Neutral Citation Number: [2024] EWHC 3125 (Fam)

Case No: FD24P00403

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 November 2024

Before :

MR JUSTICE CUSWORTH

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Between :

A FATHER — **Applicant**

- and –

A MOTHER — **Respondent**

- -
- -

Mark Jarman KC (instructed by **Poole Alcock Solicitors**) for the **Applicant Father**
Ben Mansfield (instructed by **Austin Kemp**) for the **Respondent Mother**

Hearing date: 21 November 2024

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JUDGMENT

This judgment was handed down remotely at 10.30am on 5 December 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

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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.

Cusworth J :

1. This judgment follows the hearing of a father's C66 application dated 3 September 2024 for the summary return of X (born on 10 March 2024, and so now still aged just 8 months old) to a non-Hague country pursuant to the Inherent Jurisdiction of the High Court. The application is 'Non-Hague' because, although the non-Hague country has acceded to 1980 Hague Convention, the United Kingdom has not to date accepted the accession and therefore the 1980 Convention is not presently in force as between the non-Hague country and England and Wales.

2. The father ('F') is an American citizen and the mother ('M') is a British citizen. They met in the non-Hague country in September 2022 where they were both working pursuant to a Temporary Remote Work Visa. The mother had then been in the non-Hague country since December 2020. The parents are not married. M owns a limited company through which she is employed as an IT Consultant for a concern in Scotland, working remotely. She has had a series of annual visas, the latest of which is due to come to an end on 29 December 2024.

3. It is clear from both parents' accounts which I have both heard and read that, at least from when M became pregnant in the Summer of 2023, serious fault lines in their relationship began to become apparent. By the time of X's birth, their interaction had become fraught and unhappy for much of the time, although both still wanted to find a solution. They had been seeing a couples counsellor during the pregnancy. F had been receiving advice from a counsellor of his own for some time before that.

4. X was born in the non-Hague country, but at the end of May 2024, when she was just 11 weeks old, her parents left the non-Hague country for an extended holiday, travelling first to the US (to stay with the extended paternal family), then Northern Ireland (to visit M's parents) and finally to a city in England where they were visiting close friends of M. Thereafter, they had planned to spend a month in the South West of England, before returning to the non-Hague country in September. However, whilst the parents were staying in an Airbnb in the English city on 9/10 August the relationship finally broke down. M left their rented property for over 24 hours, leaving X in the sole care of F. She clearly struggled with that, and requested X's return to the friends' home in the English city where she had been staying, which duly happened. Already, F was seeking M's agreement to commit to an arrangement for X's time to be divided on a 50/50 shared care arrangement, although she was and is still breast-fed.

5. M returned to the Airbnb with X on 15 August for one night. The parents have been living separately since then. F attended his own mediation session on 21 August 2024. On 27 August, M applied without notice for Child Arrangements and a PSO to the Family Court in the English city. F was served with the order made on 29 August, which prohibited F from removing X from the jurisdiction. M's C1A made allegations of domestic abuse against F. She accused him of emotionally and verbally abusive behaviour, of physically stopping from her leaving rooms, or on occasion from picking up X. She stated that F had recently told her that she would never feel safe with him. She finally stated that he had demanded that she return X to him and that he intended to leave the country and take her to the non-Hague country.

6. On 4 September 2024, F issued his application under the inherent jurisdiction. In his supporting statement he accepted that his relations with M had been 'strained for a while'. He accused M of physically abusing him on the night of 9 August, and accused her of fabricating the allegations she had made to create a narrative that X is at risk of harm whilst in his care. He set out that whilst he wanted a shared care arrangement, M was only then offering supervised visits to X. The parents did then attempt mediation jointly, and on 9 September 2024, they attended a first joint mediation session with Reunite. However, on 12 September, F's C66 Inherent jurisdiction application was listed for the first hearing before Arbuthnot J., on notice to M. The application was case managed to this hearing, with directions for expert evidence about the parties' immigration situation, and provision for a PTR on 18 October. Contact was consensually provided for three times weekly for up to 6 hours on each occasion, and neither parent was permitted to remove X from the jurisdiction.

