



Neutral Citation Number: [2019] EWHC 1995 (Fam)

Case No: FD19P00264

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2019

Before :

THE HONOURABLE MR JUSTICE MACDONALD

Between :

W
- and -
L

Applicant

Respondent

Mr Alistair Perkins (instructed by Dawson Cornwell) for the Applicant
The Respondent appeared in person

Hearing dates: 18 and 19 July 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application in respect of M, born in November 2012 and now aged 6 years old. The application is made by M’s mother, W (hereafter ‘the mother’). The respondent to the application is M’s father, L (hereafter ‘the father’). The father appears in person. He has been assisted throughout the hearing by an Arabic interpreter arranged and paid for by HM Courts Service. The mother applies for the following relief under the inherent jurisdiction of the High Court:
 - i) A declaration that M is habitually resident in the jurisdiction of England and Wales;
 - ii) An order that M be made a ward of the High Court;
 - iii) An order prohibiting the father from removing M from the care of the mother;
 - iv) An order prohibiting the father from removing M from the jurisdiction of England and Wales;
 - v) An order prohibiting the father from pursuing any further applications in respect of M in the courts of the Hashemite Kingdom of Jordan.
2. On 10 June 2019 Miss Deirdre Fottrell QC sitting as a Deputy High Court Judge made interim orders stipulating that M shall continue to live with the mother and preventing the father from removing M from the care of the mother and from the jurisdiction of England and Wales. Miss Fottrell QC listed this hearing to commence on 18 July 2017 with a time estimate of two days. At this hearing I have had the benefit of reading the documents contained in the hearing bundle. I have also heard submissions on behalf of the mother from Mr Perkins of Counsel and from the father in person.
3. The father having filed a statement as directed by Miss Fottrell QC, it is abundantly clear on the papers now before the court that there are substantive issues between the parties regarding the welfare of M that require judicial determination. Specifically, whether M should reside in England with his mother or in Jordan and what contact M should have with his father. Within this context, and as I made clear to the father at the outset of the hearing, the sole question with which the court is concerned today is which of the English or Jordanian courts should determine the welfare dispute that has arisen between the parties in respect of M. In circumstances where the father submits that the Jordanian courts are the appropriate forum, I deemed him to be making an application to stay these proceedings should this court determine that it had jurisdiction in respect of M.
4. The father arrived late for the first day of the hearing and told the court that he had believed that the hearing was to commence on 19 July 2018. Having investigated the matter, I was satisfied that the father was in court when this hearing was set up by Miss Fottrell QC and that he had been emailed a copy of the draft order containing the confirmed hearing dates shortly after that first hearing. That the father had received the order with the listing of this hearing is demonstrated clearly by the fact that, as

directed by paragraph 12 of that order, he filed and served a statement for this hearing. In the circumstances, whilst it is apparent that the father did not receive a *sealed* copy of the order until the beginning of this week, I am satisfied he had adequate notice of this hearing.

5. It is also the case that the father had not received until this week a copy of the bundle that is before the court. However, the father acknowledged that, save for Mr Perkins' Skeleton Argument and the mother's statement in response to the statement filed by the father, he had seen the other documents contained in the bundle prior to the hearing before Miss Fottrell QC. Upon his application for more time I gave the father a further period prior to commencing the hearing to consider, with the assistance of the interpreter, the two documents which he had received only recently.
6. Having had the opportunity to read those documents, the father applied for an adjournment to instruct lawyers. I refused that adjournment for reasons I gave in a short *ex tempore* judgment. In summary, I was not satisfied that an adjournment of this hearing should be granted because:
 - i) Whilst the father stated he had not appreciated the need to instruct lawyers, on 24 May 2018 the letter by which the mother's solicitors served the father with her application and evidence contained a clear statement that he should seek legal advice and a link to a list of qualified lawyers. The father represented himself at the hearing on 10 June before Ms Fottrell QC and has not, in the nearly two months since the letter was sent, instructed lawyers.
 - ii) More fundamentally, the father stated he had not instructed lawyers due to the prohibitive cost, which cost he had not been able to afford. When the court enquired whether he could *now* afford to fund lawyers he replied that he could not. In the circumstances, an adjournment to enable the father to instruct lawyers would have been of no effect.
 - iii) The issues with which the court is concerned at this hearing are straightforward, namely (a) whether M is integrated into a social and family life in this jurisdiction and (b) if so, whether it is more convenient for the English court or the Jordanian court to determine the welfare issues between the parents. In circumstances where the law governing both issues is clear and where, in any event, the first question is a question of fact and (given the mother did not seek to take any point regarding the relative merits of the English and Jordanian systems of law) the second question centred largely on practicalities, I was satisfied that the father would not be prejudiced by being required to deal with these two issues today as a litigant in person.
 - iv) The court was able to take full account of the fact that the father was a litigant in person and to assist, in so far as appropriate and fair, the father to understand the issues before the court and to address them fully.
 - v) The matter had been listed for a two day hearing in the High Court since 10 June 2019. An adjournment would result in a significant waste of valuable court time and public funds.

