Neutral Citation Number: [2021] EWHC 2300 (Fam)

Case No: ZZ21D36489

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/08/2021

**Before** :

**THE HON. SIR JONATHAN COHEN**

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**Between :**

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|---|---|
| **KMM** | **Applicant** |
| **- and -** | |
| **NAM** | **Respondent** |

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**Mr M Glaser QC** (instructed by **Expatriate Law**) for the **Applicant**
**Ms J Bazley QC** (instructed by **Mills & Reeve LLP**) for the **Respondent**

Hearing dates: 4-5 August 2021

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# 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 HON. SIR JONATHAN COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**The Hon. Sir Jonathan Cohen :**

Introduction

1. By an order of Poole J of 1 July 2021 a hearing was listed for 4-5 August 2021 to determine:

   i) Whether H (as I will call the husband) is domiciled in England and Wales for the purposes of the matrimonial proceedings and Children Act proceedings;

   ii) Whether, if he is so domiciled, the court shall exercise its balancing powers under s.2A(4) of the Family Law Act 1986;

   iii) Whether the court should stay or dismiss these proceedings on grounds that Dubai is the appropriate forum.

2. By order of Francis J made on 16 July 2021 the hearing was expanded to further determine:

   i) The applications of W (the wife) for maintenance pending suit and/or a legal services funding order;

   ii) Further orders for arrangements for the children, including contact and the progression of the case.

3. No extra time was provided within the estimate for dealing with these extra matters and it has been a challenge to manage the case within the time allowed. After sitting late on 4 August 2021 I informed the parties that I concluded that:

   i) H was domiciled in England and Wales at the time of filing his divorce petition;

   ii) That the court should not exercise its discretion under the Family Law Act by deeming it more appropriate for matters relating to the children to be decided outside England and Wales;

   iii) That Dubai was not the more appropriate forum.

   The court then went on to financial and children matters on 5 August. I now give the reasons for my determination of the jurisdiction issues.

4. The discord between the parties was palpable and it has unfortunately spilled into the preparation of the case. The parties were unable to agree a bundle so that I have been provided with 3 separate bundles, which was wholly unnecessary.

5. H had been ordered by 20 July 2021 to file and serve a statement setting out his position with regards jurisdictional issues. Although he did file a statement, to which I will refer, on 29 July 2021 which was both late and sparse in its content, his substantive statement was not served until 09.30am on the morning of the hearing. This was a lamentable breach of the court's directions. W would have had every justification for objecting and/or requiring an adjournment, which would inevitably

have been at H's cost, but Ms Bazley QC realistically on her behalf accepted that the matter could not wait and needed to be determined.

6. In addition to the matters already set out for determination, on 5 July 2021 H had taken out an application for permission to withdraw:

   i) His petition for divorce;

   ii) His applications under the Children Act.

   He wished for all future proceedings to take place in the UAE. He required leave so to do. Francis J refused it and there has been a debate as to whether the matter remains before me. As I have determined the jurisdiction issues against him, it inevitably would follow that his application to withdraw would suffer the same fate.

Background

7. H is aged 63. He was born in Scotland and brought up there by his parents, of whom his mother was Scottish and his father was English. He qualified as a doctor and specialised in psychiatry. At all material times during the marriage he has been a consultant psychiatrist.

8. W was born in Iraq in 1974 and at the time of the hearing was aged 46. She was educated in Iraq and by the 1990s was a medical student in Baghdad. Unfortunately, her family fell out with the regime then in power and in around 1996 W sought to escape from Iraq as did other members of her family. Most of them had by that time endured time in prison because of their political views. She arrived in the UK as a refugee in or around late 1996. Eventually she was granted temporary leave to remain and was settled in Glasgow, where H was living.

9. The parties met and married in Scotland on 27 December 1999. They commenced their married life in Glasgow and subsequently moved to Aberdeen. Their eldest child was born in Aberdeen in January 2008. They remained living there until December 2011 when they moved to England.

10. There is disagreement between the parties as to why that move took place. H says that W had become unhappy living in Scotland and made it clear that she wanted to live in England. W says that whilst she would have preferred to live in England, the move was very much a joint decision as H had become unhappy in his work.

