



Neutral Citation Number: [2022] EWHC 1965 (Fam)

Case No: FD22P00386

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2022

Before:

MR DAVID LOCK QC
SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

AB

Applicant

- and -

BB

Respondent

Michael Hosford Tanner (instructed by **A & N Care Solicitors**) for the **Applicant**
Edward Lamb (instructed by **Ellis Jones Solicitors**) for the **Respondent**

Hearing dates: 21 and 22 July 2022

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.

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 child and members of the child's 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

Mr David Lock QC:

1. This is an application by AB (“**the Mother**”) under the Child Abduction and Custody Act 1985 for the summary return of EF to Cyprus, where the Mother claims the child is habitually resident. The Respondent is BB (“**the Father**”) who defends the application on the grounds that (a) EF was habitually resident in the UK at the relevant date, (b) the Mother consented to EF’s relocation to the UK or otherwise acquiesced in the child’s relocation to the UK, (c) that returning EF to Cyprus would expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation.

2. This case commenced as a remote hearing over MS Teams on 20th July and the Mother started to give evidence during that hearing. However, it rapidly became clear that it was impracticable to continue to hold this matter as a remote hearing because the Mother was unable to access the documents. She had been provided with a e-bundle of documents consisting of 279 pages which she was only able to look at on a mobile telephone, whilst at the same time as taking part in the hearing via another mobile phone. Cross examination by reference to the bundle was not possible because the Mother was not able to download the whole of the bundle and could not navigate amongst those pages should could download to find any documents to which counsel was attempting to refer her. I accept that this matter was originally scheduled to be held as an in person hearing and was only changed to a remote hearing relatively late in the day. However, once the change was made, it seems to me that checks ought to have been made to ensure that the Mother had access to a mobile

device that would allow her to access the bundle, and hence be able to do herself justice when she was giving evidence. Alternatively, if she did not have access to such a device, it was essential that she was provided with a hard copy bundle. I was told and fully accept that legal aid funding restrictions may well have made it difficult for her solicitors to arrange for a paper bundle to be sent to her. Nonetheless, and without being too critical of the Mother's solicitors who were placed in a difficult position due to the change in the format of the hearing, the Mother's Position Statement anticipated that she would be giving evidence and hence I consider that she should have been put in a position which enabled her to do so properly. Fortunately, a court room was able to be made available at short notice and this matter was changed to an in-person hearing for the second day.

3. I am grateful to both counsel for using the single day efficiently and assisting their clients and the court to allow the matter to be concluded quickly. Both the Mother and the Father gave live evidence about limited issues (as set out below) and counsel were able to make their submissions.

The background.

4. When giving evidence, the Father was frank in recognising that the circumstance of the marriage were, to use his description, "*unusual*". I agree with that assessment but also recognise that parties to an unusual relationship have the same rights and expectations as those in a relationship which is less unusual.

5. The Father is a UK national and was born on 20 October 1957 and so is now aged 64. He has lived in the Bedford area for most of his life.
6. The Mother is a Russian citizen and was born on 16 December 1988, and is so now aged 33. Accordingly, there is a 32 year age difference between the couple. The Father had had two significant relationships before he met the mother, and has children from each of those relationships. He remains on good terms with his children and two of his children have provided helpful statements in this case, to which I will refer below. But the age difference between them and their different cultures have inevitably led to challenges in the marriage.

My assessment of the credibility of the witnesses.

7. Before recounting the history and setting out those facts I have found proven where there is a dispute, it is necessary to say something about the way in which the Mother and Father gave evidence and my assessment of their credibility. The Father gave evidence in a largely straightforward way and was fully prepared to accept criticisms of his own conduct. He appeared to me to take a relaxed approach to life and does not appear to be a person who was unduly focused on making a success of his chosen career. He has been consistently in work but has sought to make his job fit around his lifestyle rather than vice versa. He seemed to me to be someone who treated himself as being happy to go with the flow in the ups and downs of that unusual relationship. Despite everything that has happened, he clearly continues to have a deep affection for the Mother and a desire to support her, even if her conduct leaves him feeling exasperated at times. I have no doubt he is not

faultless and may well have lost his temper from time to time during the marriage, although there was no medical evidence to support any allegations of assault against the Mother. I also consider that he may not have entirely trusted the Mother, hence for example usually keeping EF's passport himself rather than allowing the Mother to hold it. Overall, I accept that he was doing his best to be an honest witness and was largely trying to assist the court, although his unduly relaxed approach to the management of his own affairs did highlight his own shortcomings, most of which he readily accepted.

8. In contrast, the Mother came over as an entirely more complex and difficult witness. The Mother speaks conversational English but it is clear that there are limitations in her language skills. She was assisted by a Russian interpreter when giving evidence but often responded in English when she was able to do so. She made the fair point that, when looking at things she has written in texts or messages, she was translating words from Russian in her head and thus meanings can have been lost in translation. Hence, for example, she said that the word "move" in Russian is only focused on the process of moving and not on a long term commitment to move to a new place. I fully take those limitations into account in assessing her evidence.
9. I also have no doubt that she has a commitment to the wellbeing of her son, albeit that this comes out as a desire to control her son's actions to suit her own particular view of the world. However, even having regard to the allowances set out above, I regret to have to say that time and again when giving evidence she displayed a total inability to answer a difficult question, let alone give me any confidence that she was answering the question honestly.

She readily accepted that, when describing events in the past, she gave answers to people because the words she spoke were what she understood the listener wanted to hear as opposed to being something that she believed to be true. Hence, for example, she repeatedly claimed that she only said to people who were buying goods from her in December 2021 that she was selling because she was moving to the UK. She claimed that this was something she had to say to explain the low price for the sale rather than being objectively true. She also said that she discussed moving to the UK on a permanent basis with the Father's daughter, T, even though she claimed she had no such intention. Again, she said she was saying what she thought T wanted to hear rather than saying things which were necessarily true.

10. Her counsel urged me to accept that she was a woman who was in an isolated situation, living in a country away from her family, and that she was economically weak because she was totally financially dependent on the Father. I accept that this characterisation of the situation is correct. But she struck me as an intelligent young woman who had deliberately made her own choices as part of a plan to move away from Russia and to allow herself to live a life where she did not have to work.
11. There is also troubling evidence from a mobile phone which the Mother gave to EF to use when he came to the UK. Mother was in contact with a large number of men and appeared to be seeking relationships with them during the period prior to her moving to the UK. One of the messages said "*I think I'm gonna have to leave EF with his dad in the UK and fresh start*". These messages

must call into question the extent to which the mother was genuinely emotionally committed to her role as EF's mother.

12. A further example was that her initial evidence was that she only allowed the Father to take EF to England for a holiday and "*I had every intention of returning after our stay in England*". When documents were put to her suggesting that she had been intending to come to England on a long term basis and that the plan was for the Father to apply for a spousal visa for her to allow her to stay in England permanently, she changed her account. She then insisted that the Father had tricked her into agreeing to come to England to live on a long term basis because he never had any intention of ever applying for a spousal visa for her. Further, the Mother was not prepared to accept that there was any contradiction between her claim that she never intended to come to the UK permanently and her contradictory claim that she did agree to do so but was tricked by the Father into making that agreement because he never intended to apply for a spousal visa. On the facts of this case, I consider that both accounts of events cannot be true. The Mother was either never party to plans to come to the UK and was only ever agreeing to come for a fixed holiday, or she did agree to do so even though the plans never worked out because she never got a spousal visa.
13. I have given myself a *Lucas* direction and reminded myself, in particular that the fact that the Mother has been untruthful on past occasions does not mean she is being untruthful when giving evidence. However, the Mother's unwillingness or inability to answer most of the questions gently put to her by the Father's

counsel in cross examination means that it is very difficult for me to know how much reliance I can put on the underlying truth of her written or oral evidence.

