



Neutral Citation Number: [2021] EWHC 2303 (Fam)

Case No: FD21P00141

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4th July 2021

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

Between :

WJV

Applicant

- and -

SR

Respondent

Ms Mavis Amonoo-Acquah (instructed by Anthony Louca Solicitors) for the applicant father
Mr Mark Jarman (instructed by Brethertons LLP) for the respondent mother

Hearing dates: 28 and 29 June 2021

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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.

Mrs Justice Roberts :

1. This is an application by a father, WJV, who seeks the return of the two children of the family to the Republic of Zambia. The children are currently residing with their mother, SR, the respondent, in this jurisdiction having travelled to England on 22 August last year. She resists the application for summary return. Each of the parents has given evidence at this two-day hearing. I hope that neither will mind if I refer to them individually in this judgment as “the mother” and “the father”. I do so only for convenience and in the interests of preserving their anonymity. The use of that shorthand in no way detracts from the importance of this case to them or the significance to this family of the outcome of these proceedings.
2. At the centre of these proceedings are two young boys, D and B, who are now respectively 6 and 4 years old. Each will celebrate their next birthdays in December this year. A great deal of material has been placed before the court for the purposes of this hearing and, having immersed myself in it over the course of two days, I have a real sense of who these children are and how they have responded to the recent changes in their young lives. They are delightful, albeit, different children, each of whom is dearly loved by each of their parents. That much needs to be stressed at the outset. I have no doubt whatsoever that these parents love their children and that love is reciprocated in equal measure. The mother has told me that, if the children are to return to Zambia, she will return with them. She is, and always has been, their primary carer and, despite the circumstances which brought her back to her family in England, she intends to continue to care for the children wherever they are living and cannot contemplate a separation from them in any circumstances. The father, for his part, acknowledges her role in the children’s lives. He accepts that, notwithstanding the breakdown of his marriage to their mother, she will continue to be the children’s primary care giver wherever they are living.

The background

3. At the heart of this litigation are two parents whose lives and parenting styles appear to have travelled in very different directions since these children were born in 2014 and 2016. The father is now 38 and the mother 37 years old. The father was born and raised in Zimbabwe by parents who continue to farm in Zambia where he now has his own

farm. That is the only life he has ever known. He was brought up in a Christian household and in an ethos of strict moral and religious codes. I am sure that life was hard at times but the paternal family is close and his parents have had much to offer their grandchildren as the boys have enjoyed a similar childhood living on their own parents' farm.

4. The mother is English. She, too, comes from a farming background having been brought up in the countryside in the West Midlands. These parents met in 2006 when both were students at an English agricultural college. They formed a relationship but their lives travelled in different directions. The father worked for 7 years in the agricultural sector in the United Kingdom before returning to work on the family farm in Zambia. The mother found employment as a rural land surveyor in this jurisdiction. In 2012 they rekindled their relationship and married in England the following year in July 2013. Thereafter the mother followed the father to begin what was for her a new life in Zambia.
5. She returned to England for the birth of each of the children who are British nationals as well as *Zambian* residents.
6. Family life for these children has been lived on the farm which their parents bought in 2012 and subsequently developed over the course of the next two or three years. The farm business produces a variety of crops including wheat, seed maize and soya. It became the family home in about 2015.
7. Whilst the father threw his heart and soul into the farm business and the life he was creating for his family at Chizmani, it is very clear from the evidence (and not disputed by the father) that the mother never really settled into life away from England. Whatever may have been her expectations or aspirations when she married the father, she became increasingly unhappy with the reality of what her daily life on the farm was becoming.
8. Her unhappiness was acknowledged by the father. He accepts that their relationship had been “rocky” from the outset largely due to the pressures of having to share a home with his parents and sister in the early years. The mother had lost the personal and

financial independence which her professional employment in the UK had given her. She became entirely dependent financially on the father and it is clear from the evidence I heard during the course of yesterday that finances were severely stretched with little coming into the household over and above the cashflow which the farming business was able to generate through the year. She was isolated from her network of friends and family who remained in the UK. The father would probably accept that he is not the most emotionally attuned individual but even he noticed the deterioration in his wife's presentation after B's birth. This coincided with her openly discussing with him her wish to return to the UK as a family.

