



Neutral Citation Number: [2022] EWHC 2120 (Fam)

Case No: FD22P00354

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29th July 2022

Before :

MR JUSTICE POOLE

Re: A and B (Children: Return Order: UAE)

Between :

C

Applicant

- and -

D

Respondent

Mehvish Chaudhry (instructed by Hanne & Co.) for **the Applicant**
Mark Jarman (instructed by JMW Solicitors) for **the Respondent**

Hearing dates: 28th to 29th July 2022

JUDGMENT

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The judge has approved this version of the judgment for publication. However, 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.

Mr Justice Poole :

1. I am concerned with two children, A, a girl aged ten, and her brother B, aged eight. Their father C (“the father”) applies for a summary return order to the UAE. Their mother, D (“the mother”) opposes the application.
2. I have heard oral evidence from Ms Baker, Cafcass, and Ms Hamade, an expert in the law of the United Arab Emirates. I have received detailed witness statements from the parties with numerous exhibits including photographs, text messages, and videos. I was invited by the mother to hear oral evidence from the parties, an invitation with which the father disagreed. I decided not to hear oral evidence from the parties for the reasons explained later in this judgment.
3. The father has Indian heritage but is a British national. The mother was born in Kuwait but is Indian. She and the father had both lived in the UAE for over fifteen years. The children were both born in Britain but they have otherwise lived all their lives with their parents in the UAE until the events described below. The parents married in E, within the UAE, but separated in 2018. The children lived with the mother at her parents’ home. They would spend time in their father’s sole care during school holidays and at weekends. The extent of the time spent with the father is disputed.
4. In October 2021, the mother travelled with the children to England. She wished to renew her biometric residence permit (BRP). Return flights were booked for return to E within two weeks but the mother retained the children in England. It is alleged that there were a number of agreed and arranged return dates thereafter but the mother did not honour them. The children now attend a state school in London. The mother says that the father discussed alternative schools in England with her but eventually refused to pay school fees. The children live with the mother in a house belonging to the paternal grandparents but several of the rooms are locked and they have to share a bedroom. No-one shares the house with them – the paternal grandparents live in the UAE as do the maternal grandparents and most of the extended families on both sides.

The Situation in E Before October 2021

5. When the family were together they were well housed, financially comfortable, went on a number of holidays abroad, and the children were well-educated. Upon separation the mother and children lived with the maternal grandparents. The mother did not work and, it appears, was financially supported by the father and her parents. The father says that there was a shared care arrangement with the children spending some weekends and parts of the school holidays with him. The mother says,

“C would take the children to his parents’ house on a few Friday afternoons until Saturday afternoons. Fridays are family days but there was no chance for me to spend lunch with them as C simply would not have it....

School holidays were chaos, as the children would spend only a few unscheduled days with their father. There was no schedule nor prior notification, he would just expect me to drop and collect the children at his convenience not mine or theirs.”

The mother also complains about the way the father expected the children to telephone him and was not active or reliable in relation to such indirect contact. The children attended a fee-paying, English school where reports show that they were both excelling and achieving high grades. The father paid the school fees. There appears to have been no court involvement in the family arrangements and no professional interventions or assistance. There is no evidence that the children showed any signs of distress or behavioural issues during the period of separation prior to October 2021. Indeed their school reports suggest that they were well-adjusted children who fitted in well. The father has exhibited text exchanges with A which are funny and affectionate, and cordial exchanges with the mother, most of these being after the separation.

Allegations of Domestic Abuse

6. On the face of it therefore, the children enjoyed a good life in E even after the inevitable upset caused by their parents’ separation. However, the mother says, “the life we had led in E was emotionally damaging for us all and I had pretty much given up on any real quality of life.” She alleges that throughout the relationship the father was physically, emotionally, and financially abusive, and coercive and controlling of her. She alleges that he physically and emotionally abused the children. There are no records of complaints to the police or authorities, no corroborative evidence from relatives or friends (only a one-paragraph statement from a woman who worked for them), and no contemporaneous evidence from the children’s school. There is no evidence of any injuries to the children. The mother does exhibit photographs showing bruising and abrasions to her face and body from 2009, 2012, 2016, and 2019 and some damage to furniture in 2017. She also exhibits messaging from the father that shows him to be angry

and hostile to the mother including messaging about what he regarded as frivolous spending, and messages to A that show him to be angry with her apparently because he felt excluded from some activities in June 2021. He comes across as more childish than his young daughter during those exchanges.