14. Where, on the balance of probabilities does the truth lie? Having heard the Mother give evidence, I regret that I have concluded that I cannot rely on her written evidence or replies in oral evidence as constituting the truth unless they are backed up by contemporaneous documentary evidence. Where there is a conflict between the evidence of the Mother and the Father, I will look primarily to the contemporaneous documents to identify what they say and rely on those, especially where supported by other evidence. If the only evidence is the oral evidence of the Father and the Mother, I will generally prefer the evidence of the Father.

The facts.

15. In early 2011 the Father and the Mother met via a dating website and started an online relationship. They got on well despite the age difference and the Father travelled to Moscow to meet the Mother in August 2011. The relationship developed and the Father extended his stay in Russia for a short period. The Mother then applied for a visa to enable her come to England, although I am unclear about the nature of the visa that was applied for. That visa application was rejected because the UK visa authorities did not accept the genuine nature of the relationship between the Mother and the Father, presumably because of the age difference. That led to the couple looking for somewhere else within Europe for the Mother to live so that they could carry on their relationship, and they settled on Cyprus.

16. The Mother had been undertaking higher education studies in Moscow when they met but she abandoned those studies when she moved to Cyprus in 2011. From that time she was not engaged in either study or in full time employment and was entirely financially dependant on the Father. He rented an apartment in Paphos and the Mother moved to live there. The Father could not secure work in Cyprus and so he remained in employment in the UK, but visited the Mother in Cyprus on a regular basis. The couple married in Cyprus 31 October 2011 and the Father split his time between working in the UK and visiting his wife in Cyprus. Meanwhile, the Mother developed her own life in Cyprus.
17. The Mother ended the relationship in January 2013 and moved with a new partner to Trinidad although I note that this incident is not referred to at all in the Mother's statements despite its obvious significance. The Father describes that he was "heartbroken" when she left him to start a new relationship. That new relationship did not go well and she contacted the Father and claimed that she was controlled and manipulated by her new partner. She reached out to the Father for help and he assisted her. The result was that, in about April 2013, the Mother returned to live in Cyprus and their former life appears to have resumed. The Mother was granted a permanent residence visa in Cyprus from February 2014 and the Father funded a move for her to a more permanent rented apartment. The Father, as an EU citizen (at the time) had the right to live and work in Cyprus.
18. The couple travelled to Russia to spend time with the Mother's parents in 2013 and were also able to obtain a visitor's visa for the Mother to come to the UK

in December 2014. That gave the opportunity for the Mother to meet members of the Father's extended family, including his children from his previous relationships who were much nearer in age to the Mother. At about this time the Mother became pregnant.

19. The Mother and the Father both agreed that the Mother should travel to England to give birth and EF was born in the UK on 9 September 2015. It is common ground that the Mother has always chosen to have an unusual diet for herself. When the couple first got together the Father reports that the Mother's diet was largely limited to her eating cabbage and carrots, but it later included beetroot. This diet slightly varied over the years but I accept the Father's evidence that it was always limited to a small number of raw foods. However, there is no evidence that the Mother's diet gave rise to medical problems for her.
20. However, the Father's evidence is that he was concerned when he saw the Mother becoming "*obsessive over his [i.e. EF's] eating habits*". He says that he was concerned about her mental health as well as the effect on the child but there is limited evidence that EF's diet as a baby or toddler caused him problems. There were however 2 incidents where EF appears to have got into danger whilst in his Mother's care. The first took place in August 2016 when EF's maternal grandmother was visiting Cyprus EF's pushchair was hit by a car. EF suffered bruising and was taken to hospital. The doctors wanted to keep EF in hospital overnight for observation but the Mother was not prepared to permit this and discharged him. The Father immediately came from England to Cyprus when he learned about this incident and expressed his concerns but

appears to have been reluctant to confront the Mother or persuade her to seek further medical care.

21. Secondly, and possibly more seriously, on 12 May 2017 EF wandered away from his Mother's sole care whilst in a car park and walked into the road. The father alleges that the Mother was talking to a friend and was so absorbed in this conversation that she failed to notice that EF had walked away. The Mother confirms that this incident happened and offers no alternative explanation. EF wandered onto a road and was in a collision with a truck, suffering a fractured foot and bruising, resulting in hospital treatment. This incident must have been frightening for both the Mother and the Father when he later learned about it. It resulted in the Mother being charged with neglect by the Cyprus authorities. That case was still pending in November 2021 when EF moved to the UK in circumstances but, despite not attending a court hearing about the case in February 2022, the evidence is that the criminal complaint against the Mother was dismissed in June 2022.
22. In late 2017 the Father and a friend started a vehicle export/import business aimed at purchasing cars in the UK and selling them in Cyprus. The Mother became involved in the Cyprus end of the business and the Father reports that she enjoyed this and it made her less focused on her concerns about EF's diet. It seems to have been the trigger for a general improvement in relations between the couple. It also provided the Mother with a source of funds because the cars were sold in Cyprus. Various members of the Father's family travelled to Cyprus and the Father describes enjoying holidays in Russia and in England during the period 2018/2019. However, the emergence of the

coronavirus pandemic in early 2020 changed things for this couple, as it did for millions of other people. The Mother's response to the pandemic was perhaps consistent with her somewhat unconventional approach that the Mother had to eating and medicine. The Father says:

“AB was becoming increasingly concerned about the virus. It wasn't until I returned to Cyprus on 17 July 2020 that I realised the extent of her views. She had become extremely paranoid about the virus and believed various conspiracy theories. She was spending hours at a time on her phone locked away in her room researching conspiracy theories. AB strongly believes that we were going to have chips put into our bodies and that PCR tests were designed to kill us all. She was also telling these things to EF which I did not agree with as he was becoming increasingly anxious and scared about Covid unnecessarily. AB told me that she believed that we were going to be put into a concentration camp and EF was going to be taken away from her. I often had to calm her down and reassure her that these things were not going to happen. However, there is no reasoning with AB and she did not listen to anything I had to say ..

The pandemic triggered AB's obsession over EF's health and diet. She became extremely restrictive in what EF could and couldn't eat and would only let him eat raw foods again. EF found this period of time very distressing and you could tell he was not coping well on such a restricted diet. I remember a distressing incident which involved AB forcing EF EF's mouth open and interrogating him about what he had eaten. She got up in his face and shouted at him causing him to cry. She threatened to remove all of his toys and phone until he told her what he had eaten. EF was very upset at this point so I picked him up and took

him out of the apartment. I went to the police station as I didn't know who else to turn to for help. The police listened to my concerns but did not take matters any further. I encouraged AB to go to the doctor during this time to seek help in relation to her mental health and anxieties but she refused to accept she needed any help”

23. The mother has not responded to this evidence in detail. She simply says that, as many people were dying, it was understandable that she did everything possible to ensure that she and her son did not catch the virus and that she was “*simply concerned to ensure that we stayed healthy*”. Whilst I accept that this is plainly correct, I note that the Mother has not responded in any way to the complaints that she believed conspiracy theories relating to the pandemic and was forcing her views on EF. In the light of the subsequent events, I accept the Father's evidence that the Mother's actions were motivated by her belief in conspiracy theories concerning the pandemic and his evidence about the effect that this had on EF. For the avoidance of doubt, I should say that I am satisfied that there is no evidence that there is any truth in these type of conspiracy theories.
24. The Father's evidence is that his long-term plan was always for the Mother and EF to move to live in the UK on a permanent basis, but it appears he had considerable difficulty in persuading the Mother to agree to this plan. Despite his wish for the family to live together in the UK, he was quite open about his concerns as to whether he would be able to secure a spousal visa for the Mother from the UK authorities. His concern appears to have been grounded in his experience in 2011 when the UK visa authorities refused to believe in

the genuineness of the relationship between the Mother and the Father, and he said he needed “history” to show they were wrong. He said, and I accept, that he felt he needed to prove that the relationship was genuine by demonstrating that it had a considerable history and that would take a number of years. In cross-examination, he was repeatedly challenged as to why he had never made an application for a spousal visa for the Mother either before or after EF’s move to the UK in November 2021. His response was, in effect, that prior to November 2021 the couple had never got to the point where there was sufficient agreement between them to make the application. Although that evidence was criticised, it fits with the evidence of the Mother that she was wary about moving to the UK and, for example, when this was discussed in about October 2020 she specifically refused to leave Cyprus to move to the UK despite being pressured to do so by the Father.