9. The clear picture which emerges from the evidence which both parties have put before the court is the extent of the social and geographical isolation which this mother experienced as the underlying feature of her everyday life as the mother of two very young children. The family lived a 20-minute drive away from their nearest neighbour. It appears to have been a four-hour round trip to the children's school as a result of which the mother was obliged to spend part of the week staying with her parents-in-law. The school, as such, was not one which we would recognise as a school serving a busy local community. I was told, for example, that D was in a 'class' with two other boys and had one friend of the same age. There were only very limited opportunities for socialising outside school. With the father completely absorbed over long hours in the business of running the farm, it is not difficult to understand why the mother's sense of social and personal isolation was informing her wish to raise the family in England. There were obviously increasing issues of communication between these parents whose relationship was put under significant strain.
10. In April 2018 she sent the father an email attached to which was a letter in which she tried to express these thoughts. She spoke about her loneliness and its impact on her health and wellbeing and the options which she saw confronting them as a family. It is clear from that email that she was urging the father to leave Zambia and rebuild their lives in England "in an environment that we are *both* able to thrive in".
11. I am satisfied that, in writing that letter to the father, the mother's intentions had been to reach out and articulate a plea to him in order to convey not only the depth of her unhappiness with life on the farm in Zambia but also the many positives she saw for

the family living in a healthier and happier environment. She explained in her letter how she had struggled to articulate her concerns to the father. She opened her letter with these words:-

“I know you feel that England isn’t any good for me, but I feel a million times better being here and just cannot accept you telling me I’m better off in Zambia. I want to be the best version of myself for you and the boys. For so many reasons I can not and do not feel like I can achieve this in Zambia.

I love you so much and can only imagine how different it must be to be alone without us. I so desperately want to see you, and truly believe life here [in England] as a family could be so much better for all of us.”

12. It is clear to me that, at this stage, the mother’s efforts were focussed on preserving her marriage to the father. She spoke in her letter of concerns that their children would inevitably be sent away to boarding school at a very young age. She spoke of the concerns she had for her health and wellbeing (*“I worry and stress over how the choice we have made is impacting on our children now and in years to come”*). She concluded her letter in these terms:

“I do not want to leave you. I just do not want to live [there] or feel that Zambia is the best place for our children or you. It is only my love for you that keeps forcing me back, until you decide otherwise. I will always be loyal to you but I feel I am no longer able to just be your shadow and comply with the decisions you choose for us. The question that keeps coming to me is can you only love, want me in Zambia and why can we not try my way ?

We both want to be happy with our children in an environment that we are both able to thrive in, hopefully we can openly discuss this.”

13. It is clear from the evidence that, with the children, the mother has spent extended periods of time (often several weeks) back in England with her family in each year since the children were born. In 2018, she was here for three months between March and June 2018. It was during that period which she regarded as “respite” from her life in Zambia that she wrote her letter (from which I have quoted above) to the father. She returned for another three months with the children in 2019. The father acknowledges that, on each occasion, she was pleading to extend her stay. He knew that she was becoming increasingly unhappy. He accepts that she had told him that Zambia was not what she wanted for herself or the boys and that she felt she had lost her sense of purpose and identity. She had begun to embrace her English life with the boys. D spent some months at his English pre-school whilst she was here in 2019.

14. That the father recognised the extent of the mother's distress and the impact upon her of a return to Zambia is clear from what happened in 2019. He persuaded her to return to Zambia on the clear understanding that the entire family would relocate to the UK but that she should return to the farm whilst they made those plans together in order that the move could be undertaken with a clear view to what the arrangements in the UK would be. It is right to record at this stage that the farm business had by this stage sunk deeper into debt and the father may well have had concerns about its future financial viability. What appears to have been a significant mortgage debt to the First National Bank Zambia was falling into arrears and I have no doubt there was pressure from both the Bank and other creditors. The family was living what was essentially a hand-to-mouth existence eking out their living expenses on a week-by-week basis but with little surplus financial capacity for anything else. The mother told me that she financed her flights to the UK by saving what little she was able to earn from a part-time job she had secured by working remotely from the farm.
15. The father's acceptance that the family should relocate to England produced an immediate improvement in the mother's state of health and wellbeing. She threw herself into making all the necessary plans. As the father accepts, packing started almost immediately. A date of June 2020 was set for the move. The mother returned to the UK in December 2019 for the specific purposes, with his consent, of acquiring a family home in England. She identified a suitable property in a rural location some 7 miles or so from Evesham in the West Midlands. As I understand it, she used an inheritance she had received from her grandmother to purchase that property which was completed in the early part of February 2020. I have seen the estate agents' particulars of that property which is in all material respects a substantial and comfortable family home.
16. Throughout this period, the father had been reconsidering his position. He told me candidly during the course of his oral evidence that, despite the encouragement which he gave the mother throughout this period of planning and arrangements, his heart had never been in a move. I accept that there was an element of disingenuousness about his behaviour over these months. He allowed the mother to invest time and energy in the relocation exercise relying on his support for the family's plans. He stood by as she