7. The mother has also exhibited two videos she has made, one of each child. A is seen saying that her father told her to “fuck off”; B saying that “papa” hit “mama”. The videos appear to me to be obviously staged in the sense that the children are not spontaneously speaking whilst the camera is on, rather, they appear to have been asked to say or repeat something once the filming starts. B can be seen waiting to start to say his piece.
8. When the children saw Ms Baker, Cafcass officer, they told her of instances when the father had hit them, and of them witnessing his abuse of the mother. A “went on to describe her father as both “violent and abusive”, saying that he would “hit, slap and pinch” the children for not doing their homework and this would sometimes leave visible marks on them.” She recalled her parents’ arguing and the father leaving the mother on the floor, abusing her, and breaking mirrors in the bedroom. The mother’s photographs of broken mirrors are from August 2017 when A would have been five years old. B reported to Ms Baker, “he just used to like hit us when we went to his house and when we did something wrong he made us do punishments, but I miss him”. He talked of the father hitting them with “tiny slaps” and shouting at the children.
9. Ms Baker told the court that A’s opinions were very polarised. The mother was good and the father was bad. She had brought along a notebook to show to Ms Baker. She had written out five pages whilst waiting to see Ms Baker. They are exhibited to Ms Baker’s report and they are in dense script. She was anxious to unload all the information she wanted to give as soon as she could. She had also written more on her i-pad but Ms Baker chose not to look at that, concerned that it had been prepared in advance in circumstance she could not know about. She said that A had been emotional when talking about her father’s conduct and his treatment of her. When asked about the affectionate messaging between A and the father from 2020, Ms Baker said that it gave a wholly different impression from that which A was anxious to present to her at their meeting. Ms Baker accepted that A had appeared genuine when talking to her.
10. Ms Baker accepted that much of B’s language was adult in nature and was suggestive of direct or indirect adult influence, meaning that he had either been told some of the things he was reporting to Ms Baker, or he had overheard them. She told the court that B was less polarised in his views than A. He had spoken in a matter of fact way about his father’s conduct and had not been upset.
11. The father strongly denies all the allegations of abuse made against him. He accepts that his language in some messaging was regrettable. There is no photograph evidence of any injuries to the children. There are no medical records of injuries. There is little by way of corroboration. There were no contemporaneous complaints to the authorities. The children had not reported any abuse to the school in E.

Arrival and stay in England

12. The mother came to England with the children in October 2021 with the father's agreement. He purchased return tickets for them, the return being within two weeks of arrival. The mother says,

When I made plans in October 2021 to travel to England with the children to obtain my BPR, I had not planned to stay. Almost immediately, however I felt an enormous sense of relief and independence; the children and I left behind the toxic world that we had accepted as normal. No one shouted at us, we had independence ...

The life we had led in E was emotionally damaging for us all and I had pretty much given up on any real quality of life. With my arrival in England, everything changed. I felt the ability to be free and independent for the first time since our marriage and cannot contemplate being compelled to return to E.

13. The father says that the mother told him that the BRP process was taking longer than he had anticipated. He visited England in October and again in November 2021, hoping to accompany the family back to E but the mother would not let him take the children without her. His parents visited England and stayed for two months until December 2021. The mother and children were living in the paternal grandparents' rented house in the London area. When they left, as I understand it, the paternal grandparents locked a number of rooms so that the mother and children, who remain in that property, have been sharing a bedroom. In early 2022 the mother said that the children should enrol in schools in England and the parties had an exchange about suitable schools by messaging which has been provided in the hearing bundle. The tone was mostly cordial and the contents concern practical matters. The father claims that the mother continued to use the delay in the BRP process as the reason for not returning. The mother has not disputed that in her statement. However, in January 2022 the father started divorce proceedings in E in which he claimed custody of the children.
14. The father made his application for summary return on 25 April 2022. On 13 May 2022 Sir Jonathan Cohen gave directions leading to the final hearing and ordered interim child arrangements including that the mother make the children available to spend time with the father on his visiting England. The parties disputed the arrangements such that the father had to cancel a booked flight in June 2022 but he did come to England and spent some time with the children later that month.
15. The children have been enrolled in a state school in England and reports show that they have started very promisingly and are hard-working and able students. It helps that they have been taught at an English school in E. A paternal uncle lives in England and there has been some contact with him and some other members of the wider family but all four grandparents and most of the wider family on both sides live in E. There is little evidence, beyond their schooling, of the children integrating fully into social life in England. The mother has no financial independence and has relied on the paternal grandparents allowing her and the children to continue to use their home.