25. I accept the evidence from the Father that both the Mother and the Father discussed the possibility of the Mother and EF moving to the UK over an extended period and they agreed in principle to do so in the autumn of 2021. However, I also accept that there was no final agreement between them as to precisely when this would happen, and the situation became more complicated because of the lockdown restrictions associated with the pandemic.
26. Nonetheless, there is considerable evidence that by late 2021 the Mother was moving towards making a decision to relocate to the UK or at least was saying that she would move to a number of different people. The Father’s daughter, C, who is about the same age as the Mother, explains how she had conversations with both her Father and with the Mother in September 2021

about the practical arrangements of moving to the UK. The Mother asked her about schools in England, year structures, school uniform and PE kits. She says of the Mother:

“She expressed concern[ed] to me about his delay of reading and I assured her that I’m sure he would be able to catch up quickly. AB discussed with me timings and explained that they were going to find somewhere to live and sort out her Visa before moving to they [sic] were aiming for October time. I wished her good luck with the move confirmed that it will be good to see her and EF again. She responded by saying “would be fantastic for EF as he is missing out on children company his age. Even he made some friends he wanna spend like all days with them not possible here they all have things to do Especially when everyone speak English lol”. I didn’t ever really consider the fact that EF and AB by people but did not speak English and when thinking about it, it must have been really hard for them both. I responded to say “oh yes, I never thought of that lol”. The conversation ended with AB saying she looked forward to seeing us all soon I told her to message me anytime if she needed anything”

C has exhibited the trail of text messages which is accurately described in the above paragraph.

27. The messages sent by the Mother to C were put to the Mother in cross-examination. The Mother’s response was, in summary, that this was a witness for the Father and that she was simply trying to be nice to the Father’s family but did not have any real intention to move to the UK. Even taking full account of the potential misunderstandings because English was her second language, I reject that explanation as it is plainly inadequate. It seems to me that either

the Mother was deliberately lying in having these conversations, because she never had any intention to move to the UK, or these were her genuine views of the time and she is now seeking to disown them as a result of subsequent events.

28. The evidence is that, in the period leading up to November 2021, the Mother was genuinely intending to move to the UK on a full-time basis is also supported by the evidence of another of the Father's daughters, T. She has visited Cyprus on a number of occasions and described her most recent short visit when she stayed with the Mother from 18 to 20 November 2021. She says:

“Whilst I was in Cyprus we all discussed in detail the fact that they would soon be moving to England but I did not realise that it would be as soon as 27 November, only a week after my trip. I knew it would be before Christmas because I discussed with AB what we would do over Christmas in London and in Milton Keynes. When I found out that AB had issued court proceedings for EF and has told the court that she did not consent to EF living in England, I was confused and shocked as this completely goes against the discussions I have had with her and the reality of the situation on the ground”

29. T has produced Facebook messages between her and AB which included the following exchange from 22 August 2021:

“How long do you plan on staying in the UK with us for.

“I said we are moving ...There”

30. Once again, the Mother response is that she never had any intention of moving to England and was simply saying what she thought T wanted to hear. I do not accept that this is true. Looking at the evidence as a whole, I conclude that during the autumn of 2021 the Mother and Father had reached a clear and settled view that the Mother and EF would be moving to England on a long-term basis. The Mother's messages included references to her working in England and to EF going to university, plainly in England. However, I also accept that this whole plan was contingent on the Father making a successful application for a spousal visa and that the Mother and the Father had no discussions about what would happen if that application was unsuccessful. Any proposed visa application was inherently complicated because the Father accepts that he was aware that generally an application for a spousal visa could only be made when the spouse was outside the UK, although he had heard about a method of applying after a person had come on a visitor's visa.
31. He had not sought professional advice but his general understanding was that it would take a number of months for such a visa to be granted, and it was easier for the application to be made by someone outside the UK. Accordingly, it seems to me that reality was that the couple were moving towards a situation where they could attempt to secure their future together in the UK, but they both recognised that the main stumbling block to achieving this was securing a spousal visa. That potential application had become more complicated because, in about October 2021, the Father was made redundant from being employed by his friend's firm, SM. He changed to working for them on a self-employed basis. It seems to me that the Father wanted to bring his wife and child to live in the UK but was worried that a spousal visa application would

be refused because he would be unable to demonstrate he had sufficient income to meet the financial criteria. However, rather than being open about this to his wife, he appears to have allowed matters to drift. I don't think this was malicious or indicative of a plan that he would never make the application but because he was afraid of having the application rejected and maybe was hoping that something would come up which might assist him to make a stronger application.

32. I reject the claim by the Mother that the Father was involved in a nefarious plot to mislead her into allowing her child to come to the UK in circumstances where the Father never had any real intention to apply for a spousal visa for her. It seems to me that the Father can be legitimately criticised for prevarication and taking the matter of the visa in a lackadaisical manner, but I do not accept that he had any malicious intent. The reality was that he knew how difficult it was likely to be to get a spousal visa and was putting off the date when he made the application because of the potential difficulties.
33. However, matters came to a head somewhat unexpectedly on 25 November 2021. By this time discussions had already reached an advanced stage about a move to England, as is clear from the Facebook exchanges in November 2020. He explains the situation as follows:

“The turning point and final decision to move to England was made on 25 November 2021. It was a Thursday morning and I had dropped EF off at school and drove to Polemi to visit a friend. Whilst in his shop I received a call from AB in a panic. She informed me that the Cyprus authorities were implementing PCR tests for children in primary schools and the testing was going to start on Monday,

29 November 2021. AB insisted that I return home straightaway to start the process of moving to the UK. I checked that we were on the same page and that moving now would mean we were moving permanently as it was not fair to keep messing with EF's education. She agreed and said she will stay in Cyprus to deal with selling our belongings, attend the criminal hearing, obtain a visa and then moved to England with us shortly thereafter"

34. The Mother does not substantially dispute this account of events, save that she does not accept that she ever had an intention to move the UK on a permanent basis, albeit she accepts that this is what she said to the Father and others. She accepts that the trigger point for EF moving to the UK was her very strong opposition to EF having a PCR test, because she firmly believed that the PCR testing regime was being operated by government bodies for malicious purposes. Whilst I accept that this was her belief, there is absolutely no evidence to this was true and, to be fair to her counsel, I was not invited to assume that it was true. Nonetheless, it is clear that in late November 2021 the Mother was in a state of considerable panic and wanted to ensure that her son left Cyprus immediately in order to avoid him being subject to a PCR test. I also accept the Father's evidence that it was agreed between them at this time that the Mother would remain in Cyprus for as long as it was necessary to unwind their affairs in that country before coming to the UK. Part of that plan may well have been that she would obtain a visa to come to the UK.
35. It is unclear as to who, between the Mother and the Father, first proposed that the Mother should swear an affidavit giving permission to the Father to take EF out of Cyprus. The Father appears to have been concerned that he may have

faced difficulties at the airport if he did not have evidence that the Mother was agreeable to him taking EF to the UK, and he was supportive of the Mother swearing an affidavit to ensure that he did not have any such difficulties. They both attended the District Court of Paphos on 26 November 2021 to prepare a suitable affidavit. The Father's recollection is that the official who was supervising the process insisted that a return date be inserted and he was fairly relaxed about a return date because he did not believe that EF would ever be returning to Cyprus and thus a stated return date was wholly notional in his eyes. In contrast, the Mother insists that a defined return date was a key part of the plan. The Affidavit stated as follows:

"I undersigned AB, from Russia holder of Russian Passport [number] make oath and say as follows:

I allow my husband BB Passport [number] to take our son, EF, Passport [number] for holiday to United Kingdom from 27.11.21 to 30.06.22"

36. It seems to me that the truth about the intentions of the Mother and Father in relation to this document probably lies somewhere between the explanations advanced by each of them. I accept the Father's explanation that the affidavit was misleading in suggesting EF was coming to the UK for a "holiday". That was wrong because they had agreed that EF was coming to the UK on a hopefully permanent basis, albeit neither of them confronted the potential difficulty which would arise if the Mother was refused a spousal visa. The Mother did not have a settled intention to continue to live in Cyprus but I find that that she inserted the return date in the affidavit as a form of "insurance policy" so as to give her some future leverage if she was unable to obtain a

spousal visa and therefore could not move to live in the UK. I have already referred to the fact that it appears that the Father did not entirely trust the Mother, as demonstrated by his retention of EF's passport. I find that that lack of trust was mutual and the Mother inserted the return date in the affidavit in order to protect herself in the event that either the Father never made an application for a spousal visa or the spousal visa application proved to be unsuccessful. What is reasonably clear is that the affidavit constituted a clear statement by the Mother of the extent to which she was prepared to permit her husband to keep EF in the UK with her permission. Hence, to that limited extent, I accept the Mother's case on this point.

37. EF then travelled to the United Kingdom with his father and commenced living with him. The Father rented a new property as from January 2022 and created a home for himself and EF. Meanwhile, the Mother remained in Cyprus and took steps to wind up their affairs there. There is evidence that she sold a large number of items on Facebook. She alleges that she only disposed of items belonging to the Father but that is plainly not correct. One of the messages from 16 January 2022 refers to "*female closed shoes one pair 37 high heels brend (sic) new the rest flat ballet shoes 3 pairs size 38*". That is plainly evidence of the Mother disposing of her own goods, not just those of the Father.
38. At some point the Father cancelled the standing order which paid the rent on the Paphos apartment they then occupied, with the tenancy effectively ending at the end of January 2022. The Father was criticised about this during cross examination. In response, he explained that this was all part of the winding up of their Cyprus affairs and he expected the Mother to move to England after

her court hearing in February 2022. He also explained that the Mother had access to funding from selling goods as well as selling one of the last cars related to the import/export business and therefore suggested she had plenty of money to be able to extend the tenancy for as long as was needed prior to her departure if she wanted to do so. I do not accept that there is any merit in this criticism of the Father. There is extensive evidence of messages flowing back and forth between the Mother and the Father during this time, but there is no evidence that the Mother raised any complaint about the cancellation of the rent Standing Order. The Father's evidence is that the Mother was present when the end of the tenancy was agreed with the letting agent and agreed to an end of January date. Whilst the Mother challenges that she agreed this, it does not seem to be in dispute that she knew that the tenancy was coming to an end and raised no concerns about it. It seems to me that the criticisms that are now made by the Mother's counsel about this matter are inconsistent with the overwhelming evidence that the Mother was selling up her possessions in Cyprus with a view to moving to the UK and so would have no continuing need for the apartment.

39. I accept that the Mother did not dispose of all of her possessions in Cyprus and may not have entirely cut her ties with the island. That was perhaps understandable because she must have been aware that she could not be sure for the long-term future in the UK. Nonetheless, I accept that she was working out the agreed plan of selling up in Cyprus with a view to moving to the UK and ending the tenancy was part of that agreed plan.

40. On 13 January 2022 the Father messaged the Mother with a photograph of EF in his new school uniform. The Mother sent a “thumbs up” response and commented on his shiny shoes. She also asked “*news about visa?*”. The Father did not respond to that question directly but asked about how much money she had managed to acquire from the sale of their goods. The Mother did not follow that up but, at about this time, the Mother and the Father agreed that the Mother could not wait in Cyprus whilst a spousal application visa was processed and so the Father would apply for a visitors visa for her. The unspoken implication of that decision was that there would be a delay in her spousal visa but it appears that, at this point, the Mother was anxious to see EF.
41. On 19 January 2022 the Mother messaged the father to say “*I want to make good income somehow in UK... So EF won't have to worry about money when he goes University*”. That is further evidence that, at this stage, her mind was focused on moving to the UK on a permanent basis.
42. The Mother was due to attend court in Cyprus on 16 February 2022 in connection the child neglect charge dating back to 2017. The Father explained:
- “AB did not want to wait for me to obtain a spousal visa so we agreed she would travel over on a visitors visa in the first instance and stay for 10 days before having to return for her court case. EF and I were happy to have her with us in the UK and it was nice to be together as a family again”*
43. The Mother then decided that she was not prepared to return to Cyprus for her court hearing on 16 February 2022 which was due to be held in relation

to the child neglect case. It also transpired that the Mother had attempted to sublet the apartment in Paphos to asylum seekers. The precise circumstances around the subletting are wholly unclear but it clearly caused difficulties with the landlord, and I do not need to make any finding about that matter. At about this time the Father reported that the Mother's level of anxiety about EF's diet was increasing and she was objecting to him having school meals. A flavour of the difficulties emerges from the evidence of T who explains:

“Throughout this time we had a daily, constant challenge of monitoring and maintaining communication with AB. On the second day of him being in England, I vividly remember her calling him telling him not to drink tap water as it would poison him, not to eat our food as it would make him ill, not to drink packaged orange juice as when packaged it contains harmful things that would make him very ill. Every mealtime for weeks was a nightmare, with EF wanting to eat the food that we all ate for dinner so badly but believing what his mum had said and worried it would make him ill. I witnessed AB calling him multiple times a day and interrogate him on what foods he had eaten, what he had drunk and she would get extremely angry if he did not tell her. I noticed that EF was extremely anxious about what he was eating as he was scared that his Mum was going to shout at him and he truly did believe that he would die if he drink tap water. Mealtimes were very distressing in our household for a while, AB's anxieties and obsession with food was making EF ill in my view and since he has been in my dad's care he has put on weight and is looking healthier. After almost every phone call with AB, EF used to be so distressed from her verbal abuse and interrogation, he used to run and hide when the phone rang, crying for long periods of time. Thankfully we worked together to give EF the patients he

*needed, and reassurance he deserved and he now eats whatever-whenever
(almost reaching his 5 a day)”*

44. I accept that evidence as it is consistent with a considerable body of other evidence about the Mother’s approach to EF’s diet and her obsessional beliefs about how, for example, he would die if he drank tap water. It is also consistent with other evidence and showing that her interventions about food and drink put EF under considerable stress and that her interventions caused EF to share her delusional beliefs about food and drink.
45. There is a considerable amount of evidence that the Mother’s anxiety about EF’s eating habits got worse towards the end of February. The Father explains (and I accept) that the Mother insisted that EF should not have any school meals or hot food, and that he should only take a packed lunch with raw food in it consisting of vegetables and some fruit.
46. There was then an incident observed by T on 7 March when the EF appeared to be hungry but the Mother refused to allow him to be taken away by T or fed by her. T was sufficiently concerned that she stayed at the property for a long time and threatened to call the police.
47. On 8 March EF developed a cough and the Father suspected he may have developed Covid. The Mother became very upset at the prospect of taking EF to the doctor because she was worried about him having a PCR test. The Mother then alleged that he had been poisoned by the family and would not allow the Father to give him Calpol, which is an extremely common mild medicine for children. The following day EF’s temperature had gone down but

he was still coughing and was very weak. The Father wanted to call the doctor but the Mother threatened to call police if the Father called the doctor. The Father did call the doctor and the Mother called the police, who stayed between 4 and 5 hours at the house.