made a substantial financial commitment with the only funds she had into the purchase of what she believed would be their permanent family home in England. He observed the transformational effect which the proposed move was having on her general sense of happiness and wellbeing without giving her any warning or prior indication that he was about to resile from the plan. It was only when the purchase had been completed and all the arrangements made for the children's schooling in England, for the transportation of the family dogs and all their furniture and possessions that he dropped what for her must have been the 'bomb shell' that he did not intend to move and would not allow the boys to leave Zambia.

17. That change of position led to the demise of their marriage. Although living under the same roof, the parties effectively separated. It was against this background that the mother and children travelled back to England in the summer of last year. The father agreed that she should travel with the boys for a three-month period from August to November 2020. He accepted that they should attend English schools during this period.
18. On 4 November 2020, shortly before the date when she was expected to return to Zambia, the mother sent the father an email indicating that she could not contemplate returning with the boys. She set out in that email her reasons for that decision.

“When we last spoke properly in September [2020] the conversation was tense and rather upsetting. I wanted you to come and see what the UK can provide and how happy the boys are here. Sadly, your answer during this call, as it has been so many times in the past, was that you are too busy and that the farm won't cope without you. For years I have tried over and over to get you to understand what I feel is important for the future of our family. Principally, being together as a family, a full education for the boys, friends for the boys and ourselves, purpose and opportunity.

In September 2019 we started looking for suitable properties in the UK, on the basis that we agreed, that England was to be the children's home and our home. In November 2019 I came over for a property auction, whilst unsuccessful at the auction I found [our current home]. An offer was made with your agreement which was accepted and the property completed on 4th February 2020. I had also spoken to you about local schools for the boys. I was devastated when at the last minute you changed your mind and then later confirmed that you would not allow the children to go either. I have remained in Zambia with a heavy heart but hoping against hope that you would change, sadly I have not seen this.

When the boys and I left Zambia back in August [2020], I personally left physically exhausted and very anxious from the events of recent months and the years prior to that. My intention when I got on the plane was to return to Zambia on 16th November as I promised you. Hopefully stronger and able to cope with the situation we are in. However, since being back in the UK I have had time to rest and reflect on our relationship and other elements of our current situation.

The constant tension, the difficulty in communication, the continual lengthy arguments, your control leading to my lack of involvement in making and implementing family decisions, and your misleading and broken commitments has made me realise how unhappy I am in Zambia. There has been no mutual compromise on any decisions involving the future for our family. Being here in England has given me the time to reflect on what the children and I have sometimes had to put up with which isn't right for example, the boys should not have to be scared of being hit by a wooden spoon with their name on it. I should be able to access medical treatment without it being questioned, and do not find it acceptable that you prevented me from taking [B] to get professional medical attention on the day he burnt his feet, and then refused to take us the following day to the appointment I had made. Your recent comment just before I left for the UK about me "acting like my mother" when you know her mental health history and how unwell she was at the time cuts deep emotionally and was nasty. The way you talk to me and the body language you use to intimidate me and make me feel below you are unacceptable and I cannot tolerate this type of behaviour from you anymore.

The isolation of where we live with no social amenities, no substantial medical care or international education facilities and no opportunity for me to pursue my profession, along with the control you exert over me and the children, are the principal reasons why we are not going to be returning to Zambia. After years of trying and hoping that things will improve, I have realised I cannot continue as we are."

19. She went on to set out her concerns about the boys' education and their need to enjoy opportunities in school which would set them up for their future. She rejected a recent proposal which the father appears to have made in this context to meet the mother's objections about the lack of educational opportunities in Zambia that their children should be sent away from Zambia to a boarding school in Zimbabwe where, as parents, they would see their boys "for a very limited amount of time each year".

20. Having listened carefully to the oral evidence which I heard from the mother, I am entirely satisfied that the concerns reflected in the mother's letter were both genuine and heartfelt. Whilst it was written in order to convey to the father why she felt she could not return to Zambia, I do not accept that this was a communication which was put together, or manufactured, for a future forensic purpose. It is clear to me that those

three months in England over last Summer had given this mother the time and space to reflect upon her situation and her perception of the deleterious effect which the father's conduct towards her over the course of many months of increasing conflict had produced. It was a measured and reflective communication but it has provided the catalyst for the present litigation.