11. H says that he agreed to move to London as it was the only viable way that he saw of saving the marriage. Having seen both parties give evidence and read a lot of their communications, I am in no doubt that H would not have moved from Scotland if he did not want to do so. I reject his claim that it was a forced choice. It may have been a part of his thinking that W would be happier in London and that to move would be good for the marriage, but I do not accept that the move was other than voluntary.

12. The family left Scotland in the last days of 2011 and H told me that the next 6 months or so were spent in Middlesbrough, where he worked as a consultant and at the same time qualified under the Mental Health Act 1983 (England), there being a different statutory provision in Scotland. It is not without significance in assessing the quality

of the move to England and the label that attaches to it that he chose to obtain this qualification.

13. H obtained a job in East London/Essex and the parties purchased a substantial home in Ilford. The funding of the property came from the sale of property in Scotland. From that time onwards F owned no home in Scotland. In July 2013 W gave birth to twins in London.

14. In 2016 the parties took the decision that H would seek employment in Dubai and the family would move there. Once again the reasons for the move are in dispute. It is clear that the parties were having a difficult time with neighbours, one of whom they had reported to social services. H says that the move took place because W wanted to live in the sun in a Muslim Arabic country. I have no doubt that coming towards the end of H's working career, the offer of a prestigious job in Dubai with all the potential for making savings was attractive to both parties.

15. The move was never intended to be permanent and the parties kept their house in Ilford, renting it out. It is again not insignificant that it was only let out on a rolling one year tenancy, so that they could resume possession when they wished to return to England, whether that be sooner or later.

16. It was H's plan that the move back to England would take place when he reached the age of 65 and his working visa would expire.

17. On 27 May 2021 H, without warning to W, issued divorce proceedings in England. In reply to the question "*why the court can deal with the case*," H replied that "*the applicant is domiciled in England and Wales*". He made serious allegations of abuse against W, the details of which are not material for this purpose.

18. The acknowledgement of service by W stated that she was going to defend the petition "*on the basis that the Respondent does not accept that the petitioner has jurisdiction to bring an application for divorce in England and Wales*". She went on to say "*the Respondent understands that the petitioner could either be domiciled in Scotland or the UAE and is habitually resident in the UAE.*

    *The Respondent is herself neither domiciled nor habitually resident in England and Wales*".

19. In recent weeks the parties have each made a complete about-turn in their presentation. Notwithstanding what they previously said, H now claims that he is not domiciled in England and Wales but is domiciled in Scotland. He asks that his petition be dismissed on the basis that the court lacked jurisdiction for it at all times. W, on the other hand, now accepts that the court does have jurisdiction. She says both H and W have at all material times been domiciled in England and Wales.

20. I will set out in detail how each party explains their change of position. Suffice to say that I found neither party's explanation to be convincing. It is clear to me that each has engaged in tactical jockeying and tried to take advantage of what was thought to be in his or her best interests at the time.

21. In his statement of 2 June 2021 H said as follows, "*although I was born in Scotland, I spent considerable time living in England as an adult and during that time I decided that England would be my permanent home. I am therefore domiciled in England. I am currently habitually resident in the UAE".*

22. At paragraph 16 of the statement he said under the heading

*Forum: England over UAE*

"*it is available to me to have issued proceedings in the UAE in the local Dubai Personal Status court.*

*17. I decided that such an application and the consequential application of Sharia Law would not be of benefit to our family.*

*18. As a resident of the UAE, I wish to be clear: I would in no way be critical of the legal system there; I believe it is simply a matter of what is appropriate culturally. For example, in the UAE (like a lot of the Middle East) mental health issues and personality disorders are not really considered in the same way as they are in England by the Courts or in wider society. There is, one might say, a less sympathetic approach and certainly less understanding. I believe that these issues are going to be relevant in the determination of appropriate welfare and protective orders in this case.*

*19. I am also conscious that there is no equivalent of CAFCASS in the Dubai Personal Status Court, nor any proper facility to investigate – in the same way as an English Court would – the welfare of the children through professional social work observation. There is no appropriate mechanism for the voice of the child to be heard either, and given Z's age and intelligence I cannot envisage a satisfactory welfare process where her opinion would not be properly heard and considered.*

*29. Despite being in the UAE for four years, it was (and remains) our intention to return to England at some point. I am unlikely to be able to remain in the UAE past the mandatory retirement age of 65 and my intention is to return to England at that time.*

*30. On 27th May 2021, I issued proceedings for divorce in England. I did this based on my sole domicile, although I could possibly have based the petition on joint domicile.*

He then gave further reasons why the English court was the appropriate arena.