7. Within the foregoing context, prior to the commencement of substantive submissions I explained to the father that at this hearing the court is concerned with the two questions I articulated above, namely (a) whether M is integrated into a social and family life in this jurisdiction and (b) if so, whether it is more convenient for the English court or the Jordanian court to determine the welfare issues between the parents. During the course of his submissions, I assisted the father in structuring his submissions to ensure he made the submissions he wished to on each question.

BACKGROUND

8. The mother is a British and Jordanian national, born in 1978. The father is likewise a British and Jordanian national, also born in 1978. The parties married in 2010 in Jordan and moved to reside in England in 2011. As I have noted, M was born in England in November 2012. The parties separated in October 2013. The mother states that the father thereafter returned to Jordan almost immediately. The mother remained living in England with M.
9. In order to instigate divorce proceedings, the mother travelled to Jordan in December 2013 with M. She instigated divorce proceedings before the Sweileh Shariah Court of the Hashemite Kingdom of Jordan. The mother sought to leave Jordan with M in April 2014 but found she was unable to do so by reason of an exit ban put in place on the without notice application of the father. The mother contends that on 7 May 2015 the father left Jordan to return to live in England, leaving the mother and M in Jordan subject to the exit ban.
10. It is apparent that one consequence of the father leaving Jordan for England on 7 May 2015 was his failure thereby to comply with a ruling of the Sweileh Sharia Court permitting him to have contact with M at a Child Hosting and Family Counselling House run by the Jordanian Women's Union. The mother contends that the father failed to inform her that he was leaving the jurisdiction of Jordan. This contention would appear to be borne out by a letter sent from the Jordanian Women's Union to the Sweileh Sharia Court dated 10 June 2015 in which it is clear the Counselling House sought to facilitate contact on five occasions after the father left the jurisdiction of Jordan, the last failed contact being on 10 June 2015. The letter from the Jordanian Women's Union informed the Shariah court was of this default on and the mother contends in her statement before this court that this led the Shariah Court to determine that there was no requirement for any further contact between M and his father.
11. It is apparent from the documentation obtained in the trial bundle that, having been made the subject of a travel ban, proceedings were instigated by the mother in Jordan seeking permission to return with M to England. In August 2015 the mother was granted permission by the Jordanian court to travel with M to England. The mother makes clear in her first statement that that permission was granted on the basis that the mother was seeking medical treatment for M in relation to issues he had with his speech and language development. On 26 November 2015 the Jordanian Court permitted the mother to remain in England indefinitely, subject to certain caveats. The translation of the decision of the Sweileh Sharia Court that is before this court sets out the following ruling (emphasis in the original):

“Whereas the respondent neither provided a medical allowance nor a medical insurance for the therapy of his young son “M” born in 8/11/2012

didn't comply with the contact order with his said young son M, and travelled abroad in 7/5/2015. Further, he didn't allow his young son's affairs or consider young M's interests who is suffering from "Auditory Neuropathy". Whereas the young son, and his mother, the claimant, holds the British nationality, and the British government has provided free treatment to said young M, as well as disbursing a salary allowance for him and his custodian mother, the claimant. Therefore, based on the case, the official written evidence submitted, and in consideration of the child's best interest, and pursuant to articles 75 of Sharia Proceedings law and 177 of Civil Procedure Law; the court decides to indefinitely extend the travel permission; self-executed immediately according to the ruling notification No. 4/9/187 dated 04/08/2015 issued in this case till the respondent the child's father, provides a health insurance coverage or medical allowance for his therapy inside the country; or rather incurs the costs of his son's therapy at one of the private centres in Jordan. Respondent shall further provide guarantees to the said; and after providing these guarantees; respondent may then prosecute the person named [name given], the claimant's brother, in order to return the child to the country. Ruling has been publicly explained to the attendees and edited in 14/2/1437H corresponding to 26 November 2015."