These proceedings

21. The father's application for the summary return of the children to Zambia was issued on 8 March 2021. Invoking the court's inherent jurisdiction, he seeks orders requiring the immediate return of the children to Zambia. In the context of his application, he has offered a raft of what are commonly referred to as "protective measures" which he says will provide the mother with a "soft landing" designed to ameliorate most, if not all, of her current concerns.
22. There has been unavoidable delay in this case including slippage in listing the matter for a final hearing due to the unavailability of the CAFCASS officer through no fault of her own. I promised these parents that they would have a decision at the conclusion of the two-day hearing albeit that there was insufficient time for me to deliver a full judgment. I announced my decision and the reasons for it in an extempore judgment but I now need to explain in greater detail why I reached the conclusion I did that I was not going to order a summary return of either child to Zambia. In this context, I turn now to the law which I must apply and the legal principles which underpinned my decision. There is no dispute between counsel as to what that law is. It is fully set out in the detailed skeleton arguments which each has put before the court.

The legal framework

23. Zambia is not a member of the 1980 Hague Convention. In this case the father seeks to engage the inherent jurisdiction of the court as the basis of the orders which he seeks. This shifts the focus of the court's enquiry from a more closely confined summary process to a broader welfare-based approach where a child's welfare is paramount. This much has been clear for many years since it was established in *Re J (Child returned abroad: Convention Rights)* (2005) 2 FLR 802. In that case the House of Lords held

that the rules and concepts of the 1980 Hague Convention were not to be applied by analogy in a non-Convention case.

24. Nine years later, Theis J encapsulated the relevant principles in her judgment reported as *S v S* [2014] EWHC 575. In essence:

- (i) In a non-Convention case, the court is under a statutory duty to have as its paramount consideration the welfare needs of the particular child or children whose upbringing it is considering. There is no legal basis to import into that exercise the rules and principles up to which Members of the 1980 Hague Convention have signed.
- (ii) In an appropriate case brought under the inherent jurisdiction, the court had the power to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation on the merits. In essence, a judge dealing with such an application had to make a choice based on welfare considerations between a summary return or a more complex forensic investigation of the wider merits of the dispute between the parents. In making that election, a judge should be guided by the welfare of the particular child or children with whom it was dealing and the individual circumstances of the case before the court.
- (iii) There was no ‘strong’ presumption that it was more likely than not, or even ‘highly likely’, to return a child who had been the subject of an unauthorised removal or retention to the country of his or her habitual residence in order to allow the domestic court in that jurisdiction to determine the parental dispute about upbringing. The most one could say was that *“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 that ... allowing a child to*

remain here while his future is decided inevitably means he will remain here for ever”.

- (iv) Factors pointing one way or the other included:
 - (i) the degree of connection of the child with each country – where is his home ?
 - (ii) the length of time which he has spent in each country;
 - (iii) depending on the facts of any given case, any differences in the legal systems operating in the two countries, including the existence in either or both of a relocation jurisdiction; and
 - (iv) the impact of any decision of the child’s primary carer.
- (v) Any decision about whether to order a summary return or not should be taken swiftly.

25. More recently, the Supreme Court has once again looked at the principles which are engaged where a summary return is sought to a non-Convention country. In *Re NY* [2019] UKSC 49, [2020] AC 665, [2019] 2 FLR 1247, Lord Wilson of Culworth provided a further raft of points which a court should address in reaching its decision.

- (i) Is the evidence sufficiently up to date and does it address welfare issues in the round (para 56) ?
- (ii) Are the court’s findings a sufficient foundation for an order for summary return (para 57) ?
- (iii) In deciding what is required in the context of the paramountcy principle of the child’s welfare for the purposes of a summary order, the welfare checklist in s.1(3) of the Children Act 1989 is engaged. It will be for the court to determine in each individual case which aspects of that statutory checklist have traction in any particular case and how extensive the range of its enquiry should be (para 58).

- (iv) In a case which involves allegations of domestic abuse which engage the provisions of PD 12J, the court will need to decide the extent to which there is a need to enquire into whether such allegations are likely to be true. If such an enquiry is needed, the court will then go on to determine the nature and extent of that enquiry (para 59).
- (v) What are the proposed arrangements for the child's or children's return ? (para 60)
- (vi) Is oral evidence from the parties required and, if so, in relation to which aspects of the case ? (para 61)

26. The need for reaching a swift resolution of such cases is emphasised in FPR 2010 PD12F, para 3.5 which adopts the procedural guidance applied in 1980 Hague Convention cases which requires non-Convention cases of abduction to be completed within 6 weeks save where exceptional circumstances make this impossible.