48. At this time the Mother made an allegation that the Father had injured her while attempting to retrieve his mobile phone. The police noted there was a “faint bruise” on the Mother’s arm. The Father accepted that he had grabbed the mobile phone. The police report suggests that they did not think this was the matter of substantial concern. However, the police report does raise concerns about EF’s well being. It says:

“EF has grown up in Cyprus and is now living in the UK with his mum and dad. Mum has stated she believes EF has an allergy to any food which is not plant-based and/or processed. She states that she only allows him to eat fruit or vegetables during the day and if he has any other food then he will be very sick. She has never taken him to the doctors despite saying that he has been so ill he has barely been able to walk. Dad states that EF is never as sick as mum is alleging. He says he feels forced to abide by the diet the mum has set the EF but does not feel it’s healthy for him. EF says that mum always shouts a lot at his dad about what food he is eating. He also said that he does not like spending time with mum and he his scared of her. Mum has told EF that eating food is not plant based is poisonous and will make him sick. She also made comments to him about PCR tests killing people and because of this, EF is scared every time his dad goes out of the country. There are concerns about EF’s physical well-

being in terms of his diet and the fact that he has not been taken to a doctor or hospital in relation to this sickness is mum is alleging

EF has a good relationship with Dad's and his half sister. They appear to be a positive influence in his life and help out a lot with looking after him."

49. The police expressed concerns that the Mother would benefit from being offered some support with her mental health if she was willing to engage with it, although there is no evidence that the Mother has ever accepted mental health assistance. The police report concluded as follows:

"... the main concern police had was the welfare of the child due to being on a restricted diet, being kept off school being prevented from accessing healthcare. Child was taken by the child's sister to stay with her with consent of dad"

50. It appears that this after this incident, and with the encouragement of the police, the Mother moved to stay in a friend's house.

51. The next relevant incident happened on 19 March. There was a heated argument between EF and the Mother at the Father's house and eventually the Father called the police. The police report notes that EF was worried/scared of being with his mother, and had become distressed because his Mother was trying to prevent him being with a family friend, D (who is the Father's former partner). The report stated EF *"started to cry and get upset and scream that he didn't want to be with her [the Mother]"* and the police were sufficiently concerned to make a child protection referral. Although this is not entirely clear from the police report, the evidence from both the Father and Mother that this incident resulted in the Mother leaving the Father's property. She said in her witness

statement that she was thrown out by the Father following domestic violence. That is not consistent with the police report which makes it clear that the main area of police concern was EF's well-being and that is why she was asked to leave the Father's house.

52. After this, the Mother moved to accommodation provided by social services. She continued to have some contact with EF but on a day to day basis he lived with his Father. There is an informative assessment by the school dated 29 March 2022. This confirms that, since starting school in January 2022, EF's attendance has been good and he has been dropped off and collected each day by his father. The report states:

“EF is currently behind his peers and at the level the school would expect to be for his age. However they have seen massive strides in him catching up to close the gap, which is a positive sign. He enjoys reading at home with Dad and he likes to be in school, as he enjoys the social side as well as the learning.... Socially EF is adapting really well ... School have noticed EF has got better at socialising within his peer group as the term has gone on and there have only been a few incidents that needed site intervention or redirecting EF, which is in line with any other child”

53. The report noted:

“Mother has displayed negativity around any time [must “type”] of medicines being used to EF, even paracetamol or calpol if he had a fever/temperature. Mother can be fixated that someone has tried to harm her child, rather than comforting the child and dealing with the illness”

54. the report noted that the home environment was loving and safe and that:

“ .. BB is a caring parent. [He] gives EF a safe predictable routine which will help them thrive and develop. The balance of this however can be upset when Mother’s present or has spent time in the home ..”

55. That report confirms that EF had built a bond with T and had become close to the Father’s ex-partner, D. The report also noted that:

“EF had been accessing after-school clubs and was enjoying making new friends and socialising with the other children”

56. It appears that the next significant event was that the Mother contacted “the Authorities” (as it is explained in the Chronology) with a view to securing an order for EF’s return to Cyprus. I assume that this is reference to the Responsible Authority in Cyprus. That inquiry led to solicitors being instructed and hence to the commencement of these proceedings on 6 May 2022. The initial application was supported by a statement by the Mother’s solicitor which said as follows:

“In around November 2021 the father arrived in Cyprus and told the mother that he wanted to take EF on holiday to England. The Mother gave permission and made an affidavit agreeing to a holiday in England from 27 November 2021 to 20 June 2022. The father made it clear to the mother in messages that he intended to keep EF in England and had no intention of returning him to Cyprus. The mother wished to see her son and take him home and eventually she came to England and stayed with the father and EF for about 4 weeks. There was an

incident when it was made clear to the mother that the father did not want her in the house and attacked her throwing her belongings into the street and telling her to get out. The mother made a complaint to the police who came to the property. The police were worried about the mother's safety and told her that she should leave for a short while which she did but on her return the father called the police to say he did not want her in the house and she had to leave. The father told the mother that EF was never coming back to Cyprus and that he had told the Estate Agent from whom the property was rented that he would not (sic) longer pay the rent"

57. I have set out those paragraphs in detail because they illustrate the extent to which, given the facts I have found as set out above, the original allegations made by the Mother were factually incorrect. First, the request to take EF to England on 27 November 2021 came from the Mother and not from the Father as this witness statement suggested. Secondly, there were no "messages" relied upon by the Mother during the trial in which the Father stated he had no intention of returning EF to Cyprus. Following the circulation of the draft judgment, the Mother's counsel has referred to various messages passing between the Mother and the Father in April 2022 but these were not referred to during the trial and the Father was not asked about them in evidence. I don't consider it would be fair to the Father to rely on these messages and, in any event, they post-date the point at which I have concluded that EF became habitually resident in the UK and thus, whatever their true meaning, cannot affect the outcome in this case.

58. Thirdly, whilst the police were called by the Mother, it was because she objected to EF being treated by doctors and not for the reason set out above. Fourthly, the Mother was asked to leave the property by the police and not by the Father, and she was asked to do this because of child protection concerns relating to EF and not for her own safety. Fifthly, the Mother does not say anything in her witness statement about the Father saying that EF would never return to Cyprus and that allegation was never put to him in cross examination.

The Law.

59. Section 1(2) of the Child Abduction and Custody Act 1985 provides that the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980 (“**the Convention**”) shall have the force of law in the United Kingdom. Article 3 of the Convention provides that the removal or the retention of a child is considered to be wrongful where:

“(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention”

60. it was common ground that a “removal” for Convention purposes occurs only when the child is taken out of - that is, crosses the international frontier of his contracting state of habitual residence”. In this case, EF was habitually resident in Cyprus on 27 November 2021 when he was removed from that state by his

Father. I accept that a consent obtained by fraud will not be considered valid: see *Re B (A Minor) (Abduction)* [1994] 2 FLR 249. However, I reject the submission made on behalf of the Mother that the Father's original removal of EF from Cyprus to England was "wrongful" because it was all part of a fraudulent plan by the Father to persuade the Mother to bring EF to England when the Father never had any intention of applying for a spousal visa for the Mother. I thus do not accept that the Mother was tricked into the Mother giving him permission to take EF to England. Whatever else was agreed between them, the primary motivation for the Mother's urgent request for EF to leave Cyprus was to avoid having a PCR test. That request took place against a background where both the Mother and the Father were planning for the Mother and EF to move to England, albeit there were uncertainties about dates and visas. I am satisfied that the Mother requested the Father to take EF to England on 27 November 2021 and signed an affidavit giving her specific permission for him to do so for a period until 30 June 2022. Accordingly, this can only be a case based on wrongful retention as opposed to wrongful removal.