12. As the mother makes clear in her first statement, the indefinite permission to travel to England with M was subject to:
 - i) The father providing health insurance or medical allowance for M's treatment in Jordan or funding the cost of the same;
 - ii) The mother's brother providing a guarantee exposing him to the risk of prosecution in the event M was not returned to the Hashemite Kingdom of Jordan.
13. Pursuant to the decision of the Sweileh Sharia Court in November 2015, the mother and M have been residing in England since 2015. The mother contends that M is now habitually resident in the jurisdiction of England and Wales.
14. In April 2017 the mother made an application to this court for a declaration that M is habitually resident in the jurisdiction of England and Wales. The application was heard on notice to the father, who attended court in person. On 22 May 2017 Mr Justice Peter Jackson (as he then was) declined to grant a declaration on a 'stand-alone' basis. There is an agreed note of Peter Jackson J's short judgment in the court bundle. As I have noted, the mother contends that the father returned to England in May 2015. The mother further contends that before Peter Jackson J on 22 May 2017 the father confirmed he was living in England and this fact is confirmed in the agreed note of Peter Jackson J's judgment.
15. Within this context, the mother asserts that the father has not sought any contact with M by contacting her directly, has not contacted her solicitors to request contact with M and has not made an application to the English or Jordanian courts for contact. The father confirmed at this hearing that this is the position, albeit he contended he had sought to arrange agreed contact via friends of the mother. As noted above, the father appears not to have taken advantage of the contact order made by the Sweileh Sharia

Court in 2015 after 7 May 2015 when he returned to the jurisdiction of England and Wales. On 22 May 2017 Peter Jackson J recorded in his judgment that the father was not having contact with M at that time. Within this context, the mother contends that the father has not spent any time alone with M since the parties separated. She further contends that the father has failed to meet his maintenance obligations towards M.

16. As noted above, one of the conditions attached to the order of the Shweileh Sharia Court made on 26 November 2019 was that mother's brother provide a guarantee, exposing him to the risk of prosecution in the event M was not returned to the Hashemite Kingdom of Jordan. It is apparent that the mother's brother has now applied to the Sweileh Sharia Court to discharge that guarantee. The mother informed this court that this was because the mother, the father and M all now reside in this jurisdiction. On 18 February 2019 the father filed a defence to the mother's brother's application with the Sweileh Sharia Court. A translated copy of that defence is before this court. In that defence, it is contended on behalf of the father, *inter alia*, that the guarantee should remain in place as it constitutes the only guarantee of the return of M to Jordan and that the fact that the father is outside the jurisdiction is not a reason for revoking the guarantee. The defence asks the Sharia Court to implement the Sharia Regulations. As a consequence, on 3 April 2019 the Sweileh Sharia Court issued a without notice order requiring the mother to place M in the father's care immediately.
17. The order states that if the mother fails to comply with the order legal action will be taken against her by the Executive Department. There is no indication on the face of the notice of the reasons the Sweileh Sharia Court granted the order of 3 April 2019. The mother is concerned that the father will now seek to enforce the order issued by the Sweileh Sharia Court and remove M from her care or by seeking the imprisonment of her brother in Jordan. Before this court the father confirmed his understanding that the order of the Sharia Court renders the mother's brother a fugitive from justice who is actively being sought by Jordanian security personnel.
18. It is in the foregoing context that the mother now seeks the relief outlined above from the High Court of England and Wales. As I have already noted, and more fundamentally, during the hearing it became abundantly clear that there are issues between the parties regarding the welfare of M that require determination. Specifically, whether M should reside in England with his mother or in Jordan and what contact M should have with his father. Within this context, the two questions before the court are (a) does this court have jurisdiction to determine those outstanding welfare issues and (b) if so, is the convenient forum for the determination of those issues the English court or the Jordanian court.