The cases advanced on behalf of the parents

27. On behalf of the mother, Mr Jarman, her counsel, resists a return on the basis of two fundamental submissions. First, he submits that the children have acquired a new habitual residence in this jurisdiction. As a result, and applying the law as I have set it out above, the court now has jurisdiction which flows from the Family Law Act 1986 to conduct a full welfare enquiry under the 1986 Children Act into whether it is in the best interests of these dual national children to be returned to Zambia and what will be, for them, a very different life from that which they left almost a year ago. In this context, he formulates his second submission in relation to welfare by reference to the very full welfare-centric report which has been produced by Mrs Lynn Magson, the CAFCASS officer who has been charged with undertaking the wider enquiry on behalf of the court. I have not only read Mrs Magson's report, I have also heard extensive oral evidence from her. That evidence was given from the foot of the time she spent in court yesterday listening to the evidence of the parents.

28. In addition to that report, there is a significant amount of written material available to the court. The father has filed four statements; the mother two. In addition I have

expert evidence in the form of reports from two jointly instructed individuals. The first is a report in relation to immigration formalities and the ability of this mother to secure her position in Zambia both in relation to permanent residence and work. The second is a report in relation to domestic law in Zambia and the options which would be available to a judge in that jurisdiction were this court to order the children's return. It is agreed that one of those options would be the ability of the mother to apply for permission to relocate permanently to the jurisdiction of England and Wales.

29. Mr Jarman has made a number of forceful submissions which are crafted around the very significant contra-indicators which he identifies on behalf of the mother and which point on her case to it being inimical to the interests of these children to require their return to Zambia.
30. With equal forensic penetration and force, Ms Amonoo-Acquah has advanced the father's case on the basis that, whilst welfare considerations are plainly relevant, this court should undertake a swift, summary and unsentimental assessment of which of the English and Zambian courts is best placed to undertake that wider welfare survey. She accepts that, pursuant to the guidance given in *NY*, this court is entitled to apply the full welfare checklist set out in s.1(3) CA 1989 but she maintains on behalf of her client that there is no specific mandate in this case for its full application.
31. In relation to the issue of the children's habitual residence, she points to the fact that the father's case should not be prejudiced by the delay caused between November last year and February this as a result of the attempted mediation with Reunite. That delay, on her case, was exacerbated by the necessary adjournment of the previous final hearing in May this year. She seeks to persuade me that I should deal with a determination of where these children were habitually resident as at mid-November last year, that being the date when, on her case, the children were wrongfully retained by the mother in this jurisdiction.

Habitual residence

31. In relation to the issue of habitual residence, the legal principles are now equally well known. I have been referred to a number of authorities in which the Supreme Court has

considered the issue including *A v A and another (Children: Habitual residence) (Reunite International Child Abduction Centre and others intervening)* [2013] UKSC 60, [2014] 1 FLR 111; *Re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 75, [2014] 1 FLR 772; *Re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] UKSC 1, [2014] 1 FLR 1486; *Re R (Children) (Reunite International Child Abduction Centre and others intervening)* [2015] UKSC 35, [2015] 2 FLR 503; and *Re B (A child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4, [2016] 1 FLR 561.

32. More recently, in *Re M (children) (return order: habitual residence)* [2020] EWCA Civ 1105, Moylan LJ approved an analysis of the law in relation to habitual residence which was set out in an earlier first instance judgment delivered by Hayden J in *Re B (Habitual Residence)* [2016] EWHC 2174 (para 17) with a single substitution to para (viii) of his Lordship’s judgment. That case concerned a summary return to a Convention Member State and was governed by the principles applied under Brussels IIA. Nonetheless it is a helpful summary of the approach which a court is enjoined to adopt in approaching its analysis of the underlying factual enquiry into where an individual child or children are resident at any given point in time.
33. First, that question of fact has to be determined on the basis of all the circumstances put before the court. Drawing together the threads from all the authorities to which I have referred above, it is now established law that a parent can unilaterally cause a child to change his or her habitual residence by removing that child to a different jurisdiction without the consent of the other parent. What the court is looking for in the context of a wide-ranging investigation into the particular child’s circumstances is the connections which exist, or have been established, which represent some degree of integration by the child in his social and family environment. The focus is on the *stability* of the new arrangements rather than their permanence. In this context stability does not require full integration. The time available for these enquiries is often restricted by the summary nature of the proceedings before the court. Thus the canvas to be explored is of necessity broad.
34. The analogy of Lord Wilson’s see-saw in *Re B* is frequently deployed for these purposes. In that case (*Re B (A Child) (Habitual Residence: Inherent Jurisdiction)* cited in para 31 above), his Lordship provided the following guidance at paras 45 to 46:

“The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw.

