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Neutral Citation Number: [2024] EWHC 2425 (Fam)

Case no: FD24P00233

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

11 September 2024

Before :

V Butler-Cole KC (sitting as a deputy judge of the High Court)

Between :

The Father

Applicant

- and -

(1) The Mother

(2) AA

(3) Z

(through their children's guardian, Emma
Huntington)

Respondents

Ms Lindfield (instructed by Wilsons Solicitors) for the Applicant
Mr Langford (instructed by Bindmans LLP) for the 1st Respondent
Ms Rayner (instructed by Freemans Solicitors) for the 2nd and 3rd Respondents

Hearing dates: 10 and 11 September 2024

Approved Judgment

This judgment was handed down remotely at 2pm on 11 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS BUTLER-COLE KC

Victoria Butler-Cole KC:

1. This case concerns two children, A who is 14, and her younger brother Z who is 3. Their father is the applicant and their mother is the 1st respondent. In this judgment I will refer to them as the father and the mother, or as F and M. The children are represented by their guardian, Ms Huntington. The father’s application is for the summary return of both children to Germany, and is brought under the Child Abduction and Custody Act 1985 (incorporating, by Schedule 1, the 1980 Hague Convention on the Civil Aspects of International Child Abduction: the “1980 Hague Convention”).
2. The children and their parents are Ukrainian. They met in 2003, married in 2004, and their eldest son X was born later that year. Their subsequent relationship has fairly been described as tumultuous. In 2012, the mother moved away from the father taking X and A with her, but they reconciled 6 months later. In 2014, the family moved to Russia, but shortly afterwards, the mother returned to Ukraine leaving the father and both children behind. She had no contact with the father or the children for around 6 months, but by 2016 they were once again living as a family in Ukraine. The parents divorced in 2018, but in 2020 were reconciled and Z was born at the end of that year. In March 2022, the parents and all three children moved to Germany because of the Russian invasion of Ukraine. By May 2022 they had separated. From 2019, the father was intermittently seeing another woman in Ukraine, and in June 2022, he assisted this woman to move to Germany with her three young children and commenced a full relationship with her. He married her in August 2023 and lives with her and her children in Germany. It appears that X and A were not aware of their father’s new partner and his pre-existing involvement with her until she moved to Germany.
3. These events led to a breakdown in the relationship between the parents in these proceedings. The mother was upset that the father had brought his new partner to Germany and moved in with her so soon after she and the father had separated. The father issued proceedings in Germany in 2022 to obtain access to A and Z. A German guardian visited the parents and spoke to X and A. The proceedings were concluded in respect of Z in September 2022 with an order by agreement that the father would spend time with Z on two afternoons a week and every other Saturday. By the first week in October, this arrangement was not being implemented by the mother. In January 2023, the German courts made an order again by agreement that there would be no contact between A and her father, in accordance with A’s wishes. The order recorded that if A changed her mind about wanting to see her father, her mother would facilitate contact between them.
4. F last spent time with A in May 2022. His last contact in person with Z was in early October 2022. In February 2024, M moved to England with A and Z under the Homes for Ukraine scheme. She did not discuss the move with F beforehand, and when he became aware of her plans, he applied to the German court for an order preventing the children’s removal from Germany on 16 February 2024. An order to that effect was made by the German court on the papers on 19 February 2024. The

application and order however came too late, as M and the children had already travelled to England on 13 February 2024.