7. Seven days later, on 19 September, the mediation process between the parents was closed in circumstances where they were then unable to make progress. Handovers have since however taken place without incident and F has on occasions been invited into M's home. Since September, M has enrolled X into a nursery in the English city where she attends 3 half days per week. M has also moved back to her own property, which was previously rented out. In late October, F returned to the non-Hague country where the lease which the parents had over their home had been terminated by the landlord. M's possessions were taken to the home of some friends of the parties. F had provisionally rented a property for her to return to, but he then cancelled it, after she indicated she did not consider it suitable. F says that there are other appropriate properties for M in the non-Hague country should the court order X's return there.

8. On 18 October 2024, the PTR came before Harris J. By her order, overnight stays with F were introduced from the start of November 2024, with X staying every Friday with him until 2pm on Saturday. There have been three such sessions prior to this hearing, which have been without incident. M has expressed concerns about how X has presented afterwards, but it is not suggested that this should not continue. Mr Jarman KC for F raised the possibility that the court would now order a move to 50/50 care arrangements, whatever the decision about the making of a return order, which M does not agree to now, and says that it had not been properly raised before the hearing.

9. Mr Mansfield for M put her case opposing the making of a summary return order under the inherent jurisdiction as follows. Firstly, he relies on what M has perceived to be a significant history of domestic abuse, mainly in the form of bullying, physical intimidation and sexual coercion. He says that the effect of this on M has had a profound impact on her ability to manage any return to the non-Hague country, and to manage the 'overwhelming sense of isolation, fear and vulnerability' that she would experience on any such a return. He also raises a number of wider more practical issues for her in the event of any return.

10. Mr Jarman KC for F argues that the various practical issues are all capable of resolution, and the evidence suggests that both parents are capable of providing good care for X. He says that in the longer term, X will best be able to enjoy a relationship with both of her parents if a return to the non-Hague country now on a summary basis is ordered, and that there is no need for any fact finding at this stage. The parties have both filed extensive written evidence, and he says that from this the court can see that each has a good network of friends on the island, and that M would have sufficient support. Her support in the English city is anyway a friendship group rather than blood relatives, her parents being in Northern Ireland. He suggests that there is no reason why the courts in the non-Hague country should not determine the longer-term issues of X's welfare, and so he says that a return order should now be made.

The Law

11. Both counsel in their helpful submissions have agreed entirely about the law which I have to apply. The key principles in relation to returns under the inherent jurisdiction are derived from the leading cases of *Re: J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40, per Baroness Hale, and *Re: NY (A Child)* [2019] UKSC 49 per Lord Wilson. The principles from both of those cases were

distilled by Cobb J in the case of *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412 (Fam), where he set them out as follows:

37. …I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

i) "… any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];

ii) "There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it" [22];

iii) "…in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];

iv) "… the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits..." [26];

v) "Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child" [28];

vi) "… focus has to be on the individual child in the particular circumstances of the case" [29];

vii) "… the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever" [32];

viii) "One important variable … is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this" [33];

ix) "Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests" [34];

x) "In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned" [39];

xi) "The effect of the decision upon the child's primary carer must also be relevant, although again not decisive." [40]

Baroness Hale summarised her views in this way:

"These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. But they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here." [41]

38. I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent jurisdiction in what are accepted to be very different circumstances to those obtaining here. [Counsel] argued that I should give (as the judgment suggests) "some consideration" ([55]) to the eight linked questions posed by Lord Wilson in that case:
i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);
ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);
iii) In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);
iv) In a case where domestic abuse is alleged, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);
v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);
vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;
vii) The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";
viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63]).