61. Both counsel accepted that it was important to identify the specific date when the Father wrongfully retained EF in the United Kingdom. The reasons why the date is important were explained in the Judgment of Lord Hughes JSC in *Re C (Children)* [2019] UKSC 8 [2019] 1 AC 1. At paragraph 34 the Judge said:

"The Convention cannot be invoked if by the time of the alleged wrongful act, whether removal or retention, the child is habitually resident in the state where the request for return is lodged. In such a case, that state has primary jurisdiction

to make a decision on the merits, based on the habitual residence of the child and there is no room for a mandatory summary return elsewhere without such a decision”

62. Lord Hughes next examined the vexed question as to whether, in a case where a “left-behind parent” gives permission to a “travelling parent” to take a child to another country for a limited period, it is possible for the travelling parent wrongfully to retain the child before the expiry of the agreed period. The Judge concluded that this was possible, and thus a child could be wrongfully retained within a new state for the purposes of the Convention even though the agreed period in that state had not expired. That conclusion then led to the difficult question as to what type of act by the travelling parent was capable of constituting a wrongful act in such circumstances. A non-exhaustive answer to that question was given by Lord Hughes at paragraph 51 of the judgment as follows:

“51. As with any matter of proof or evidence, it would be unwise to attempt any exhaustive definition. The question is whether the travelling parent has manifested a denial, or repudiation, of the rights of the left-behind parent. Some markers can, however, be put in place.

(i) It is difficult if not impossible to imagine a repudiatory retention which does not involve a subjective intention on the part of the travelling parent not to return the child (or not to honour some other fundamental part of the arrangement). The spectre advanced of a parent being found to have committed a repudiatory retention innocently, for example by making an application for temporary permission to reside in the destination state, is illusory.

(ii) A purely internal unmanifested thought on the part of the travelling parent ought properly to be regarded as at most a plan to commit a repudiatory retention and not itself to constitute such. If it is purely internal, it will probably not come to light in any event, but even supposing that subsequently it were to do so, there must be an objectively identifiable act or acts of repudiation before the retention can be said to be wrongful. That is so in the case of ordinary retention, and must be so also in the case of repudiatory retention.

(iii) That does not mean that the repudiation must be communicated to the left-behind parent. To require that would be to put too great a premium on concealment and deception. Plainly, some acts may amount to a repudiatory retention, even if concealed from the left-behind parent. A simple example might be arranging for permanent official permission to reside in the destination state and giving an undertaking that the intention was to remain permanently.

(iv) There must accordingly be some objectively identifiable act or statement, or combination of such, which manifests the denial, or repudiation, of the rights of custody of the left-behind parent. A declaration of intent to a third party might suffice, but a privately formed decision would not, without more, do so.

(v) There is no occasion to re-visit the decision of the House of Lords in *In re H* [1991] 2 AC 476 (para 28 above) that wrongful retention must be an identifiable event and cannot be regarded as a continuing process because of the need to count forward the 12-month period stipulated in article 12. That does not mean that the exact date has to be identifiable. It may be possible to say no more than that wrongful retention had clearly occurred not later than (say) the end of a particular month. If there is such an identifiable point, it is not possible to adopt the submission made to the Court of Appeal, that the left-behind parent may elect to treat as the date of wrongful retention either the date of manifestation of repudiation or the due date for return. It may of course be permissible for the left-behind parent to plead his case in the alternative, but that is a different thing. When once the actual date of wrongful retention is ascertained, the article 12 period begins to run”

63. These proceedings were commenced on 5 May 2022 and Mr Hosford Tanner accepted that the onus lies on the Applicant to prove that there was a wrongful retention by the Father and that he has to identify the relevant date of the wrongful act. It must follow that, unless the Mother is able to demonstrate that there was an act which satisfies the conditions set out above prior to 30 June 2022, EF cannot have been wrongfully retained at the date the proceedings commenced: see *Re A (Hague Convention: Wrongful Retention)* [2021] EWHC 1204.
64. In this case, the Father knew that EF had been habitually resident in Cyprus until 27 November 2021 and that the Mother had parental rights in Cyprus. He knew that the Mother had given permission for EF to be in England until 30 June 2022 and knew that thereafter it would have been a breach of the Mother's rights of custody to have retained EF in the UK after 30 June 2022. The Father may not have placed particular weight on that date at the time it was put into the affidavit because, consistent with his relaxed, and possibly even lackadaisical, approach he hoped everything would turn out for the best long before 30 June 2022. Nonetheless, I accept that he was aware of the date and was aware that this was the outer extent of the formal permission given by the Mother for EF to remain in the UK.
65. The Mother would be able to assert that EF had been wrongfully retained at a specific earlier date if she was able to point to a specific occasion upon which the Father had stated that he would refuse to allow EF to return to Cyprus on 30 June 2022 or if she could show that he had acted in a manner which was clearly inconsistent with allowing EF to return to Cyprus by that date.

66. The precise date of any allegedly wrongful retention was not an issue which was canvassed specifically in the Mother's Position Statement although there was reference to the date when the Father ceased paying the rent on the Cyprus apartment. The case was originally advanced in the application was based on the suggestion that EF was only coming to the UK for a fixed period for a "holiday" pursuant to a request by his Father, and that once here the Father had repudiated that agreement. As I have explained above, that explanation is not consistent with the facts the trigger to EF leaving Cyprus was not a request by the Father but because his mother wanted him to do so to avoid the PCR test. It is also inconsistent with the fact that EF moved to England at a time when both the Mother and the Father were actively exploring and planning for a long-term future for the family in the UK.
67. In oral argument Mr Hosford Tanner suggested that the cancellation of the standing order for the Cyprus apartment was a wrongful retention. I do not accept that submission because, on the facts I find that the cancellation of the standing order for the rent was part of a common endeavour to wind up their affairs in Cyprus and was not indicative of any intention by the Father not to honour the long stop date of 30 June 2022. I find that the cancellation of the tenancy was mutually agreed between the Father and the Mother as part of their efforts to unwind there Cyprus affairs. It follows that the cancellation of the rent standing order did not manifest any clear indication that the Father would not be committing EF to return on 30 June 2022 because both the Mother and the Father were hopeful, at that point, that they would not be returning to Cyprus and therefore continuing to pay rent for an occupied apartment would have been a waste of money.

68. Mr Hosford Tanner's next submission on behalf of the Mother was focused on the events of 9th and 19th of March 2022, when the police were called to the house where EF was living, in the circumstances set out above. The problem with that submission is that the events on these occasions were completely focused on the particular circumstances at the time, and on EF's immediate well-being. There is nothing in any of the records to suggest that the Father was ever asked whether, looking forward to 30 June 2022, he would permit the Mother to take the child back to Cyprus at the end of the agreed period. The Father made it clear in evidence that he thought that the 30 June date was a "*fall back position*" and he didn't ever think that it would be needed because he hoped the move to England would be permanent for them all, albeit he had not quite worked out how he would obtain a spousal visa for the Mother. That evidence seems to me to be consistent with his understanding of Mother's intentions at that time.
69. There is simply no reliable evidence that I accept that, after EF arrived in England, the Father was ever challenged by the Mother to honour the fallback position. There is no evidence he was ever specifically asked whether he was proposing to refuse to return EF at the end of June 2022 if, by then, she had failed to get a spousal visa. I do not consider that there is any evidential merit in speculating what the Father might have said if he had been challenged about this on 9 March 2022 or 19 March 2022. The fact is that there is no evidence that he was ever challenged about his intentions or that he made any clear statement that he would be refusing to return EF to Cyprus by 30 June 2022. In those circumstances it seems to me that there is an absence of any evidential

basis to support a case of anticipatory breach on any specific date prior to 30 June 2022.