23. By 29 July 2021 H had reversed his position. He said this:

*2. At the start of these proceedings whilst the issue of my domicile was not completely clear, I verily believed that it was England and Wales. The various conflicting factors included the following: a) I was born in Scotland and raised there. My mother is Scottish and was born in Scotland. I spent most of my life in Scotland; b) In contrast my father was born in England and raised there until he was 17 years old; c) [W] and I moved to Middlesbrough, England in January 2012 and London on 12 June 2012*

*where we jointly bought a house. She told me she would never want to return to Scotland. We then left England and moved to the UAE in January 2017.*

*3. Given the different matters set out above, the predominant factor for me was my domicile of origin. On the basis that my father was born in England (and his father was English), I believed that my father was domiciled in England and that meant my domicile was also England. I commenced the proceedings on that basis. Whilst we moved to London, I did not consider that I had changed my domicile of origin to a domicile of choice.*

*4. However, when I learned in the current proceedings that [W] was disputing my English domicile and we would need to file evidence, I investigated the matter further and I checked my father's papers to see if anything was mentioned about his domicile. These papers included my father's will*

*5. Exhibited to this statement at KM1 is my father's will and executory paperwork. In the Form CN on page 8 it states that my father:*

*"died DOMICILED IN SCOTLAND…"*

*6. My father moved to Scotland in 1945 and it is my belief, for the following reasons, that he abandoned his domicile of origin, to one of choice – being Scotland, when he moved to Scotland.*

*7. I only realized this on Monday 26 July 2021. Notwithstanding my previous belief as to my domicile of origin (and that that domicile had not changed), I feel that this clear statement about my father's domicile settles the fact that my domicile of origin is in fact Scotland and not England. This has not changed.*

*8. I am therefore in agreement with [W] that I am not domiciled in England. I apologise to the Court for the mistake in my petition, however, this was not deliberate as set out above.*

24. W's statement of 2 August 2021 marks her reversal of position. She says at paragraph 13, "*Having considered matters further, I now realise that my original belief that H remained domiciled in Scotland was wrong.*

Then at paragraph 15,

"*We always intended to return to England once H's' employment in Dubai came to an end and so we kept our family home in England and rented it out. H in particular spoke of wishing to return and settle permanently in England in due course. Indeed, [H]'s intention within these proceedings, up until recently, seems to have been to keep the children away from me, get the Dubai travel bans lifted and return to England with the children.*

*16. My intention is to remain in Dubai with the girls for the time being but I also envisage returning to England in due course and making this country my permanent home. Accordingly, I regard myself as domiciled in England and Wales. I have no family in the UAE and no ties with the country other than good friendships.*

*…*

*22. Having thought further about whether this Court has jurisdiction I have concluded that it does. We own no property in Scotland and have few ties there (H's sister lives in Edinburgh and they do not have a close relationship). There are no assets in Scotland of which I am aware. We continue to retain our family home in England. We moved to Dubai temporarily to escape the unpleasant situation that we were in at the time.*

*23. I believe that England is also the convenient forum for our divorce. The only matrimonial home is here and it is a major asset. We will need to resolve in this jurisdiction what happens to the property.*

25. In addition, W referred to several emails that H had written in July 2021 urging her to drop proceedings in Dubai so that the family could return to England as soon as possible and conduct whatever litigation was necessary in England.

26. The final statement that I need to refer to is that which H produced on the morning of the hearing. In it H set out that he mistakenly believed that by choosing to live in England, for whatever reason, it meant that he was domiciled in England. This conclusion was reinforced by his mistaken belief that his father was domiciled in England.