5. Against that background, F issued an application for summary return of both children in June 2024. His case is that they were wrongfully removed and that they should return to Germany either with M (in which case he would agree to them living with her pending the first hearing before the German courts) or without her, in which case they would live with him, his new wife and her three children. If the court were to find that A should not be returned, nevertheless Z should be returned to Germany.
6. M opposes the application for summary return and contends that F was not exercising rights of custody at the time of removal and so pursuant to Article 3(b) of the 1980 Convention, the removal was not wrongful. In the alternative, M contends that A is objecting to a return and the court should exercise its discretion not to make the order sought in respect of her, and that as M would not go back to Germany, returning both children, or Z on his own, would constitute grave harm for the purposes of Article 13(b) of the 1980 Convention.
7. The children's guardian raises a question as to whether the burden on F to show that he had rights of custody in respect of Z has been discharged. If it has, the guardian agrees with M that F was not exercising those rights of custody. If the court disagrees, the guardian's position aligns with M's in respect of A's objections and the risk of grave harm to each child.
8. In reaching my decision, I have read the court bundle, the skeleton arguments of each party, and the authorities cited in those skeleton arguments and in oral submissions, and heard brief oral evidence from the guardian. This judgment is being handed down on the second day of the hearing.
9. This judgment addresses the following issues:
 - a. Whether the removal of the children was wrongful:
 - i. Whether F had rights of custody in respect of Z
 - ii. Whether F was or would have been exercising rights of custody in respect of both children
 - b. Whether A is objecting to returning to Germany and if she is, whether her objection should be overridden
 - c. Whether there would be a grave risk of psychological harm or the children would otherwise be placed in an intolerable situation if they were returned to Germany
 - d. Whether the court should exercise its discretion to refuse to order the return of one or both children.
10. It is agreed by the parties, that the provisions of the 1980 Convention apply to both A and Z as they are aged under 16, and that both were habitually resident in Germany prior to the removal.

Whether the removal of the children was wrongful

11. Article 3 of the 1980 Convention provides materially:

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention;*
- and*
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

Whether F had rights of custody

12. On behalf of the children's guardian, Ms Rayner raises an issue as to whether F had rights of custody in respect of Z pursuant to the law of Germany immediately prior to removal, as required by Article 3(a). M and F were not married at the time of Z's birth. I have been provided with a translated copy of s.1626a of the German Civil Code which provides that where parents are not married at the time of birth, '*they shall be entitled to parental custody jointly*' only if one of three steps are taken. The material provision is "*if they declare that they wish to take on parental custody jointly*". Ms Rayner points out that there is no evidence from an expert in German law explaining whether having the father's name on the birth certificate constitutes such a declaration.
13. In response, Ms Lindfield accepts that it is for the father to demonstrate that he had relevant rights of custody. She relies on the order obtained by F in Germany on 19 February 2024 which states that the parents have joint parental responsibility. She also relies on correspondence from the central authority in Germany, but that correspondence is less helpful as it states that the parents have joint responsibility as they were married, which does not reflect the position in respect of Z.
14. I accept that there are deficiencies in the evidence relied on by F in support of his contention that he had rights of custody in respect of Z. The 19 February 2024 order was made on the papers without submissions being made by M, and I cannot be certain what information F provided to the court. The concerns raised by the guardian were only set out shortly before this hearing, and did not form part of M's case, which explains why no expert evidence had been sought in respect of this issue. No party sought an adjournment for such evidence to be provided. I am satisfied for the purposes of this summary determination that, on the balance of probabilities, F did have rights of custody in respect of Z. Although I do not have full details of the circumstances in which the German order of 19 February 2024 was made, that order does state clearly that both parents have joint parental responsibility. The order could have been challenged or appealed by M but has not been, and M does not contend that F did not have rights of custody.

Whether F was or would have been exercising rights of custody

15. Mr Langford submits on behalf of M, supported by Ms Rayner for the guardian, that F was not exercising rights of custody at the time of removal because:
 - a. He had not had any contact with A or Z for two years.
 - b. There was an order of the German courts providing that F would not have any contact with A until such time as she changed her mind about seeing him.

- c. F had not taken any steps to enforce the German court order providing for him to have contact with Z, and had not raised the lack of compliance with this order by M in the period October 2022 to January 2023 when proceedings in the German court in respect of his contact with A were still ongoing.
 - d. If, which is not clear, F had a right to veto a decision by M that the children should live abroad, that right cannot be relied on in circumstances where there had been no contact or involvement by F in the children's lives for around 18 months at the time of removal.
16. In response, Ms Lindfield submits that F was still involved in the children's lives despite not seeing them, and relies on contact from A's school on 15 February 2024 letting him know that M had told them A would be moving to a different school as demonstrating that he was still part of the children's lives. His explanation for not having pursued contact with Z despite M's failure to abide by the order made in October 2022 was that he was advised that if he pursued the matter, Z would be removed from M's care and given to him, or put into foster care. F has not provided any direct evidence of this advice nor any copies of correspondence which he says took place between his lawyers and M's lawyers on the subject of her failure to implement the agreed arrangements.
17. Although the question whether F was exercising rights of custody is a question of fact, there is some guidance as to what the concept means. Mr Langford and Ms Rayner rely on the statement by Lord Brandon in **Re H (Minors) (Abduction: Custody Rights); Re S (Minors) (Abduction: Custody Rights)** [1991] 2 AC 476, at 500-501, [1991] 2 FLR 262, at 271-2, that