Ms Hamade's Evidence

16. Ms Hamade is Managing Partner of Diana Hamade Attorneys at Law, UAE. An expert in civil and sharia law, specialising in family law, she has acted as expert witness in courts in Canada, England, France, Australia, Switzerland, Isle of Man, New Zealand and the U.S on family law, including divorce, child custody, child relocation/abduction, financial remedies, dowery & Nafaqa, surrogacy, prenuptial and postnuptial agreements. She speaks fluent English and Arabic. She has produced a written opinion and answered questions from each party. I found her evidence to be clear, balanced and very helpful. In particular her practical experience of the application of the law in relation to families in the UAE was very valuable. I accept her opinions, the most important to this case being:
- i) In the event of separation the mother has custody (or custodianship) of a child, the father is their guardian. Under sharia law the principle is that when a boy reaches the age of 11, the mother's custodianship terminates. The same happens when a girl reaches the age of 13. A father might waive his rights. However, if there is a dispute between the parents then a judge can determine whether the principles apply or not. In doing so the judge will have a discretion and will have regard to the best interest of the child. However, if the mother has re-married, Ms Hamade advised that whilst the children can remain with the mother if this was decided by the courts in E to be in their best interests, the mother would be "at serious risk of the children being taken away" when they reached the said ages.
 - ii) When considering the best interests of children the courts in E do not take into account the wishes and feelings of the children concerned. There is no concept equivalent to "hearing the voice of the child".
 - iii) A woman would not be able to establish allegations of domestic abuse unless there had been police involvement, abuse had been witnessed by reliable witnesses, there was clear medical evidence, or the court could see injuries for itself. Photographs or other evidence will not be relied upon to establish such allegations. Hence, in the present case the mother's allegations of past abuse will not be established in the courts in E.
 - iv) Allegations of abuse against children would be referred to the criminal justice system in E and would not be dealt with in the civil system.
 - v) The mother would have no chance at all of securing permission from the court to relocate with the children abroad if the father did not agree and he was living in the E. This would "never ever" happen.
 - vi) Visitation rights can be exercised in a way that safeguards children for example at contact centres or in public places.
 - vii) A settlement agreement could be reached by the parties which can then be entered as a judgment in the courts in E. It is binding and cannot be amended for one year. However, if there is a change of circumstances then a party can apply for an amendment even before the elapse of a year. Ms Hamade's experience is that these settlement agreements are honoured. Their terms can include custody,

guardianship and visitation rights. The parties could agree that the mother shall have custody of the children with defined contact with the father. Settlement agreements can include pledges or undertakings including that the father will not instigate criminal proceedings against the mother. However there are no sanctions for breaching an undertaking although Ms Hamade's evidence was that a financial imbursement can be requested amounting to large amounts of money. Ms Hamade advised that rather than including within a settlement agreement a promise to withdraw the existing claim for custody in E which the father has made, she would advise any clients that it should be made a condition of return that the father *has* withdrawn his custody claim.

- viii) Upon returning the children there would be no risk that the mother would face criminal charges or sanction so long as she is the custodian of the children. Therefore, if the father's application for custody were continuing upon return or determined in his favour prior to return there would be a risk that the mother could be arrested and the children removed from her care upon return to E. The father could withdraw his application at any time.

Ms Baker's Opinion

17. I have referred to Ms Baker's evidence about her meetings with the children which took place on 8 July 2022. She has not seen the children spending time with the father. She had not been presented with plans for the children to spend time with the father were they to remain in England and so she had not considered the practicality of such plans or their likely impact on the welfare of the children. Ms Baker had the advantage of listening to the oral evidence of Mr Hamade and told the court that by doing so she had learned more about the legal system in E and that it was more restrictive of the mother's rights than she had previously understood. Even so, Ms Baker maintained the recommendation made in her report that summary return to E would be in the children's best interests. She was less sure about that recommendation having heard Ms Hamade's oral evidence and when her opinion was probed in cross-examination by Mr Jarman on behalf of the mother, but she did nevertheless maintain her view. Ms Baker found that A had been "overburdened emotionally and psychologically". Her hostility to her father was a matter of concern to Ms Baker.
18. Ms Baker's opinion was that if there was not a summary return,

"I would be concerned that an accelerated emotional loss of meaning is likely to occur with regards to their relationship with their father. Additionally, they will continue to experience a significant disruption of their ties with people who are important to them, and a corresponding degree of stress is likely to occur.

...

It is difficult to be clear about the origin of A's views, who has now totally rejected her father. I highly doubt that the children remaining in

England will bridge the huge emotional and psychological gulf that now exists and is increasing for her. Despite the strength of her current views and feelings about him, she is clearly too young to appreciate that if the correct steps are not taken to repair their relationship, this is likely to negatively impact her future developmental wellbeing. Consequently, time is of the essence for both children and arguably more so for A.”