As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up will probably come the child's roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it."

"One of the well-judged submissions of Mr Tyler QC on behalf of the respondent is that, were it minded to remove any gloss from the domestic concept of habitual residence (such as, I interpolate, Lord Brandon's third preliminary point in the *J* case), the court should strive not to introduce others. A gloss is a purported sub-rule which distorts application of the rule. The identification of a child's habitual residence is overarchingly a question of fact. In making the following three suggestions about the point at which habitual residence might be lost and gained, I offer not sub-rules but expectations which the fact-finder may well find to be unfulfilled in the case before him:

- (a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;
- (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and
- (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it."

My conclusions in relation to habitual residence

32. For present purposes in relation to habitual residence, I have reached the following conclusions.
33. First, the date for ascertaining where a child is habitually resident should be determined as at the date when the application for return was issued, in this case 8 March 2021. The law is clear on that point although the submissions made by Ms Amonoo-Acquah on behalf of the father in relation to delay lend weight to the separate issue of the court's discretion and the basis of the welfare assessment it has to undertake in the context of whether or not to order a return.
34. Secondly, in the light of all I know from the evidence about the boys' lives over the course of the last ten months, I have reached a clear conclusion that, whilst habitually resident in Zambia before 22 August 2020, they have since acquired a new habitual residence in England and that state of affairs existed as at 8 March this year when the father's application was issued.

35. I bear in mind that these children hold UK passports. They were born here and have spent significant periods of their childhoods to date in this jurisdiction. Since they have been of school age, each has, with their parents' consent, attended a pre-school or nursery in this jurisdiction to ensure consistency of their education during periods away from their home in Zambia. D has just completed what amounts to a full academic year at the school which he attends locally to the English home purchased by the mother. The extensive and regular three month stays which occurred with the father's consent have resulted in a state of affairs whereby their younger son, B, has spent almost a quarter of his young life to date living in this jurisdiction with his mother and surrounded by his extended English family.
36. Of particular significance in this case is the fact that the home in which they have lived for almost 11 months whilst they have been in England is a home which was specifically purchased as a family home. It was acquired as such with the specific consent of the father. It is a home environment in which both children are now entirely happy and settled but for the fact that they do not share that home with their father who is missing as a daily part of the lives they formerly enjoyed. The school reports, confirmed by Mrs Magson, demonstrate the extent to which the boys are integrated into, and absorbed by, their day-to-day school lives and the friends and social networks they have made there. They are having frequent and regular contact with the extended maternal family including their young cousins who appear to be an important element of their wider family connection.
37. The extent of their settled integration into their school and home lives is supported by the reports of D's improved presentation at school. Having initially presented as a slightly anxious child who was no doubt affected by the parental conflict and tensions which flowed from his parents' separation and the constant arguments which the father accepts were a daily feature of life in Zambia as the marriage disintegrated, he is now happy and flourishing. He is described as a child who has "blossomed" in recent months.
38. Were these proceedings brought under the Hague Convention, that finding would have deprived the court of jurisdiction to order a summary return under Art 12. It does not have the same impact on these proceedings because the court must go on to undertake

a welfare assessment as to whether or not an order for return is nevertheless in their best interests. For these purposes, the overarching parameters of the 1989 Act are engaged including the so-called checklist in s.1(3). Its component elements include the following:-

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

39. As I have stated, the welfare of each of these children, viewed in the widest sense, is this court's paramount consideration. Whilst this case was allocated a time estimate of only 2 days with most of the evidence having to be heard in one day to allow time for submissions on day two, I was able to do a substantial amount of pre-reading before the case began. I am therefore satisfied that I have sufficient information and a full immersion in the facts and feel of this case to produce a welfare analysis. The parties have assisted me in that analysis with their written and oral evidence, as has Mrs Magson in the careful and considered oral evidence she gave me yesterday.

40. She formed the view in her report that this was a finely balanced case. Yesterday, she told me that, having heard the parents' evidence and read the material which was not available to her when she prepared her report, she had a number of concerns for these children. I share her views on both points.