27. He went on to set out his great affection for his country of birth, his pride of being Scottish, and his hope that eventually the children would return to live with him in Scotland and develop a love for the country of his birth. He expressed his love for the scenery and his enjoyment of hill walking and climbing and then went on to say at paragraph 16,

"*although I agreed to live in England and Dubai to try and keep my wife happy, and to work there and educate the children there, my long term goal was always to return to Scotland and to retire there. …*

*20. I could never, ever see myself retiring to England. It was acceptable to live and work there for periods of my life, but it is definitely not where I want to spend the last years of my life…. Being back in Scotland would be a great comfort for me in the twilight of my life.*

28. He continued that he wished to be buried in Scotland and that his emails urging W to return to England in July 2021 were written because he knew that London was the only UK location to which W would agree to move.

29. It is hard not to think that to some extent H's change of case does not reflect the reaction that he has received from Poole J and Francis J. Both judges were concerned about the way that H had made a series of applications to the courts of England and Wales which had resulted in ex parte orders on 3 June, 9 June, 15 June, 17 June and 24 June.

30. On 1 July 2021 W appeared for the first time and Poole J made various orders, the most material of which for these purposes was to try and set up contact which had not taken place since the institution of proceedings, following which H had left the rented matrimonial home with the children and set up home elsewhere.

31. The court concluded that it was in the children's best interest on the evidence so far available that they should remain in the care of their father but with supervised indirect and direct contact by W to the younger children, as well as to the older child Z if she so wished. W would stress that there has been no full welfare consideration yet as she has not filed evidence on this issue.

32. On 5 July W returned the matter to court as no indirect contact had taken place, despite the judge's order, and H had applied to withdraw all applications in England and Wales. His applications were put over by the judge to be heard on 15 July, when they came before Francis J.

33. Francis J was critical of H in a number of different respects. He made orders for unsupervised contact, notwithstanding H's objections, and set up the financial hearing which also came before me. He made a series of orders for the filing of evidence for the hearing which I have conducted including one that H must by no later than 26 July file and serve a statement setting out his case on domicile. H was very dissatisfied with the result of the hearing. He is in breach of a number of paragraphs of the order (covering jurisdiction, money and children) and he has sought permission to appeal it.

The Law

34. The law is clearly established and although each party relied on different authorities, to my mind they do not demonstrate any significant difference. Mr Glaser QC for H relies on Agulin v Cyganik [2006] EWCA Civ 129 and in particular paragraphs 5-7 and 45-46.

> *5. In Re Fuld [1968] P 675 Scarman J explained that the legal relationship between a person and the legal system of the territory which invokes his personal law is based on a combination of residence and intention. Everybody has a domicile of origin, which may be supplanted by a domicile of choice. He noted two particularly important features of domicile (page 682D-E) which are relevant to this case:*
>
> > *"First, that the domicile of origin prevails in the absence of a domicile of choice, i.e., if a domicile of choice has never been acquired or, if once acquired, has been abandoned. Secondly, that a domicile of choice is acquired when a man fixes voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimited time." [As pointed out by Buckley LJ in IRC v. Bullock [1976] 1 WLR 1178 at 1184H Scarman J's formulation "for an unlimited time" requires some further definition]*
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> *6. After reviewing the more important authorities and noting the need in each particular case for "a detailed analysis and assessment of facts" in relation to the subjective state of mind of the individual in question, Scarman J stated the law in terms which this court should expressly approve (page 684F-685D)*
>
> *"(1) The domicile of origin adheres-unless displaced by satisfactory evidence of the acquisition and continuance of a domicile of choice; (2) a domicile of choice is acquired only if it is affirmatively shown that the propositus is resident in a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land*

*of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking; but, if he has in mind only a vague possibility, such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn; the ultimate decision in each case is one of fact-of the weight to be attached to the various factors and future contingencies in the contemplation of the propositus, their importance to him, and the probability, in his assessment, of the contingencies he has in contemplation being transformed into actualities. (3) It follows that, though a man has left the territory of his domicile of origin with the intention of never returning, though he be resident in a new territory, yet if his mind be not made up or evidence be lacking or unsatisfactory as to what is his state of mind, his domicile of origin adheres…."*