THE PARTIES SUBMISSIONS

The Mother

19. The mother's case, advanced through Mr Perkins, is that M is plainly habitually resident in the jurisdiction of England and Wales having regard to the test that the court must apply to determine that issue, namely whether M displays some degree of integration in a social and family environment in this jurisdiction. In her first statement, the mother describes the following features of M's life in England since that date:

- i) The mother and M live in secure, rented accommodation and have lived in the same accommodation since September 2015;
 - ii) M has received all of his schooling and education in England, attending nursery and primary school in this jurisdiction;
 - iii) Since September 2015 M has spent time with a child minder three days a week who is a specialist in speaking therapy and language delay. He continues to spend time with her two days per week.
 - iv) M has been under the care of a speech and language therapist at the local hospital, where he has been attending since December 2015. M is registered with a GP and a dentist;
 - v) English is M's first language, although he does speak and understand Arabic and attends Arabic lessons at school;
 - vi) M is a member of the local gym and leisure centre and has been a member of the swimming club since January 2017;
 - vii) M benefits from a large group of friends at school and regularly attends playdates with friends.
 - viii) M takes part in extra-curricular clubs and is a member of a local football club.
 - ix) During the course of his nearly seven years, M has spent only 16 months in Jordan and has not visited that jurisdiction since 2015. The remainder of time has been spent living, being educated and socialising in England.
20. Within the foregoing context, the mother contends that M is fully integrated in social and family life in England, physically, psychologically and emotionally and, accordingly, applying the relevant legal test is plainly habitually resident in the jurisdiction of England and Wales
21. Mr Perkins further submits that the father is unable to demonstrate in this case that England is not the natural and appropriate forum *and* that there is another available forum that is clearly and distinctly more appropriate. In this regard Mr Perkins relies on the fact that M is habitually resident in this jurisdiction, that the mother the father and M all live in this jurisdiction, that the majority of the evidence relevant to the determination of the welfare issues before the court exists in this jurisdiction. In short, Mr Perkins submits that "everyone is here". Within this context, Mr Perkins submits that it would make no practical sense, let alone be in M's best interests, for the welfare issues between the parents to be tried in the Kingdom of Jordan, the balance of practicalities falling very firmly in favour of the welfare issues being heard in this jurisdiction.
22. Mr Perkins further relies on the fact that the last time the mother entered Jordan she was made the subject of an exit ban upon the application of the father. Within this context, Mr Perkins invites this court to infer that if the mother returned to Jordan to engage in welfare litigation in respect of M she would be at considerable risk of the father impeding her exit from that jurisdiction.

23. Whilst acknowledging that the Sweileh Sharia Court has made an order concerning M, which order requires the mother to give M to his father, Mr Perkins makes the following points:
- i) It is unclear from the order of 3 April 2019 whether it resulted from a judicial process or an administrative process. The mother's understanding is that it was issued as the result of an administrative process.
 - ii) The order of 3 April 2019 was made in the context of an application by the mother's brother to be released from his guarantee. There is accordingly no live application before the Jordanian court with respect to M's *welfare*. Rather, there is only a procedural application in respect of the mother's brother's guarantee.
 - iii) The order of 3 April 2019 was made without notice to the mother and the mother did not have the opportunity to be represented or make submissions in respect of the same.
 - iv) This court has been provided with no reasons for the granting of the order of 3 April 2019. It thus does not appear that the Sweileh Sharia Court undertook a welfare analysis prior to ordering the mother to give M to the father and in any event did not have information regarding the change of circumstances for M between 25 November 2015 and 3 April 2019.
 - v) In any event, the Sweileh Sharia Court has adjourned the proceedings in which the order of 3 April 2019 was made in order to the middle of September 2019 to await the decision of this court.
24. Likewise, whilst acknowledging that the order made by the Sweileh Sharia Court on 25 November 2016 was conditional in nature, Mr Perkins submits that there is no evidence that the father has satisfied the conditions set out in the judgment of that date such as to trigger the return provisions, namely ensuring medical insurance or funding for M in Jordan.
25. In these circumstances, applying the principles set out in *Spiliada Maritime Corporation v Consulex* [1997] AC 460 Mr Perkins submits that the father cannot demonstrate in this case that England is not the natural and appropriate forum *and* that there is another available forum that is clearly and distinctly more appropriate.

The Father

26. With respect to the issue of habitual residence, the father made the point that it is difficult for him to make submissions on whether M demonstrates some degree of integration in a social and family environment in this jurisdiction when he has had no contact with M for a significant period of time. However, the father did not seek to dispute that M was born in England and is a citizen of the United Kingdom, that aside from a 16 to 18 month period in Jordan when he was aged one year old, he has spent his entire life in England, that both he and the mother live in England (although he contends that his work may take him to other jurisdictions and he would like to return to Jordan with M), that M has been educated and has received treatment in this jurisdiction uninterrupted since 2015 and that, aside from his period in Jordan, M has

lived at the same address in England all his life. Within this context, the father did not seriously seek to suggest that M was is not integrated in social and family life in England subject to, as I have said, the caveat that he knows little of M's day to day life in circumstances where he is not having contact with him.