70. I thus conclude that, at the date these proceedings were issued, there was no wrongful retention by the Father. However, it is common ground that EF did not return to Cyprus by 30 June 2022 and still remains in the UK. In *Re NY (A Child)* [2019] EWCA Civ 1065 the Court of Appeal held that no return order could be made under the convention unless a wrongful retention was proven. In that case, a child had originally come to the UK from Israel with the consent of both parents. When the marriage broke up, the child remained with the mother and the father returned to Israel and commenced proceedings under the Convention. The focus of the first instance hearing was not on whether the mother had wrongfully retained the child when the couple separated in London. Instead the Judge treated the initial consent (prior to the breakdown of the marriage) as being a relevant “consent” for the purposes of Article 13 of the Convention. As a result, there was no focus on the circumstances at the time of the breakup and whether the Father had agreed to the Mother continuing to live with the child in London. The mother’s case was that the father had consented to her continuing to live with the child in London and that accordingly (on in any event) there was no wrongful retention despite the fact that the father had subsequently changed his mind after returning to Israel and withdrew any consent to the child still being in London.
71. The Court of Appeal held that, unless the Judge finds facts which amount to a wrongful retention, “the 1980 Convention cannot bite”: see paragraph 59. In this case I find there was no wrongful retention at any time up to the date

when proceedings were issued because there is no evidence to support a *Re C* type anticipatory breach prior to issue of these proceedings.

72. In this case, the Mother invited me to proceed on the basis that, if there was not a wrongful retention prior to 30 June 2022, there was a wrongful retention on that date because the Father did not return the child at that point. The Father's case was that he was never a party to an agreement that the child would be returned on 30 June 2022 and thus there was no wrongful retention after 30 June. Whilst that submission appears factually correct in that the Father never actively consented to the child returning on 30th June, he was aware that the Mother did not consent to the child staying in the UK beyond that date and was asserting her claimed right to return the child to his place of habitual residence. That does not need the Father's agreement but, of course, will not be effective if the child's place of habitual residence changed before the date when she sought to exercise her right to require the child to return to Cyprus.
73. Neither party argued that the fact that this proposed return date arose after the issue of proceedings prevented the Court making a Summary Return Order because it appears to be accepted that I could do so on the basis of a wrongful retention after the date of issue. It seems to me that this approach is arguably inconsistent with the approach of the Court of Appeal in *Re NY* because, although the act of the father in that case of commencing proceedings plainly indicated that at the date of issue he considered that the mother's retention of the child in London was a breach of his custody rights in Israel and so must be taken to have withdrawn any permission for the child to stay in London,

that assumption was not treated by the Court of Appeal as being sufficient to amount to a wrongful retention which could support a return order. That way of putting the case does not appear to have been advanced before the Court of Appeal and, in any event, there was no longstop date in *Re NY* and there is a longstop date here. I also note that the final decision of the Court of Appeal in *Re NY* was overturned by the Supreme Court albeit on grounds relating to the exercise by the Court of its powers under the inherent jurisdiction: see *In re NY (A Child) (Reunite International and others intervening)* [2019] UKSC 49. I thus agree, despite my concerns, to proceed on the basis agreed between counsel.

74. However, for completeness, I propose to examine the issue of habitual residence by reference to both mid-March 2022 and 30 June 2022 in case I am wrong about Mr Hosford Tanner's submission that the events of mid-March amounted to a repudiatory breach by the Father.

Habitual Residence.

75. There have been a plethora of recent cases setting out the principles to be applied in determining the habitual residence of a child, and the principles were not in dispute between the parties. It was agreed before me that the principles have been conveniently set out in a judgment by Mr Justice MacDonald in *TY v HY (Return Order)* [2019] FLR 1284 at paragraph 37 as follows:

“i) It is the child's habitual residence which is in question and hence the child's level of integration in a social and family environment which is under consideration by the court determining the question of habitual residence.

ii) *In common with the other rules of jurisdiction, the meaning of habitual residence is shaped in the light of the best interests of the child, in particular on the criterion of proximity. Proximity in this context means the practical connection between the child and the country concerned.*

iii) *In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must also weigh up the degree of connection which the child had with the state in which he resided before the move.*

iv) *The relevant question is whether a child has achieved some degree of integration in social and family environment. It is not necessary for a child to be fully integrated before becoming habitually resident.*

v) *It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there.*

vi) *In circumstances where the social and family environment of an infant or young child is shared with those on whom she is dependent, it is necessary to assess the integration of that person or persons (usually the parent or parents) in the social and family environment of the country concerned.*

vii) *In respect of a pre-school child, the circumstances to be considered will include the geographic and family origins of the parents who effected the move.*

viii) *The requisite degree of integration can, in certain circumstances, develop quite quickly. It is possible to acquire a new habitual residence in a single day. There is no requirement that the child should have been resident in the country in question for a particular period of time.*

ix) *A child will usually, but not necessarily, have the same habitual residence as the parent(s) who care for her. The younger the child the more likely that proposition but this is not to eclipse the fact that the investigation is child focused.*

x) *Parental intention is relevant to the assessment, but not determinative. There is no requirement that there be an intention on the part of one or both parents to reside in the country in question permanently or indefinitely”*

I direct myself to follow that approach in deciding whether, as a matter of fact, EF was habitually resident in England in either March or June 2022.

76. In making that finding of fact, I must observe that the focus on the evidence has largely been on the relationship between the Mother and the Father and has only, to a limited extent, focused on EF’s position. In contrast, I remind myself of the observations of Mr Justice Hayden in *Re B (A Child)* [2016] 4 WLR 156 at paragraph 18 as follows:

“If there is one clear message emerging from both the European case law and from the Supreme Court, it is that the child is the centre of the exercise when evaluating his or her habitual residence. This will involve a real and detailed consideration of (inter alia): the child’s day to day life and experiences, family environment; interests and hobbies; friends et cetera an appreciation of which adults are most important to the child. The approach must always be child driven. I emphasise this because all too frequently in this case is no exception, the statements filed focused predominantly on the adult parties”

77. Applying that approach, it seems to me that the following matters are significant:

- i) EF came to the UK in circumstances where both his parents were actively planning for him to have a long-term if not permanent stay relocation to the UK (albeit this may not have been certain);

- ii) His first language is English and he moved from a predominantly Greek speaking environment to an English-speaking environment which must have been more comfortable for him;
- iii) EF started school in January 2022 and settled in quickly, with his Father taking him to and from school each day (as noted in the school reports);
- iv) EF developed friends in his new school and attended after-school clubs;
- v) EF formed a close relationship to D, the Father's former partner, and was friendly with T and C, his half-sisters;
- vi) By the time the Mother came to England in February 2022, his new routine and his new family set up was well established;
- vii) There is ample evidence that there was considerable tension between EF and his Mother once she came to the UK in February 2022, and that the Mother's attempts to insist that EF's diet be restricted to a small number of raw foods caused shouting matches between EF and his mother.