“In my view, art. 3(b) must be construed widely as meaning that the custodial parent must be maintaining the stance and attitude of such a parent, rather than narrowly as meaning that he or she must be continuing to exercise day-to-day care and control. If the narrow meaning was adopted, it could be said that a custodial parent was not actually exercising his or her custodial rights during a period of lawful staying access with the non-custodial parent. That, as it seems to me, cannot be right.”
18. They further submit that I should have regard to the purpose of the requirement in Article 3(b), which was described by Lord Clarke in a Scottish case, **J.S. v. S.S.** [2003] ScotCS 28 (6 February 2003) as *“to be simply to prevent applications being made by persons who have not played any reasonably meaningful role in the life of the children, before their removal”*. They submit that for Article 3(b) to have any purpose, there must be cases where rights of custody are found not to have been exercised, and that this is one such case.
19. Even on their own analysis, I am not persuaded by the submissions of M and the guardian. While F was not exercising any day-to-day care of the children, M had agreed to him having contact with Z, and the German order made in respect of A expressly referred to the possibility of contact with her father in the future. There was an order in place requiring M to facilitate contact between F and Z. F still viewed himself as their father and was still a point of contact for example with 's school. He did previously play a meaningful role in the children's lives over an extended period of time, albeit that around 18 months had elapsed at the time of removal since he had seen either child.

20. I am fortified in my conclusion that F was exercising rights of custody by the consideration in Lord Clarke's judgment in **J.S. v S.S.** of other authorities and one of the travaux préparatoires of the Convention, which together suggest that it will be unusual for there to be a finding that rights of custody were not being exercised, and that the court making a decision about summary return should not delve into the question of how custody rights (in this case, in particular, the right to have regular contact with Z) were being exercised and whether they were being exercised well or badly.
21. I note further that the German order of 19 February 2024 states that neither parent has the right to unilaterally decide to change the children's place of residence, and while I cannot be certain that the father had a right to veto a move abroad, the preponderance of the evidence I have suggests that to be the case, with no suggestion that the father had intended to abandon this right.
22. I therefore find as a fact that F was exercising custody rights or would have exercised them as required by Article 3(b). It follows that the children's removal to England was wrongful within the meaning of the 1980 Convention, and that I must determine whether M has established any of the defences on which she seeks to rely.

Whether A is objecting to returning to Germany, and if she is, whether her objection should be overridden

23. Article 13 provides materially that:

The judicial or administrative authority may...refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

24. There is no dispute as to the applicable law, and I have had regard to the guidance of Black LJ (as she then was) in **In re M (Republic of Ireland) (Child's Objections) (Joinder of Children as parties to appeal)** [2015] EWCA Civ 26, [2016] Fam 1, namely that:
 - a. the gateway stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.
 - b. whether a child objects is a question of fact. The child's views have to amount to an objection before Article 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.
 - c. the objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child's views are one factor to take into account at the discretion stage.
 - d. there is a relatively low threshold requirement in relation to the objections defence; the obligation on the court is to 'take account' of the child's views, nothing more.
 - e. at the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times bear in

mind that the Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.

- f. once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are authentically the child's own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which are relevant to the child's welfare, as well as the general Convention considerations (**Re M** [2007] 1 AC 619).

25. I am clear that A does, as a matter of fact, object to being returned to Germany. The guardian's report states:

"A expressed what is likely to constitute a clear and strong objection to returning to Germany. The language A used when considering what a return would mean for her conveyed the intensity and extent of her emotional and negative response; she expressed "dread" at the prospect of herself and Z being returned to Germany and scored her strength of feeling against a return as 10 out of 10."