27. The father was however *very* firmly of the view that the appropriate legal forum for the determination of the welfare issues in respect of M is the Kingdom of Jordan, relying on the following submissions:
- i) Whilst making clear he had the utmost respect for the English court, the father prayed in aid the fact that the Sweileh Sharia Court has already made an order requiring the mother to hand M to him. He submitted that this court should respect the decision of the court of the Kingdom of Jordan rather than taking upon itself jurisdiction to decide matters in respect of M.
 - ii) Within this context, the father further pointed out that the order that permitted the mother to take M to England was a conditional order.
 - iii) The father relies on the fact that there have been previous proceedings in Jordan regarding the welfare of M, which proceedings resulted in the father obtaining an order for contact. In 2015 there were further proceedings in Jordan concerning the mother's application for permission to travel. Each set of proceedings was dealt with swiftly.
 - iv) In his submissions and in his statement of evidence the father emphasised that Jordan is a state of institutions, a state of law, a democratic and pluralistic state that respects human rights, the right to make a decent life and a state that enjoys security. He observes that the Jordanian courts are as impartial and fair as the courts of England and Wales.
 - v) The father reminded the court that M holds Jordanian nationality as well as British nationality.

LAW

28. It is now well established that where the question jurisdiction issue arises as between Member State to which Council Regulation (EC) 2201/2003 (hereafter BIIa) applies and a non-member third party state, that issue is to be determined by reference to the terms of the regulation. In *Re A (Jurisdiction: Return of Child)* [2014] 1 AC 1 the Supreme Court made clear that BIIa applies when determining the question of jurisdiction regardless of whether there is an alternative jurisdiction in a non-member state. The Court of Justice of the European Union has confirmed in *UD v XB (ECJ)* KC-393/18 PPU [2019] 1 WLR 3083 that Art 8(1) of BIIa is not limited to disputes involving relations between the courts of Member States.
29. Art 8(1) of BIIa provides that the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised. For habitual residence to be established the residence of the child must reflect some degree of integration in a social and family environment (*Area of Freedom, Security and Justice*) (C-532/01 [2009] 2 FLR 1 and *Re A (Jurisdiction: Return of Child)* [2014] 1 AC 1). This must be established

on the basis of all the circumstances specific to the individual case (*Case C-523/07* [2010] Fam 42). Relevant factors will include the duration, regularity, conditions and reasons for the stay in the Member State and the move to that State, the child's nationality, the place and condition of attendance at school, linguistic knowledge and the family and social relationships of the child in the State.

30. Where the English court does have jurisdiction under Art 8 but there are proceedings also in a third party non-member state the issue becomes one of *forum conveniens*. As I have already noted, the issue of *forum conveniens* is to be determined by reference to the principles set out in the case of *Spiliada Maritime Corporation v Consulex* [1997] AC 460. These cardinal principles can be stated as follows:
- i) It is upon the party seeking a stay of the English proceedings to establish that it is appropriate;
 - ii) A stay will only be granted where the court is satisfied that there is some other forum available where the case may be more suitably tried for the interests of all parties and the ends of justice. Thus the party seeking a stay must show not only that England is not the natural and appropriate forum but that there is another available forum that is clearly and distinctly more appropriate;
 - iii) The court must first consider what is the 'natural forum', namely that place with which the case has the most real and substantial connection. Connecting factors will include not only matters of convenience and expense but also factors such as the relevant law governing the proceedings and the places where the parties reside;
 - iv) If the court concludes having regard to the foregoing matters that another forum is more suitable than England it should normally grant a stay unless the other party can show that there are circumstances by reason of which justice requires that a stay should nevertheless be refused. In determining this, the court will consider all the circumstances of the case, including those which go beyond those taken into account when considering connecting factors.
31. In determining the appropriate forum in cases concerning children using the principles in *Spiliada Maritime Corporation v Consulex*, the child's best interests would not appear to be paramount, but rather an important consideration (whilst in *H v H (Minors)(Forum Conveniens)(Nos 1 and 2)* [1993] 1 FLR 958 at 972 Waite J (as he then was) held that the child's interests were paramount, subsequent decisions have treated those interests as an important consideration: *Re S (Residence Order: Forum Conveniens)* [1995] 1 FLR 314 at 325, *Re V (Forum Conveniens)* [2005] 1 FLR 718 and *Re K* [2015] EWCA Civ 352).
32. The starting point when determining whether the party seeking the stay has established that England is not the appropriate forum for a case concerning a child is that the court with the pre-eminent claim to jurisdiction is the place where the child habitually resides (although habitual residence will not be a conclusive factor). In *Re M (Jurisdiction: Forum Conveniens)* [1995] 2 FLR 224 at 225G Waite LJ observed as follows:

“There is no limit, in legal theory, to the jurisdiction of the court in England to act in the interests of any child who happens to be within the jurisdiction for whatever purpose and for however short a time. In practice, however, if the child is not habitually resident in this country and there are legal procedures in the country of habitual residence available to achieve a fair hearing of competing parental claims regarding the child's upbringing, the English court will decline jurisdiction, except for the purpose of making whatever orders are necessary to ensure a speedy and peaceful return of the child to the country of habitual residence. The practice thus is to follow the spirit of the Convention, even though its formal terms are inapplicable.”

33. Within the context of the principles set out above, in *Re K* [2015] EWCA Civ 352 at [26] the Court of Appeal made clear that in determining the issues of jurisdiction and forum the court should adopt the following structure:

“[26] In setting the scene, I should also make the following observation as a matter of law and structure. It is not necessary for me to descend to detail. The legal structure for these issues in an international private family case is plain. The court first determines whether or not the court in England and Wales has jurisdiction. It does so, depending on the countries involved, with or without reference to various international provisions. In a case such as this, which is not one between Member States of the EU, the approach is straightforward. The court decides jurisdiction and decides it with regard to the habitual residence of the child at the relevant time. That determination in this case has been made and is not open to review or challenge and was not open to review or challenge at the hearing before Newton J.

[27] It is then possible, if parties wish to do so, for the English court to be invited, despite a finding that it has jurisdiction, to consider the question of convenient forum. The court, if required to do so, approaches that on the well-known basis applicable to civil proceedings generally which is set out in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460.

[28] Again, as a matter of structure, the normal approach is for the party asserting that England and Wales is not the convenient forum to apply for the English proceedings to be stayed. The burden is upon the applicant for such a stay to persuade the court, on the principles of *Spiliada* and related cases, that the stay should be granted and that, despite having jurisdiction, England and Wales should cede to another court which is the more convenient forum.

[29] It is established that the welfare of the child is a relevant consideration in determining the question of convenient forum but it is not an issue, that determination, to which the paramount principle in section 1 of the Children Act applies.

[30] The final structural step is that, if jurisdiction is established and if a stay is not imposed because of *forum conveniens* considerations, then the court is free to go on to make more generally based welfare determinations with respect to the child's future.”

34. Within the foregoing context, Williams J set out in *V M (A Child)(Stranding: Forum Conveniens: Anti-Suit Injunction)* [2019] 4 WLR 38 at [35(iii)] a helpful summary of the factors that will be relevant to the court's determination of the question of 'natural forum':

“In assessing the appropriateness of each forum, the court must discern the forum with which the case has the more real and substantial connection in terms of convenience, expense and availability of witnesses. In evaluating this limb the following will be relevant; a) the desirability of deciding questions as to a child's future upbringing in the state of his habitual residence and the child's and parties' connections with the competing forums in particular the jurisdictional foundation; b) the relative ability of each forum to determine the issues including the availability of investigating and reporting systems. In practice judges will be reluctant to assume that facilities for a fair trial are not available in the court of another jurisdiction but this may have to give way to the evidence in any particular case; c) the availability of witnesses and the convenience and expense to the parties of attending and participating in the hearing; d) the availability of legal representation; e) any earlier agreement as to where disputes should be litigated; f) the stage any proceedings have reached in either jurisdiction and the likely date of the substantive hearing; g) principles of international comity, insofar as they are relevant to the particular situation in the case in question. However public interest or public policy considerations not related to the private interests of the parties and the ends of justice in the particular case have no bearing on the decision which the court has to make; h) it has also been held that it is relevant to consider the prospects of success of the applications.”