78. In my judgment, having regard to these facts and the totality of the evidence, it is clear that EF had quickly developed and embraced his new life with his Father and the Father's extended family soon after arriving in England. I accept the Father's submissions that there were difficulties with his schooling in Cyprus, particularly because he was being educated in a Greek speaking environment in which she did not operate particularly successfully. I also accept that, whilst he had friends in Cyprus, there were difficulties in arranging time for him to

meet with them. There were thus elements which suggested his roots in Cyprus were not as deep as they would have been if he had been fluent in Greek and had a settled and supportive group of friends. It also seems to me that his Mother's approach to his diet, medical treatment and in particular her fears about the pandemic must have led to EF living a more isolated life in Cyprus than the life he experienced once he joined his Father and wider family in England.

79. I accept that the test is whether the child has achieved “*some degree of integration in social and family environment*”, not whether the child has developed total integration or has become permanently settled in the new country. The authorities accept that the requisite degree of integration can develop quite quickly, particularly where the child has an expectation that this new environment is likely to be his new home and is not just a short-term arrangement. I also accept that it is possible for a child to acquire a new habitual residence in a single day but it is more usual for a child to develop the necessary degree of integration in the social and family environment over a longer period. There is no requirement that the child should have been resident in the country in question for a particular period of time before the requisite degree of integration is established, but that integration will inevitably develop more quickly where the child is settled, happy and is developing relationships that are important to the child. As Lord Hughes observed in *Re C* at paragraph 12:

“It [the acquisition of a new place of habitual residence] is perhaps improbable in the case of removal, but it is not in the case of retention. It

may particularly happen if the stay in the destination state is more than just a holiday and lasts long enough for the child to become integrated into destination state”

80. I accept that the Mother referred to EF coming to England for a “holiday” in her affidavit but, as explained above, there was far more to it than that and, looking at the evidence as a whole, I conclude that that cannot be how EF saw things. I am confident that EF quickly embraced his new life with his Father in England, settled well in his new school and started to make progress no doubt accelerated because he was working in a language he fully understood. He developed friends, took part in after-school activities and developed friendships which were important to him with D and T amongst others. My impression is that this stability was established before the Mother arrived in February 2022 and, to some extent, his stability was undermined by the presence of his Mother who started to insist on him following her rules about what he could eat and drink, and who he could see. The police reports and the reports by make it clear that EF was expressing a very strong preference for the stability and family structure offered by his Father in contrast to the restrictions and limitations on his life that his Mother was seeking to place on him, and was distressed at the reintroduction of these rules.
81. The evidence shows that the adults who were most important to the child in the period between November 2021 and March 2022 were his Father and members of his Father’s extended family, and that the Mother was a source of tension rather than support for EF. That was not because the Father had alienated EF from his Mother but because of her attempts to reintroduce a

rigid control over his life and make him confirm to her restrictions. Given the relative stability that EF had achieved and his response to its attempted disruption, I readily conclude that, as a matter of fact, EF became habitually resident in the UK by early March 2021 at the latest.

82. I therefore conclude that there is no jurisdiction for me to make a Return Order under the Convention because, prior to the date of any wrongful retention by the Father, EF had become habitually resident in the UK.

Other issues.

83. In the circumstances, this application must fail and I do not need to reach conclusions on the other issues raised by the parties. However, for completeness I will consider the remaining issues on summary basis because they have been fully argued before me. First, I consider that the initial consent given by the Mother to EF leaving Cyprus and coming to England in November 2021 is not relevant for Convention purposes for the reasons explained by the Court of Appeal in *Re NY*. Secondly, once the Mother gave her consent to EF remaining in the UK until 30 June 2022, she could not withdraw that consent and thereby assert that the Father is acting in breach of her rights of custody in Cyprus: See *Re C* at paragraph 43. Thirdly, I find that the Mother has failed to prove a repudiatory breach prior to 30 June 2022. Fourthly, I find that the Mother never gave consent to extend EF's stay in the UK beyond 30 June 2022 and she did not acquiesce in his remaining in the country after that date, as is shown by the fact that she had already commenced these proceedings seeking a return order. In those circumstances I find that the Father was not acting wrongfully prior to 30 June 2022 but his case based on consent or acquiescence

for any period after 30 June 2022 must fail. Thus, but for the issue of habitual residence, I reject the Father’s case on consent or acquiescence and would have to consider whether to make a return order following the Father’s failure to arrange for EF to return to Cyprus on 30 June 2022.

84. The Father’s case under article 13(1)(b) is more complex and nuanced. Article 13(1)(b) provides that the Court has a discretion not to make a return order if the Father establishes (on the balance of probabilities) that:

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

85. It is the nature of the risk which has to be “grave” as opposed to the level of physical or psychological harm which will arise if the risk manifests itself, albeit the two are inevitably inter-related. It is not sufficient for the risk to be “real”, but must have reached such a level of seriousness as to be characterised as “grave”.

86. The Father asserts that a grave risk arises in this case because the Mother’s damaging approach to:

- i) nutrition,
- ii) vaccinations;
- iii) medical treatment generally;
- iv) her belief in conspiracy theories relating to the pandemic and the potential effects on the child of such beliefs; and

v) a claimed propensity for the Mother to act unlawfully or fraudulently.

87. I can dismiss the last ground relatively easily because it does not appear to me that there is any proper evidential foundation for the complaint that the Mother has acted either fraudulently or otherwise unlawfully. The neglect proceedings which were commenced against her in Cyprus arising out of the incident in 2017 were recently dismissed. I consider that the evidence does not suggest that the Mother was guilty of anything more serious than a momentary lapse, and that this does not indicate any wider issue of neglect. I also do not accept that the unlawful subletting of the apartment is sufficient to support that case.

88. However, the Mother's views on nutrition, medical treatment and her views on the pandemic give rise to much more serious concerns. The evidence of her recent views makes it perfectly clear that, if anything, she is hardening in her approach to these issues. However, at the same time, the evidence suggests that EF has broken free from his Mother's beliefs that, for example, he will die if he drinks tap water or that he should limit himself to a very narrow range of raw foods. Once EF has experienced life without these bizarre limitations, he has expressed himself very strongly in not wanting to return to a life which is subject to these restrictions. The reported hostility between EF and his Mother appears to me to be primarily due to her attempts to reimpose these restrictions on her son and EF's refusal to go back to his former way of life.

89. In my judgment, the combination of the risks to EF's health arising out of his Mother's approach to vaccinations and medicine more generally, the impact on

him of her views of the pandemic and the dietary restrictions which she will seek to reimpose on him if he were to return to live with her in Cyprus all add up to a grave risk to EF's physical and psychological health. None of these restrictions are grounded in a proper evidential basis and all of them can be properly described as potentially damaging to the civil and psychological health of a child. Once EF has experienced life without these illogical and potentially damaging restrictions, it seems to me it is likely to be intolerable for him to be required to live in an environment where these restrictions are reintroduced. Accordingly, if it were necessary for me to decide the matter, I would have held that the Father had successfully established the case under article 13(1)(b), and, consistent with a focus on EF's best interests as one of the factors to take into account, I would have exercised my discretion to refuse to make a return order.

90. The consequence of this judgment is that EF will remain living with his Father in England until a court in the UK has decided what arrangements should be put in place on a long term basis. I accept that this decision will be a deep disappointment to the Mother and that she will have to leave the UK as her visitor's visa has now expired. I invite the parties to agree a schedule of telephone or video contact to ensure that EF remains in touch with his mother, albeit I consider that EF must be able to end contact if he becomes distressed at any attempt by the Mother to quiz him about his diet or the other restrictions referred to in this judgment.
91. The Father has offered an undertaking to make an application for a spousal visa for the Mother, notwithstanding the breakup of the marital relationship. It

seems to me to be appropriate to hold the Father to that promise but otherwise this application is dismissed.