She noted that the children had suffered disruption in what had previously appeared to be stable home lives and education. They were out of the education system for a few months. Their family and social networks in England were very limited. Since coming to England the children had had very little contact with the father and their feelings towards him had clearly become hostile, particular in the case of A.

The Legal Framework

19. I can do no better than rely on the analysis of the legal principles set out by Cobb J in *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412:

“[34] It is clear law that the court in this jurisdiction will determine an application for a summary return of a child to a non-Hague Convention country by reference to the child’s best interests. My attention has been drawn to what Lord Wilson (in *Re NY* at [30]) and Baroness Hale (in *Re J* at [26]) both described as the “classic” observations, the “*locus classicus*”, of Buckley LJ in his judgment in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, (obviously a pre-1980 *Hague Convention* decision but with evidently enduring relevance and standing). He said this:

p.264F: “To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country than that he should spend in this country

the period which must necessarily elapse before all the evidence can be assembled for adjudication here. Anyone who has had experience of the exercise of this delicate jurisdiction knows what complications can result from a child developing roots in new soil, and what conflicts this can occasion in the child's own life. Such roots can grow rapidly. An order that the child should be returned forthwith to the country from which he has been removed in the expectation that any dispute about his custody will be satisfactorily resolved in the courts of that country may well be regarded as being in the best interests of the child.”

p.265A-B: “... judges have more than once reprobated the acts of "kidnappers" in cases of this kind. I do not in any way dissent from those strictures, but it would, in my judgment, be wrong to suppose that in making orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account, but, whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration.”

...

[37] I was then taken to the current definitive statement of the law pronounced by the House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40. I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

- i) “... any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration” [18];
- ii) “There is no warrant, either in statute or authority, for the principles of *The Hague Convention* to be extended to countries which are not parties to it” [22];
- iii) “...in all non-*Convention* cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration.” [25];
- iv) “... the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases.” [26];
- v) “Summary return should not be the automatic reaction to any and every

unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child” [28];

vi) “... focus has to be on the individual child in the particular circumstances of the case” [29];

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

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

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

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

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

Baroness Hale summarised her views ...

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

[38] I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent

jurisdiction in what are accepted to be very different circumstances to those obtaining here. Mr Khan argued that I should give (as the judgment suggests) “some consideration” ([55]) to the eight linked questions posed by Lord Wilson in that case:

- i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);
- ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child’s habitual residence) ([57]);
- iii) In order sufficiently to identify what the child’s welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in *section 1(3) of the 1989 Act*; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);
- iv) In a case where domestic abuse is alleged, the court should consider whether in the light of *Practice Direction 12J*, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);
- v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);
- vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;
- vii) The court should consider whether to obtain a Cafcass report ([62]): “and, if so, upon what aspects and to what extent”;
- viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63]).”

20. I would only add the remainder of [39] of the judgment of Baroness Hale in *Re J*,

“If those courts have not choice but to do as the father wishes, so that the mother cannot ask them to decide with an open mind, whether the child will be better off living here or there, then our courts must ask themselves whether it will be in the interests of the child to enable that dispute to be heard. The absence of a relocation jurisdiction must do more than give the judge pause ... it may be a decisive factor. On the other hand, if it appears that the mother would not be able to make a good case for relocation, that factor might not be decisive. There are also bound to be many cases where the connection of the child and all the family with the

other country is so strong that any difference between the legal systems here and there should carry little weight.”

Oral Evidence from the Parties

21. Mr Jarman invited the court to hear oral evidence from the parties because, he said, the court needed to assess the father’s credibility. He agreed that the proceedings were summary in nature and that the court could not conduct a finding of fact hearing in relation to the mother’s allegations of abuse, but submitted that credibility went to the heart of the decision for the court in this case. Ms Chaudhry submitted that the court need not hear oral evidence. I gave a short ruling that I would not hear oral evidence from the parties. I had regard to the overriding objective. I did not regard it as necessary or proportionate to hear oral evidence from the parties to determine the issues for the court to resolve. I have received detailed witness statements. I am aware of the allegations of abuse against the father and have Ms Hamade’s evidence as to how the courts in E would deal with such allegations and any future allegations. The allegations of abuse against the mother nearly all pre-date the parties’ separation and the most recent, and the only allegation of significance after the separation, is from 2019. I have evidence as to the effect of the alleged abuse on the children and the mother from Ms Baker and from the mother herself. The court has to make a welfare determination concerning summary return and the resolution of allegations of abuse is not required to make that determination. I cannot see any other purpose being served by hearing oral evidence from the parties, or how their credibility can be assessed without determining issues which they dispute which, in large part, concern allegations of the father’s conduct.
22. The approach I take, borrowing from the approach in Hague Convention cases in accordance with *In re E (Children)* [2012] 1AC 144, is that I should make a reasonable assumption in relation to the maximum level of risk to the children arising out of any domestic abuse perpetrated by the father. I should, in particular, consider the risks to the children in the context of a return to E, with any undertakings or pledges offered by the father being formalised in the courts in E, and bearing in mind the enforceability of those undertakings in E.