DISCUSSION

Jurisdiction

35. I am wholly satisfied that M is habitually resident in the jurisdiction of England and Wales based on a degree of integration in a social and family environment in this jurisdiction. M was born in the United Kingdom and is a United Kingdom citizen. Save for a sixteen month period when he was one year of age (which I note would have been a three month period but for the exit ban the mother was made subject to upon the application of the father) M has lived his entire life in England in the same property, previously with both parents and subsequent to 2013 with his mother. For the majority of M's life both his parents have lived in England and the family life he has enjoyed with them has been located in this jurisdiction. M has received all of his education and all of his medical treatment in this jurisdiction, which education and medical treatment has been uninterrupted in this jurisdiction since April 2015. Whilst M speaks Arabic and takes Arabic lessons, his first language is English and this is the language in which he is more proficient. It is plain on the evidence before the court that M is well integrated socially in England with a large group of friends. Whilst M has extended family in Jordan, he does not have regular or any contact with them at present.
36. Within the foregoing context, I have no hesitation in finding that M is habitually resident in the jurisdiction of England and Wales. It follows, having regard to the

decisions in *Re A (Jurisdiction: Return of Child)* [2014] 1 AC 1 and *UD v XB* (ECJ) KC-393/18 PPU [2019] 1 WLR 3083, that this court has jurisdiction in relation to matters of parental responsibility concerning M pursuant to Art 8(1) of BIIa as incorporated into domestic law by the Family Law Act 1986.

37. Satisfied as I am that the English court has jurisdiction, the next question is whether I should, upon the application of the father, stay the English proceedings pending the determination of the welfare issues in respect of M by the Jordanian courts.
38. By his Skeleton Argument and in oral submissions Mr Perkins sought to persuade the court that the father was, in effect, estopped from arguing forum by reason of his being domiciled in the United Kingdom. Mr Perkins submitted that the effect of the decisions in *Owusu v Jackson and others* (Case C-281/02) [2005] QB 801 and *UD v XB* (ECJ) KC-393/18 PPU [2019] 1 WLR 3083 is to confirm that the domicile provisions of Art 2(1) of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (hereafter BIIa), which requires a person domiciled in a Member State to be sued in the courts of that State regardless of their nationality, apply in this case. Mr Perkins further submitted that BIIa applies to this case in any event as these proceedings are civil proceedings. Accordingly, Mr Perkins submits that the father is prevented from arguing *forum conveniens* in this matter. As I indicated during the course of the proceedings, I am not at all persuaded by these arguments. However, given the clear result in this case of applying long established governing legal principles to the question of forum it is not necessary for me to deal with those submissions and I do not do so.
39. Having considered the factors relevant to determining the jurisdiction with which this case has the most real and substantial connection, I am satisfied that the case has the most real and substantial connection with the jurisdiction of England and Wales for the following reasons:
 - i) M is habitually resident in England. It is an established principle of international private law that it is desirable to decide questions as to a child's future upbringing in the state of his or her habitual residence. Within this context, whilst not a conclusive factor, the court with the pre-eminent claim to jurisdiction in respect of matters of parental responsibility with respect to a child is the place where the child habitually resides;
 - ii) Both the mother and the father hold dual British and Jordanian nationality. Both parents currently reside and work in this jurisdiction and have done so on an uninterrupted basis since 2015. Whilst the father evinced an intention to return to Jordan, possibly as a result of his work commitments, there is no clear evidence before the court that his departure is imminent. Within this context, and given the length of M's residence in this jurisdiction, the vast majority of the matters that will bear on the welfare decision in respect of M have arisen in this jurisdiction by reason of the parties long and close connection with the same.
 - iii) Related to this point, the witnesses who are likely to be required to give evidence in a hearing to determine the welfare issues in respect of M reside in this jurisdiction and are available to come to court in this jurisdiction if required. In circumstances where both parties and M live in England the

English court is plainly the most convenient and will incur the least expense in attendance. In circumstances where the mother was given specific and indefinite permission by the Jordanian court to travel to England to secure medical treatment for M, all of the evidence and witnesses that speak to that issue within the context of the welfare dispute are in this jurisdiction.