*7. Scarman J discussed another point relevant to this case-the standard of proof. He cited authorities stating that the "necessary intention must be clearly and unequivocally proved" and that the domicile of origin is more enduring than the domicile of choice and said (page 685D):*

> *"...It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the person asserting the change… What has to be proved is no mere inclination arising from a passing fancy or thrust upon a man by an external but temporary pressure, but an intention freely formed to reside in a certain territory indefinitely. All the elements of the intention must be shown to exist if the change is to be established: if any one element is not proved, the case for a change fails. The court must be satisfied as to the proof of the whole; but I see no reason to infer from these salutary warnings the necessity for formulating in a probate case a standard of proof in language appropriate to criminal proceedings…..*

*45. That leaves the crucial question whether Andreas changed his mind after 1995 and formed an intention to live permanently or indefinitely in England, thereby abandoning the domicile of origin which, on the deputy judge's analysis, he had retained down to about 1995.*

*46. On that question I make several general points.*

*(1) First, the question under the 1975 Act is whether Andreas was domiciled in England and Wales at the date of his death. Although it is helpful to trace Andreas's life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. Positioned at the date of death in February 2003 the court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death. Soren Kierkegaard's aphorism that "Life must be lived forwards, but can only be understood backwards" resonates in the biographical data of domicile disputes.*

*(2) Secondly, special care must be taken in the analysis of the evidence about isolating individual factors from all the other factors present over time and treating a*

*particular factor as decisive. In this case the deputy judge carefully considered the long residence in England in the context of Andreas's continuing connection with Cyprus throughout his time here. In relation, however, to the years after 1995 the focus of the judgment is almost entirely on the relationship with Renata, their engagement and the wedding plans. Nothing much else happened between 1995 and 2003 that could have altered the agreed position that, despite having lived most of his life from the age of 19 in London and having made his fortune here, Andreas still retained, at the age of 55, his Cypriot domicile of origin. The development of the relationship with Renata was the only factor from which an inference could be made that Andreas changed his mind in the period 1995 to 1999/2003 about where he would make his permanent home. The judge's treatment of that one factor as decisive or conclusive of domicile must be examined with care. As appears from the authorities, marriage by a man with a domicile of origin in one country to a woman domiciled in another country and post-matrimonial residence with his wife in that other country for many years are important considerations, but they are not conclusive. The matrimonial factor does not, as a matter of law, mean that the husband acquires a domicile of choice in that country and abandons the domicile of origin, to which he has not actually returned to live: IRC v. Bullock [1976] 1WLR 1178; see also Dicey & Morris on The Conflict of Laws 13th Ed para 6-049 and Abraham v. A-G [1934] P 17. The court was also referred to Forbes v. Forbes (1854) Kay 341; Aitchison v. Dixon (1870) LR 10 Eq Cas 589; and A-G v. Yule ...1931) 145 LT 9 at 16,17. They all make interesting reading, but a comparison of the facts of one domicile case with the facts of another domicile case is of limited assistance in deciding this case.*

35. Relying on those passages, Mr Glaser invited me to draw the following conclusions:

    i) H's move to England was not a move "formed independently of external pressures" and therefore was not a voluntary move;

    ii) It was not for an "unlimited time" because he always intended to make old bones in Scotland.

36. Ms Bazley QC relied on M v M (Divorce: domicile) [2011] 1FLR 919 and in particular paragraph 3 where Baron J says

    *"The rules set out in Dicey, Morris and Collins on The Conflict of Laws (Sweet & Maxwell, 14th edn 2009) [are] as follows:*

    i) *"A person is, in general, domiciled in the country in which he is considered by English Law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it.*

    ii) *No person can be without a domicile.*

    iii) *No person can at the same time for the same purpose have more than one domicile.*

    iv) *An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.*

v) *Every person receives at birth a domicile of origin.*

vi) *Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise.*

vii) *Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice.*

viii) *In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious.*

ix) *A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise.*

x) *When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives."*

37. Discussion

It is clear to me that I have to take a holistic approach and regard no one factor as conclusive.

38. I do not accept that I need to interpret the words *"formed independently of external pressures"* as meaning that a decision taken for the good of the whole family is one that removes the element of free will. Few of us make any decision independently of external pressures. I am satisfied that H did not move to England against his will so as to undermine his ability to form a domicile of choice.