26. It is evident from the guardian's thorough report and her oral evidence, both of which I found extremely helpful, considered, and well-reasoned, that A does not want to live in Germany and does not want to live with her father. From A's perspective, she decided in 2022 that she did not want to see her father, and he demonstrated that he intended to respect those wishes when he agreed to the German order stipulating that he would not have contact with her unless she changed her mind. A told the guardian that her father subsequently 'ambushed' her outside her school and tried to talk to her. She spoke of experiencing conflict between her parents including her father being violent and aggressive, and physically chastising her older brother. Germany is not A's home, and she had experienced some difficulties integrating there, reporting bullying and anti-immigrant sentiment at school.

27. A is 14 years old. She has experienced not only a dysfunctional relationship between her parents, and the shock of discovering her father had another partner, but also the loss of her home and familiar environment and her new status as a refugee. She was able to explain to the guardian in a nuanced way her views about a range of matters including her relationship with her father. The guardian told me that although A was not an outwardly confident child, her maturity was commensurate with her age and her wishes should be taken into account. I did not understand Ms Lindfield to suggest otherwise on behalf of F, and I am clear that A's views must be considered.

28. Ms Lindfield submits that A's views are not authentically her own and that she has been alienated and turned against her father by her mother. She notes that in the German proceedings, reference is made to the mother trying to prevent Z running to his father, and that X says, in a witness statement filed in support of the application, that his mother effectively told him he had to choose between her and his father. She therefore submits that when exercising my discretion as to whether to make an order for A's return to Germany, I should give A's views little or no weight. I cannot accept that submission. As the guardian fairly accepted, it is unsurprising that A's views are in line with her mother's, and to be expected that her mother may have influenced A's opinions, either deliberately or inadvertently. But there are objectively understandable reasons why A might hold negative views about her father. The end

of her parents' relationship and her father's new relationship was obviously extremely difficult for both A and her mother to come to terms with. A has held the view that she does not want to see her father consistently for a period of time, and has provided reasons for that position, both to the German guardian and the English guardian. In the German proceedings, the guardian reported that A's older brother X, who at the time had preserved his relationship with both his parents, said that A "*categorically rejects all contact. Her mother had no influence on this, just as she had no influence on him.*"

29. In my view, A's objection to returning to Germany is a very weighty factor. The guardian told me A would be devastated if she had to return, and that it was difficult to see how a return would be effected against her wishes. A told the guardian she believed that if the court said she had to go back, her mother would go with her and Z. There is also a practical implication of A's strongly held views. M's evidence is that she would not return, and in my judgment, the prospect of enforcing a decision that A should go back to Germany without her mother is slim, in circumstances where she has no wish to see her father, let alone live with him and his new wife and family, and would be hugely distressed by having to be separated from her mother, with whom she has a very close relationship. The guardian told me that A would be "*devastated*" if she had to return and that she was not sure how a return could be achieved "*given the real distress*" that A would experience.
30. The policy objectives of the 1980 Convention must of course also be weighed in the balance, but in my judgment, they do not outweigh A's clear objection and implications for her of overriding her wishes. A has already been in England for 7 months, she would be caused immense psychological distress by having to return, and importantly, prior to her removal she had no relationship with her father, a situation he had accepted. A return to live with him, as he proposes, would not maintain the pre-removal status quo, but would be a wholly new arrangement that conflicts with A's wishes and his previous acceptance of them.
31. Even if M did in fact choose to return, I consider that the negative impact on A of having to be moved to a country she does not want to live in will be substantial. F is clear that he considers M wholly responsible for A's negative views about him, and sees M as a threat to his relationship with A. His position is that if M did return, while he would agree that M could live with the children in the interim, this would only be pending a first welfare hearing in the German courts. A would thus be returned to an uncertain living arrangement even if M went with her and Z, which would inevitably have a damaging impact on her mental wellbeing. A has already received counselling because of her recent life experiences, and I find it concerning that her father has not recognised the predictable negative impact on her of his proposals, and is not willing to give her wishes the respect he previously afforded them. His change of position in respect of A feeds M's stated concern that F is seeking to have the children live with him in order to reduce the chances that he would be required to be conscripted into the Ukrainian army, were he to return there to renew his passport.