12. The Court of Appeal in *Re R & Y (Children)* [2024] EWCA Civ 131 has recently confirmed that PD12J applies to inherent jurisdiction cases, per Jonathan Baker LJ. This point also arose in *Re NY (A Child)* [2019] UKSC 49, a case which concerned an application for summary return to Israel under the inherent jurisdiction. At paragraph 50, Lord Wilson said in that case:

> "The mother points out, however, that, by para 1, the Practice Direction applies only to proceedings under the relevant parts of the 1989 Act (which would include an application for a specific issue order) or of the Adoption and Children Act 2002. Therefore it does not expressly apply to the determination of any application under the inherent jurisdiction, including of an application governed by consideration of a child's welfare in which disputed allegations of domestic abuse are made. Nevertheless, as in relation to the welfare check-list, a court which determines such an application is likely to find it helpful to consider the requirements of the Practice Direction; and if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should, in the light of the Practice Direction, conduct an inquiry into the allegations and, if so, how extensive that inquiry should be."

13. Paragraph 17 (g)-(h) of PD12J make clear that the court should consider relevance and proportionality, in determining whether it is necessary to conduct a fact-finding

hearing. Sir Andrew McFarlane P emphasised in *Re H-N* And Others (Children) (Domestic Abuse: Finding of Fact Hearings) [2021] EWCA Civ 448, at [§36-37] this need for proportionality:

36. It is important for the court to have regard to the need for procedural proportionality at all times, both before and during any fact-finding process. A key word in PD12J paragraphs 16 and 17 is 'necessary'. It is a word which also sits at the core of the President's Guidance 'The Road Ahead ' (June 2020), ('RA II') in particular*:*

'43. If the Family Court is to have any chance of delivering on the needs of children or adults who need protection from abuse, or of their families for a timely determination of applications, there will need to be a very radical reduction in the amount of time that the court affords to each hearing. Parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear.

...

46.Parties will not be allowed to litigate every issue and present extensive oral evidence or oral submissions; an oral hearing will encompass only that which is necessary to determine the application before the court.'

37. The court will carefully consider the totality of PD12J, but to summarise, the proper approach to deciding if a fact-finding hearing is necessary is, we suggest, as follows:

i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD12J.5).

ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD12J.16) which is, in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.

iii) Careful consideration must be given to PD12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.

iv) Under PD12J.17 (h) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in '*The Road Ahead'*.

14. In *Re A and B [2022]* EWCA Civ 1664**,** Moylan LJ set out guidance to the application of FPR PD 12F in applications pursuant to the Inherent jurisdiction: [§54]

54. Applications for return orders to a non-Convention State are specifically addressed in Part 3 of Practice Direction 12F, International Child Abduction. This states, in paragraph 3.1: *"The extent of the court's enquiry into the child's welfare will depend on the circumstances of the case; in some cases the child's welfare will be best served by a summary hearing*

and, if necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary (see Re J (Child Returned Abroad: Convention Rights) [2005] UKHL 40; [2005] 2 FLR 802)."

15. Having considered Re J and Re NY (above), Moylan LJ continued from [§66]

> 66. All these references demonstrate that a judge has a discretion when deciding the extent of any welfare inquiry including the extent to which allegations of domestic abuse require investigation and determination.
>
> …
>
> 70. The approach set out in *Re H-N* is consistent with that set out by Lord Wilson JSC in *Re NY* (at para [50]), namely that, when the court is considering whether to make a summary order, *'it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should, in the light of the practice direction, conduct an inquiry into the allegations and, if so, how extensive that inquiry should be'*.

16. The relevance of domestic abuse if found in children proceedings is well understood, as so too now is its true scope. In *Re: H-N* (above), the President explained:

> 22. PD12J paragraph 3 includes the following definitions each of which it should be noted, refer to a pattern of acts or incidents:
>
> "'domestic abuse' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;
>
> 'coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;
>
> 'controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour."
>
> 27. …It is now accepted without reservation that it is possible to be a victim of controlling or coercive behaviour or threatening behaviour without ever sustaining a physical injury. Importantly it is now also understood that specific incidents, rather than being seen as free-standing matters, may be part of a wider pattern of abuse or controlling or coercive behaviour.'