41. The issue which lies at the heart of this case and the decision about what to do in terms of the natural centre of gravity for any future litigation in relation to these children is the fracture in the close and loving relationship which this father has with his children. Time and distance have had an inevitable impact on the quality of that relationship. The father is rightly concerned about what he perceives to be the loosening of those bonds in circumstances where he has not seen his children to hold them and hug them

for the best part of a year. Any parent or adult who has experience of trying to engage a young child on a digital video platform will know how difficult it can be to hold their attention for any consistent period. Other distractions of daily life are ongoing around them. There is often an absence of knowledge of the minutiae of their daily lives and friendships to underpin the sort of easy, relaxed dialogue such as was once the subject of daily life over the kitchen table at home. The children themselves lose perspective on the day-to-day reality of an absent parent's life when all they see is a face on a computer screen or iPad.

42. I accept as entirely genuine this father's love for his children and his concerns about the loss of that closeness which he enjoyed when this family lived together as a unit at the family farm. I have read, and re-read, the document which he produced about life at the farm at [C:326]. Together with the photographs he has provided, it is an eloquent narrative of the boys' lives as they were lived on a daily basis. It represented a lifestyle for his children which has a clear resonance with the childhood he enjoyed growing up in Zimbabwe. It is a lifestyle which, as he accepts, runs through his very veins and which has informed and shaped the adult and father he has become.
43. I am equally clear that Mrs Magson is right when she tells me that for children of this age, frequency and consistency of contact with an absent parent is important for retaining and developing those familial bonds. The father is desperate to see his children restored to what he regards as their home and to grow up enjoying a life which will be similar to his own experience of childhood. He has invested time, energy and scarce financial resources in his attempts to achieve those ends and I accept that he has done so as a result of the love he has for these children. Whatever the decision of this court, I recognise, and the parties accept, that whether they are living here or separately with their mother in Zambia, his relationship with both his sons is of significant importance if they are to grow into the happy well-adjusted children both their parents would wish them to be.
44. The new reality of family life is that these children will be living separately and apart from their father wherever they are living. It is no part of the father's case that arrangements should change in relation to their primary care. He acknowledges the importance of the role of their mother in their lives and I accept his evidence on this

aspect of the case to be entirely genuine. For the last ten months and more, she has provided the nurture and the care which underpins the stability which they currently experience in their home in England. They naturally look to her to meet all their most basic needs. Her ability to perform that role is central to their welfare and it will continue to be so throughout the formative years of their childhood.

45. If the court orders a return to Zambia, the mother will follow the children. Because of the geographical realities of the country to which they will be returning, distance and travel will always be a feature of any ongoing arrangements which these parents, or a court, put in place for the children. They will be commuting between two homes which are likely to be separated by significant distances of up to hundreds of miles. On the assumption that the mother secures the necessary residence permit to enable her to work in Zambia, she will need to find employment which fits around her obligations to the children. For the purposes of her immediate return, even the rented property which has been identified by the father is some significant distance away from the family farm in which he will be living. His original proposal was that she should live in a rented property which was some seven hours' travel from the farm. Were the boys in due course to attend Martin House (the Zambian option apparently favoured by both parents) as day pupils, the weekend contact arrangements would involve a regular ten hour round trip and it is difficult to see how these arrangements could ever be viable whilst the children were so young. Even when they grew older, it is difficult to imagine how such long journeys could be accommodated into weekly or bi-weekly contact.

46. I accept that D has some fond recollections of his previous life on the farm (despite his reference to Mrs Magson about his home being in Zimbabwe) but the reality of both children's lives in the event of a return are likely to be very different. A return would inevitably represent change and would uproot them from all that has become familiar and safe in England. Quite what that future would look like is highly uncertain.

47. In addition, I have significant reservations about a number of matters which concern an evaluation of the children's welfare and wellbeing.

48. I am far from persuaded that the farm is financially secure as the vehicle which will provide the father with both his home and his income. I agree with the submissions

made by Mr Jarman that the ongoing negotiations with what is effectively the new mortgage provider, or ‘funder’, are still not complete. Whilst there is the prospect of securing a deal on the higher settlement figure proposed by that provider, the position could easily change on the production of the outstanding accounting information. The cashflow projections produced by the father show the margins to be very tight. On a best case scenario, it will take some time to reach even a break-even position. To a significant extent, the mother’s and thus the children’s financial security in a home of their own in Zambia depends upon the continuing stability of the father’s own financial position. He accepts that the farm is currently the subject of a foreclosure judgment secured on appeal in the Zambian courts. The fact that he has not yet been evicted is no guarantee to a successful outcome of the ongoing remortgage negotiations.