Whether there would be a grave risk of psychological harm or the children would otherwise be placed in an intolerable situation if they were returned to Germany

32. Article 13(b) provides materially that:

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

[...]

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

33. My task is to:

“...evaluate the evidence against the civil standard of proof, namely the ordinary balance of probabilities whilst being mindful of the limitations involved in the summary nature of the Convention process. Within the context of this tension between the need to evaluate the evidence against the civil standard of proof and the summary nature of the proceedings, the Supreme Court [in Re E] further made clear that the approach to be adopted in respect of the harm defence is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as grounding the defence under art 13(b). Rather, the court should assume the risk of harm at its highest and then, if that risk meets the test in art 13(b), go on to consider whether protective measures sufficient to mitigate harm can be identified.”

E v D [2022] EWHC 1216 (Fam),

34. In this case, the relevant harm or intolerability is primarily the psychological impact on the children of returning to Germany, including by reference to the mother’s stated intention to remain in England. The mother has also made allegations of domestic abuse against the father which are denied, but they are not the main reason for her position.

35. M says that she would not return to Germany with the children. Ms Lindfield on behalf of F contends that this claim is not plausible, and is a device aimed at bolstering M’s case. I have asked myself the question identified in **C v B** [2019] EWHC 2593 (Fam) at paragraph 67: *“Is M’s refusal a consequence of the facts and matters which justify a finding that the defence is made out? Or is it, alternatively, a creature of M’s own making designed to supplement the other matters relied upon by her in order to establish the defence?”*

36. In my judgment, M’s stated refusal to return to Germany is not designed to bolster her defence. Germany is not her home, she has no family there apart from X, and no support network. She has a job and a place to live in England, with no certainty that she would be provided a further opportunity under the Homes for Ukraine scheme if she were to leave England for an extended period. Her long-term wish is to bring up her younger children in England if they cannot live in Ukraine, and she is described as having had a dream of living in England for some time. She has previously left her children in another country when she found the situation there intolerable and she thought that by leaving them, the longer-term outcomes would be better for her and the children. As already noted, she makes allegations of domestic abuse against F,

including extremely serious allegations of rape and physical assault against her, as well as verbal abuse witnessed by the children. Even if those most serious allegations are discounted, as Ms Lindfield submits they should be given the lack of evidence to support them, there is ample reason for M not to want to return to Germany.

37. I have had regard to the summary of authorities in T v G [2024] EWHC 246 (Fam) as to the situation where a child's primary carer says they would refuse to return with the child. I note that M has provided evidence of previous mental health problems which have required medical treatment, and I accept that if she were to return, this would have a negative impact on her mental health, which would in turn make it difficult for her to provide adequate care to one or both children.
38. As indicated above, given the strength and nature of A's objection to returning and the likely impact on her of being forced to return, I consider that her wishes should not be overridden. It would put A in an impossible position if she had to choose between remaining in England with her mother and returning to Germany with Z, and in my view, that is not a choice which it would be fair to impose on a child of 14 – whichever decision A made would have huge implications for her psychological wellbeing now and in the long term. The guardian told me in oral evidence that all the children are vulnerable and already caught up in the parental conflict, putting them in very difficult positions. If Z were returned, he would likely either be separated from his big sister, who he loves and has a close bond with, and who he has lived with his whole life, or he would be separated from his mother who has been his primary carer for most of his life. He would move to live with his father, with whom he has not had any face-to-face contact since October 2022, in a house he has never visited, with his father's new wife and three other children he has never met (save for in passing on a video call).
39. It does not appear that the father accepts that separating Z from A would cause harm to Z. Ms Lindfield submits that since A will '*soon become an adult*' and since she could have video contact with Z and travel independently to Germany to see him, it would be appropriate for Z to return alone. In my view, the father's position completely ignores the psychological and emotional impact on Z of separating him from his mother and sister, and demonstrates a lack of awareness of the needs of a three-year-old child. It is not realistic that A would travel on her own to Germany to stay with a father she does not wish to have contact with and his new family she has not met, and it is obvious that video contact is no substitute for A's physical presence given Z's young age. The father's submission that Z would benefit from having a relationship with his older brother X if he returned may be correct, but I note that X was living away from home during the week as a 16 year old when Z was born, and now lives independently in Germany – it is evident that he has never had the same quality of relationship with Z that Z has with A.
40. I accept the submissions of M and the guardian that Z would be put in an intolerable situation if he was returned to Germany, either with or without A.
41. The father has proposed protective measures, which are largely concerned with the allegations of domestic abuse made against him, which he denies. There are no protective measures identified in respect of the psychological harm to the children of returning to Germany without their primary caregiver, as there is in reality nothing that could mitigate that impact in a meaningful and effective manner. No proposals were made by the father about promoting contact between the children and their mother, and on behalf of the guardian, Ms Rayner expressed concern about the father's ability to promote such contact given the '*almost vitriolic*' nature of his second witness statement. While it appears that the mother may be entitled to state