17. In *Re H-N*, the Court at [32] also set out with approval the remarks of Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121, where the President said:

> 32. It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child;

much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)*…(paragraph 61):

"Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is 'used to harm, punish, or frighten the victim…' and 'controlling behaviour' as behaviour 'designed to make a person subordinate…'. In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict."

This Case

18. The PTR in this case was listed, as explained, before Harris J on 18 October 2024. The mother invited the court to list this final hearing as a dedicated fact finding hearing and then to list a further (final) hearing at a later date. After considering the mother's statement and her C1A Harris J recited in her order:

'*that a separate fact finding was not required as;*

i) The mother's allegations would not of themselves justify a separate fact finding hearing,
ii) The allegations of themselves would not prevent the father having a relationship with the child
iii) The mother's case in any event does not seek to prevent the father having a relationship with the child and proposes unsupervised and overnight contact.'

19. I have therefore heard evidence from both parties as a part of this final determination of F's application for summary return. Together their evidence has been given over around 3 hours. I am satisfied that such a process has been both necessary and sufficient for the purposes of the application before me. Both have been questioned sensitively by counsel about the intimate details of their relationship in the months before X's birth. From this I have been able to gain a clear picture of the dynamics in the parents' relationship, and I agree with Harris J's assessment that a fully dedicated fact-finding hearing was not required in this case. However, that does not mean that the failed relationship and its aftermath are not significant elements in the court's consideration of whether the application for a summary return is now justified.

20. It is very clear that for much of the past 18 months the parents' relationship has been strained and unhappy. However, it is also clear that, now that they are living apart and their relationship is recognised as being over, they have been able to cooperate over parenting arrangements tolerably well. This does hold out some prospect that whilst

the first months of X's life have been a period of anger and upset between her parents, the future may improve.

21. Having heard from both of the parents about their relationship, however, I am in no doubt that the primary reason for the breakdown of their relationship has been F's inability to accept or make any allowance for the unsurprising changes in M brought about by her pregnancy and then by the birth of X. He seems to have been unable to understand that every woman will react differently and very personally to those incredibly important events, and that the relationship between new parents must adapt and remould itself accordingly. I do not consider it likely that he intended to be coercive or controlling of M in this regard. Rather, he was simply too insensitive or perhaps emotionally immature to understand that his relationship with her would inevitably need to adapt to the new circumstances of their changing life. He should not have been surprised or disappointed that M's emotions were heightened, and her willingness to engage in sexual activity with him at least temporarily compromised.

22. The result of this failure of his has been that the relationship, which clearly M very much wanted to work and to continue despite the regular arguments between them through this period, was significantly eroded to the extent that it became entirely unsustainable by the middle of August. Whilst this is of course a tragedy for X, it is also so for the parents, both of whom clearly hoped and expected that it would endure. However, I am entirely satisfied that the way in which F has approached M during her pregnancy and since has had a profound effect on her which for the time being at least remains a significant emotional barrier for her in her perception of F. Whilst he may be right that on occasion she has shouted at him, this has been, I am satisfied, a manifestation of her distress, rather than any outwardly abusive conduct on her part.

23. In the event that I now order a summary return, I do accept that the life to which M would then be returning would be a very difficult one for her. Her previous time in the non-Hague country – around 2 ½ years prior to her pregnancy – was a period of fun and enjoyment, the last months of which were filled as well with her new relationship with F. Returning as a single mother with different priorities, and with friends there but whom she had not met before 2020/2021, and no other support other than from F himself, would be difficult and stressful. Whilst I have no doubt that she would do her best to parent X, and support F's relationship with her, I accept that she would feel both isolated and vulnerable in that situation. I am satisfied that having made those

findings in light of the evidence before me, I have properly considered the provisions of PD12J in the context of this summary application.