39. I accept that in an ideal world H might have preferred to be living in Scotland, but more important to him was that he wished to be living with his wife and daughters in a place where they and he could be happy. Pride in one's heritage is not conclusive of domicile. Simply because H took into account in making the decision to move W's preference to live in England rather than Scotland does not somehow subordinate his decision into one driven by external pressures.

40. It is clear that the move was intended to be permanent. The parties sold their homes in Scotland. They bought a substantial home in England. They entered their daughter into school. When they moved to Dubai they kept the home in England so that it would be available to them on their return.

41. H's fallback position is that even if he had acquired a domicile of choice in England which lasted through their move to Dubai, he lost it and reverted to his domicile of origin by the time that he filed his petition for divorce. At that time he argues, his wish to keep the family together had become unrealisable and he was looking to return to Scotland. He cannot say when that return would be but it would be:

i) If he obtained the primary care of the children and the permission of the court to relocate to Scotland, at that time; or

ii) When the children were grown up and had left home which plainly would not be for at least 10 years.

Of course, there was always the possibility, remote though it might have been, that the parties would reconcile.

42. Once again, I do not accept that H's desire ultimately to make his home in Scotland and his intention to do so at some stage in the future makes his decision to live in England one of limited duration and so cannot be characterised as having or continuing a domicile of choice.

43. It is clear that the parties intended to return to live in Ilford for the foreseeable future after the end of the posting in Dubai. As at 27 May 2021 that remained H's intention. I remind myself that when he instituted the proceedings H and W and the children were all still living under the same roof, and it was only on 4 June 2021 that H left the matrimonial home with the children and moved first into a hotel and then a rented apartment in Dubai.

44. It follows therefore that I am satisfied that H was domiciled in England and Wales at the time he filed his petition and as set out in his statement of 2 June 2021.

45. I do not need to consider W's domicile, but it seems to me very likely that she had acquired domicile of choice in England. It is common ground that she preferred England to Scotland. As a refugee from her birth country which she left over 20 years ago, there is no other country to which she has formed a connection other than England. She became a British citizen. There was no reason for her to be in the UAE other than H's work.

46. I can deal together with the question of whether (i) it would be more appropriate for Part 1 matters relating to the child to be determined outside England and Wales and (ii) whether Dubai is the more appropriate jurisdiction.

47. As always there are arguments both ways. In favour of Dubai there seem to me to be the following principle points:

i) It is where the children currently are and it is where both parents are. This is an important point;

ii) The proceedings will probably be cheaper if conducted entirely in Dubai;

iii) Some witnesses in the children proceedings may be based there;

iv) Welfare enquiries are more easily carried out in the jurisdiction in which the parties and children live.

48. On the other hand:

i) These proceedings started in England and Wales. This was H's choice.

ii) There have been a multiplicity of hearings in England. 4 judges of the Division have conducted the hearings which have ranged across the issues of the jurisdiction of the divorce, children orders and money orders.

iii) The parties agreed to instruct an ISW who has made recommendations to the court both in writing and orally. She is based in England.

iv) Their property and assets are largely to be found in London;

v) H will not pay for W's UAE lawyers and I cannot order it. Equality of arms requires litigation to take place in England.

vi) The parties' stay in Dubai was always intended to be limited. H has told me that his employment has been terminated in Dubai and he may need to leave the country. His visa will be removed within the next 30 days. He has applied for another job which he may or may not get. It would be a great misfortune if the proceedings were stayed so that they could take place in Dubai, only to find that within a short time the family were all back in England.

49. I am particularly swayed by the extent to which proceedings have been conducted in this country and the limited duration that the parties may stay in the UAE. I regard the factors cumulatively for the continuation of the proceedings in England and Wales outweigh those that point towards Dubai and I therefore conclude that it would be more appropriate for the proceedings to continue in this jurisdiction.

50. I end this judgment by expressing my horror that the parties' have already spent some 20% of their wealth in proceedings which are still at an early stage. It is absolutely essential, both for the parents and for the children, that they adopt the suggestion made before that they enter into mediation.