support as a refugee in Germany, it is not clear whether her acceptance under the Homes for Ukraine scheme would affect the availability of that support, nor whether she would be accommodated in the same area as the father.

Conclusion

42. I have found that A has a strong objection to returning to Germany, and that it would place Z in an intolerable position to return him to Germany either alone or with A (if she were to change her mind about returning). I also consider that requiring A to choose whether to stay with her mother or go with Z would put her in an intolerable position for the purposes of Article 13.
43. I need to go on to weigh the aims of the 1980 Convention against these findings, before deciding whether to exercise my discretion to refuse the father's application.
44. It is a core objective of the 1980 Convention that children who have been wrongfully removed can be swiftly returned to their state of habitual residence so that welfare decisions can be made in their home country, and the potential harms of abduction can be ameliorated or removed entirely. I have reminded myself that the decision I have to make concerns the return of the children for only a limited period of time, pending a decision about their long-term residence (**B v B** [2014] EWHC 1804). I have nevertheless concluded that I should not accede to the father's application and that I should refuse to order the summary return of A and Z, for the following reasons:
 - a. The policy objectives of the Convention have less weight in circumstances where neither child was enjoying a relationship with their father for around 18 months prior to their removal, where he had accepted A's refusal to see him, and where he could have made further applications to the German court in respect of contact with Z during that period but chose not to.
 - b. The children have been here for 7 months, and a swift return is not achievable.
 - c. Germany is not the children's home, despite being their place of habitual residence, and there is no familiar home for them to return to there.
 - d. A's objections to returning are strongly held, consistent and understandable, and there would be a very serious negative impact on her mental health, at a vulnerable stage in her development, if her wishes were overruled. It would also be practically difficult to require her to leave England against her wishes.
 - e. M's refusal to return appears genuine, and if she stays in England, the child or children returned would lose their primary care giver, which would have an immediate harmful impact on them.
 - f. Given A's objection to returning and M's stated intention to stay in England, it is likely that Z would have to return alone, losing both his primary care giver and his sister, and being put, at the age of 3, into an unfamiliar environment, to be cared for by people with whom he does not have a strong subsisting relationship. This would be hugely disruptive to him and would inevitably cause him psychological and emotional distress. The father previously took the view in the German proceedings that he would not pursue implementation of the order for contact with Z because he did not want to risk Z being removed from the care of the mother.
 - g. Even if, contrary to my findings, M and A did decide to return with Z, the circumstances into which they would be put would be intolerable for the children, by reason of the negative emotional and psychological impact on

them of moving once again to a new home, the difficulties that M would have in caring for them given her own distress and likely mental health problems, and the uncertainty and anxiety they would be caused by the possibility of being required to live with the father and his new family, or being separated with Z moving to live with his father.

- h. It is possible for the father to maintain video contact with Z while Z remains in England. The interim arrangements for contact have inevitably been less than ideal, as a 3-year-old is not able to participate in long periods of video contact, but they have taken place facilitated by the mother, and the father reports that more recently, Z has started to tell the father that he loves him. That news provides reassurance that the relationship between Z and his father is capable of being maintained at a distance, and is in fact being developed in a way that had not been happening prior to the wrongful removal.

45. That concludes my judgment. I will hear submissions as to further directions.