24. M's position, however, is only one element in the overall consideration of X's best interests which I must consider. It is important to remember that this is a summary application, and that a fuller welfare consideration may well now follow in whichever jurisdiction X is living in the months ahead. I bear in mind Mr Jarman's point that much of the evidence which the court will need for that consideration is already at hand, but for reasons which I will explain, I am clear that such a long-term view cannot be fairly determined for X at this time. I also must consider F's position, of course, alongside X's connections to the non-Hague country and England, albeit that that these are far less important with a child of her age as opposed to when considering an older child who may have powerful cultural and familiar connections which would influence any decision, all in the context of the above cited authorities. The focus of course must be on Isla in the particular circumstances of this case.

25. The evidence before me is up to date, full and clear for the limited purpose of this summary determination. As to what findings would be required in order to make the order sought by F, these must depend on a careful consideration of the provisions of the welfare checklist in S.1(3) of the Children Act 1989 as they apply to X, and in the light of the findings made above in relation to the issues raised by M under PD12J. I must be satisfied in the light of those factors that it is in X's best interests for a summary return order now to be made.

26. Given X's age, the first of the s.1(3) factors, her ascertainable wishes and feelings, is inevitably of limited importance. The is no suggestion that her physical and emotional needs are not currently being well met by M, or by F when she is with him. Whilst M is still breast-feeding, there is otherwise no evident reason why each parent should not be capable of meeting her needs going forward. It is very important that X is not yet 9 months old, and I will deal with that and the questions of the effects of any change and of any risk of harm below, when considering the impact on M if a return order is made.

27. As to X's background and characteristics, these are relevant to the question of determining where might properly be considered her home country, and what connections she may already have formed that are of importance. Neither of her parents is a native of the non-Hague country, although they met whilst working from there, as part of the international ex-patriate community. X was born there, and so is a

citizen, but she has lived there for only 11 weeks of her life, and she will have no other memory or connection with the non-Hague country. It would have been by no means certain, had the parents' relationship endured, that they would have chosen to remain there throughout X's childhood. They had already discussed other alternatives. She has now, as a result of the ending of her parents' relationship and the initiation of these proceedings, spent longer in England than in any other place during her short life. England now would probably be classified as the place of her habitual residence, although that is not in any way determinative. I make it clear that I am not seeking '*to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection'* – adopting the words of Baroness Hale in *Re J (a child) [2005] UKHL 40* at [33]. Given her young age, X's primary attachment will be to M who has been her primary carer to date, rather than to any particular jurisdiction or culture. There is therefore no overwhelming reason from X's perspective in relation to her connection with that country why a return to the non-Hague country for the courts of that jurisdiction to determine her future is mandated.

28. The legal systems of England and the non-Hague country will apply similar principles to determining her best interests, and in the event of considering any relocation application will consider similar, if not the same, precedents. It is the case that there are already extant proceedings under the Children Act 1989 in the English city, which have been stayed pending the determination of this application, and the evidence which that court would require to determine the longer-term question has already very largely been collated. Both parties are ably represented in this jurisdiction. Whilst the evidence gathered may also be deployed before the courts in the non-Hague country, there would seem to be no obvious procedural or jurisdictional advantage to the case commencing there after any return order, rather than continuing here. Given the other considerations under s.1(3) set out above, the eventual determination of the longer-term question must be considered a finely balanced one, in either jurisdiction.

29. Turning to the impact of the proposed change, it is here that X's young age and current dependency on her primary care-giver are of particular significance. As I have indicated, it is clear that there is some hope that as time passes the relationship between M and F, and their ability to co-parent, may improve as the difficult ending of their relationship is put behind them. However, I am clear from the evidence that I have heard that that process is not yet sufficiently far advanced to be robust. It is very clearly in X's interest that her parents should be able to cooperate, but I consider that

that ability risks being severely compromised if a summary return order is made. There is a significant risk that M would feel isolated, unsupported and stressed in the non-Hague country, which only serve to leave her feeling more resistant to the embedding of a genuine shared care arrangement, whether or not fully equal. F has not yet demonstrated sufficient awareness of or sensitivity to M's concerns that there can be any confidence in this court that he would work sympathetically to allow any current progress in their relations to be sustained if a return to the non-Hague country on an interim basis is now put in place.