- iv) No point is taken by either party on the relative ability of the English and Jordanian courts to determine the issues or the availability of investigating and reporting systems. One relevant factor however is that reporting system employed by the English court in the form of the Children and Family Court Advisory and Support Service (CAFCASS) is the reporting system that will, as a matter of practicality, have the readiest access to information concerning M's welfare in circumstances where he has spent the majority of his childhood in this jurisdiction and where both his parents live in this jurisdiction. Whilst the father has not instructed lawyers in this jurisdiction in the circumstances I have set out above, legal representation is available to the parties in both jurisdictions.
- v) I am cognisant that the order of the Jordanian court in November 2015 that permitted the mother to travel to England with M was conditional and provided a mechanism for the return of M to the jurisdiction of Jordan. Against this however, I note that this order was made during a period when the mother and M had travelled to Jordan temporarily for the purpose of the mother initiating divorce proceedings. Further, and importantly, whilst the father has responded to proceedings brought in Jordan by the mother's brother for the latter to be released from his guarantee, there is no evidence that the father has satisfied the conditions set out in the judgment of 26 November 2015 such as to trigger the return provisions in the order of that date, namely ensuring medical insurance or funding for M in Jordan.
- vi) I am likewise cognisant of the fact that there are proceedings on foot in Jordan. I have paid careful regard to the fact that, on the face of it, on 3 April a judicial (or possibly administrative) decision was made which resulted in a without notice order requiring the mother to hand M to the father. However, against this, I note that those proceedings were instigated by the mother's brother in order to seek release from his guarantee and do not directly concern the welfare of M. There is accordingly no live application before the Jordanian court with respect to M's welfare. Rather, there is only a procedural application in respect of the mother's brother's guarantee. I have also had regard to the fact that the order of 3 April 2019 was made without notice to the mother and the mother did not have the opportunity to be represented or make submissions in respect of the same. Further, on the information currently available to this court, it is not yet clear that the Sweileh Sharia Court undertook a welfare analysis prior to ordering the mother to give M to the father and, in any event, did not have information regarding the change of circumstances for M between 25 November 2015 and 3 April 2019. Finally, and importantly, this court understands that the Sweileh Sharia Court has adjourned the proceedings in which the order of 3 April 2019 was made in order to the middle of September 2019 to await the decision of this court on the issues before it today.

- vii) Whilst the father submits that the time it will take the Jordanian court to complete welfare proceedings in respect of M will be short, it is apparent from the dates of the orders made by the Jordanian court that are before the court that the timescales in the respective jurisdictions are comparable.
 - viii) I have of course borne in mind very carefully the principles of international comity. In this case M is habitually resident in this jurisdiction but is also the subject of a recent order made by the Sweileh Sharia Court. However, once again I bear in mind that it is an established principle of international private law that it is desirable to decide questions as to a child's future upbringing in the state of his or her habitual residence. I also once again bear in mind that Jordanian court has adjourned proceedings to await the outcome of the decision of the English court on the issues with which I am concerned at this hearing.
 - ix) Finally, as I have noted, M's best interests are not paramount but are important. It is accepted that it is ordinarily in a child's best interests to have their future decided in the country of their habitual residence where issues with respect to their welfare arise. In this case, it is in my judgment also in M's best interests for the English court to decide the welfare issues between the parents in circumstances where it is the English court that is in the best position to ensure a comprehensive examination of those issues given it has the easiest access to the evidence relevant to the determination of those issues and is the court to which the parties will have easiest access in circumstances where they both reside in England.
40. Having regard to the totality of competing factors in this case as set out above, I am not satisfied that the father has demonstrated that not only is England not the natural and appropriate forum but that there is another available forum that is clearly and distinctly more appropriate. In the circumstances, I decline to stay these proceedings and will proceed to give directions for the determination of the welfare issues between the parties in respect of M.

CONCLUSION

41. In conclusion, and applying the legal principles I must, I am satisfied that M is habitually resident in the jurisdiction of England and Wales and, accordingly, that the English court has jurisdiction in respect of matters concerning parental responsibility for M pursuant to Art 8 of BIIa as incorporated into domestic law by the Family Law Act 1986. Further, I am not satisfied that the father has demonstrated not only that England is not the natural and appropriate forum but that there is another available forum that is clearly and distinctly more appropriate. In the circumstances, I am satisfied that the English court should proceed to determine the welfare issues in respect of M and I will give directions to that end.
42. The mother has indicated through Mr Perkins that, in the interim, she stands ready to facilitate contact between the father and M. Given the period of time that has past since the father last saw M the mother proposes that she be present at contact. She would dearly like the father to provide her with a recent photograph of himself to place in M's bedroom with a view to stimulating conversations about his father. Pending the determination of this court, the mother is reluctant to agree to

unsupervised overnight contact but hopes that contact will progress to that stage in due course.

43. That is my judgment.