some other special

circumstances by virtue of which justice requires that the trial should take place in this jurisdiction.

114. I have considered delay above.
115. I have had the advantage of being able to read the judgment of the Monaco Court of 30th March 2023. I noted that the parties were both represented by specialist lawyers. Unsurprisingly, clear reasons were given for the decisions made. I have said above I could not fault the decisions made by the Court, indeed their decision on jurisdiction is clearly the right one.
116. I had been concerned after hearing the expert evidence that the wife might be deprived of a personal financial advantage if the husband pursued a fault divorce. The question then would have been, could this Court have been satisfied that substantial justice would be done in Monaco, the test not being whether the wife would achieve a better outcome.
117. I may have found that substantial justice would have been done in any event. As it was, the need for a decision on that argument was removed when the husband's Monaco lawyers sent a letter dated 9th October 2023 to the wife's lawyers in Monaco (copied to her London lawyers) in which they proposed that a divorce would take place on the sole basis of Article 198 of the Civil Code, in other words by mutual consent as a no-fault divorce. This was a sensible proposal.
118. The wife was asked about this aspect in cross examination as her representatives had not replied to the husband's letter. She was very hesitant but was able to agree that a no-fault divorce was better than a fault based one.
119. Another factor for this Court to consider is that the proceedings in Monaco are the first in time. The parties disagreed about the significance that should be given to this aspect. The husband said it was significant that the wife had been represented by specialist lawyers and participating in the proceedings in Monaco for seven months whilst Miss Perrins said it was not. It seemed to me that where a discretionary stay is being considered, the place where the proceedings were first issued is a relevant consideration. It is just one factor though and there may be other factors to give more weight to.
120. A consideration which I gave a little weight to was the cost of the proceedings in each jurisdiction. The parties have changed solicitors in this country several times. The costs are mounting, and I was struck by the wife's evidence that the costs in Monaco would be considerably less.
121. In conclusion, taking all the factors into account, I could not see that proceedings in Monaco conducted in a language the wife is fluent in, on the basis of the no-fault procedure, represented by specialist lawyers, supported by financial disclosure which could be enforced, in a country the wife could reach if needs be, could be said to lead to any injustice to the wife. There are no other special circumstances by virtue of which justice requires that the trial should nevertheless take place here.

Order

122. I order a conditional stay of both the wife's divorce proceedings and her applications for financial remedies on the basis that neither party should use the fault-based Article 197 of

Civil Code divorce procedure in Monaco. If either did, then this Court would re-visit its decision.