30. Looking firmly therefore at X's interest, there is a definite risk of ongoing harm to her if her parents are unable to co-parent cooperatively. There is already evidence that they have on occasion have had serious, occasionally physical, altercations in her presence, and that these rows have endured for many hours. If that continues, it will undoubtedly impact upon her wellbeing and development. That they are separated should improve matters, but that improvement must continue. The prospects for such progress would I am satisfied be measurably assisted by M feeling for now confident and comfortable in her surroundings and support network. Even though her closest supporters are not her blood relations, I accept her evidence that these long-term friends are providing her with the sort of support which has enabled her to begin the process of working with F in X's interest, which X's needs require. I am satisfied that a summary return now would risk imperilling the fairy delicate balance which has so far been established, without any obvious balancing benefit to X from a return to a country which she will not recall.

31. I have of course considered F's position. It is important that he is able to spend very significant time with X in the coming months whilst the longer-term determination of where her best interests require that she should live is considered. To do this, he will be dependent upon the requirements of a visitor visa. As immigration experts Duncan Lewis explained: '*As the father is a citizen of the U.S.A., he was able to enter the UK for the purposes of tourism without requiring a Standard Visa. However, he remains subject to the requirements of such visa. He is therefore only permitted to remain in the UK for up to 6 months from the date of entry before he must leave'*. He would then, probably, have to reapply from outside the UK, but '*the success of such application will depend on his ability to prove that he has an active role in his daughter's upbringing'*, which he will clearly be able to do. So, he should be able to be present here through the majority of the process of any full welfare application, and be able to maintain and enhance his relationship with X. Mr Jarman suggested

that he would be restricted to only spending 6 months in any 12 in the UK, but that is not my understanding of how the visitor visa process works.

32. There has not been at this hearing a detailed investigation into F's means, and I accept that his ability to earn may well be impacted by the fact that a summary order is not made, leaving him spending the majority of his time in this jurisdiction until the proceedings are determined. However, I am satisfied that his commitment to X is such that he will be in a position to make himself so available – it has not been suggested that such would not be possible for him, if necessary. Financial sustainability is a matter which will be a more important consideration in the longer term, in so far as it impacts on X's ability to have a full and beneficial relationship with both of her parents as she grows older.

33. This will be part of what will be a fine balance for the court to consider, but I am clear that it is in X's best interests for that full consideration to take place here, after a period of calm and cooperation between parents, during which her bonds with each of them can be strengthened. I therefore will not make a summary order for X's return to the non-Hague country, as I am not satisfied that such an order now would be in the interests of her welfare. Indeed, on balance, I consider that the implementation of such an order would make future cooperation between the parents less likely, and their relationship less workable.

34. Whilst I have considered F's request to direct an increase in the current amount of time spent with him for X under the child arrangements order, I will not do so now, given that there have to date been only 3 overnight stays under the order made by Harris J on 18 October. I also bear in mind the different accounts of how X has reacted to those visits – it is not a surprise that each parent honestly has a different perception, seeing her at different times. What I would expect is that, if all continues to progress well, longer overnight stays can be put in place within the next few months, and if this remains in issue, the matter can be brought before the Family Court dealing with the substantive welfare issue. I anticipate that this will be in the English city.

35. I must finish by expressing again the hope that the parents will not in the end need to litigate the issues around X's welfare any further. Their previous attempt at mediation coincided with the early stages of this application, which would not have been the happiest circumstances in which to make progress with the process. I emphasise again that my decision on a summary basis is by no means determinative of a court's longer

term view, but that longer-term decisions about where X will grow up and how she will share her time between her parents now that they are separated should first be a matter for them, and they should focus primarily on seeking to resolve those questions before spending more time and money on further court proceedings.

36. In light of the above, I refuse F's application for the reasons that I have given.

37. That is my judgment.