49. Furthermore, if the children are to return, the court needs to be satisfied that the financial arrangements for their support and education (including, it appears, private school fees over a number of years) are in place and will continue. The father currently has only minimal cash resources available to him and those are likely to be further depleted either by ongoing legal costs and/or by the need to prop up a precarious business cashflow situation. The package of financial support which he offers the mother, including her rent, will make significant inroads into that cashflow. Whilst he has made two rental payments on the property he proposes she should live in, he has in the past barely managed to sustain their domestic economy in a single family home. He is currently \$1.3 million in debt with no discernible fixed income and that debt has been accumulated over the period when the parties have lived together sharing their common family expenses.

50. In relation to the father’s views about physical chastisement of the children, I accept the provenance of those views. The man has been shaped by the experience of the boy. Physical chastisement has been his experience of childhood discipline. It is a culture which is deeply embedded not only in his own psyche but in the culture of those around him. He believes in it passionately as an effective element of his responsibility to raise disciplined, well-mannered children. He appears to lack insight into the effects of physical punishment (or the ‘hidings’ as he referred to them) on his young son but D found his own voice about those experiences and expressed them clearly to Mrs Magson. As with his attitude to the ash pit incident when B burnt his feet badly, much

of this conflict flows from a significant divergence of views between the parents about how their children should be raised. Whilst I do not find him to represent a physical risk of harm to these children, I do find it difficult to accept that a man with an admittedly quick temper would think first of formal promises given to a court in England were he confronted with a situation in which he could not control the children's behaviour other than by resorting to smacking them with or without the 'fire stick'.

51. This concern feeds into a more fundamental concern which I have about this mother's psychological and emotional stability. I well understand the points argued with much force on behalf of the father by Ms Amonoo-Acquah. I accept that, prior to August 2020, there is no evidence of any formal complaint to any welfare agency in Zambia. The medication which she is currently prescribed to assist her to cope with the often overwhelming feelings of anxiety and unhappiness which she has described in her evidence had not been a feature of her previous life in Zambia. Ms Amonoo-Acquah invites me to find that whatever anxieties are giving rise to the need for this level of medical intervention, they are likely to have been generated by this litigation rather than by the prospect of a return to Zambia with the boys. She further points to the fact that, as recently as last year, this mother was attempting to persuade the father to join the family in England.

52. These are valid points to make. However, in my judgment, the mother's obvious and deteriorating emotional frailty, accepted by Mrs Magson, flows from a more fundamental psychological and emotional deficiency. She was plainly deeply unhappy in Zambia since shortly after B's birth and the father knew this to be the case. Her extended stays in what she regarded as her natural 'home' in England were the means by which she coped with, and accepted, life in Zambia. The father created in her an expectation that he would address these difficulties by relocating to England. When that opportunity was taken from her, she responded by emotionally and physically withdrawing from her engagement with him, with family life and I suspect that impacted on her ability to care as she would wish for the children. I have very real concerns that she could not tolerate a return to that environment as a single, divorced woman with all the social and professional isolation that move would entail. Whilst I accept that she would do her best, I suspect that her best would not deliver for these children what their welfare demands. She would perceive herself to be returning to the

financial control of a former partner who, on his own admission, was no longer concerned about her circumstances save to the extent that they impacted on his children.

53. I find the likely cumulative effect of all these circumstances to be wholly inimical to the interests of these children who are now settled in their homes and schools in this jurisdiction. Save only in relation to the urgent need to give full and proper consideration to the arrangements which need to be put in place to restore the father's relationship and contact with these children, I do not consider in the circumstances of this case that there is any reasonable basis for reaching a considered conclusion that a return to Zambia is in their best interests. For these reasons, I decline to accede to the father's application for summary return.

54. As I indicated to counsel at the conclusion of the hearing, it is essential that urgent consideration is given to the restoration of the children's relationship with their father and his with them. The parties will have had time to reflect on the decision which I communicated to them at the conclusion of last week's hearing. I am told that the mother has recently commenced divorce proceedings in this jurisdiction. Those proceedings will take their course and I would hope that this family will not become involved in expensive litigation in relation to the formal dissolution of their marriage which each appears to accept to be inevitable. Before relinquishing any ongoing issues in relation to international contact to the Family Court, I wish to ensure that arrangements are put in place to ensure a swift resumption of contact between this father and his sons. I know that there will have been ongoing discussions between the parties and their legal advisers. I understand that a further hearing in relation to this issue has been listed in my diary before the end of this term when I hope we can make substantive progress towards this end.

Order accordingly