Submissions

23. For the mother, Mr Jarman’s core submission was that whilst return of the children to E might properly be contemplated after a full welfare assessment, it should not be ordered summarily now, prior to any such assessment. The mother would be unable to apply to relocate with the children once they had returned to E. The E courts’ notion of best interests is not at all the same as in the jurisdiction here. The children would have no voice upon return. The only chance to given them a voice would be to carry out a welfare enquiry in this jurisdiction. The legal system in E is weighted against someone in the

mother's position. The father could breach undertakings given now, even those embodied in a settlement agreement issued in the courts in E, with impunity. He submitted that Ms Baker's opinion was flawed because she had no clear understanding of how child arrangements would work either on remaining in England or on return to E and she had not fully understood the evidence about the legal system in E. The gulf in the relationship between the children, in particular A, and the father is explicable by the father's conduct rather than any other factor. At the very least that possibility requires further investigation before an irreversible return is ordered.

24. Ms Chaudhry for the father accepts that Ms Hamade's evidence points to the significant difficulty for the mother in making a relocation application in E, but says that such an application, even if made under the principles of the law in this jurisdiction, would be hopeless. There are child protection processes in E even though they involve the criminal jurisdiction. The allegations of domestic abuse are historic and do not have a significant welfare impact on the children and therefore the evidential difficulties for the mother in establishing past abuse in E are not material in this case. The conception of welfare within this jurisdiction is not the only one available. In any event, there are more compelling welfare issues including the separation of the children from their father and from their grandparents and wider family in E, the precarious and isolated position of the children in England. The father has commitments to his elderly parents in E, including his very unwell father, and cannot regularly travel to and from England. The quality of his relationship with the children is clearly adversely affected by their having been retained in England. Ms Baker highlights the long term damage that continued separation from the father is likely to cause the children. A welfare enquiry here would be likely to require a finding of fact hearing and could take many months, even years to resolve.

Conclusions

25. The children's welfare is my paramount consideration and I have regard to the welfare checklist at s.1(3) of the Children Act 1989. I have to decide whether to order summary return or whether a welfare enquiry and assessment should be made whilst the children remain in this jurisdiction. Such an enquiry would be likely to take many months.
26. The most salient features of the case are:
- i) The children's home country is in E. They were born in England but otherwise have lived their whole lives in E.
 - ii) The children's connection to E is very strong. Not only have they lived there all their lives, but their four grandparents and most of their wider family on both sides live in E, and they had regular contact with them whilst living there. Indeed, from 2018 the children lived in the same house as their maternal grandparents. The children were fully engaged in the education system in E and were excelling at school.

- iii) Following the parental separation in 2018 the family had worked out child arrangements for themselves without court involvement. The arrangements may not have always operated to each parent's satisfaction, but they had reached accommodations with each other.
- iv) The evidence suggests that the children were well looked after, healthy, surrounded by family, well-adjusted, and excelling at school when living in E.
- v) But for allegations of abuse by the father which have only fully emerged since the mother retained the children in England after October 2021, there would have been no grounds at all for considering that relocation to England would be in the children's best interests.
- vi) Although they are British citizens and were born here, the children had no other substantial connection to England before they were retained here in October 2021. They rely on the father and the goodwill of others for their accommodation and financial support. They have started school in England and are doing well in their studies and they have a few members of the extended family living here, but otherwise the evidence tends to show that they and the mother are isolated here. The mother has no independent financial means with which to support the children. The home they live in is provided by the goodwill of the paternal grandparents, the grandfather being, I am told, very unwell. The children's situation in England is precarious.
- vii) The allegations that the father has abused the mother in large part concern events before the separation in 2018 and the most recent allegation dates from 2019. Since then, even taking the evidence at its highest, there is no credible evidence of domestic abuse by the father against the mother. To be clear, there is no credible evidence of continuing coercive and controlling behaviour by the father, nor of physical or emotional abuse. The allegations therefore concern past events from well before the children were retained in England. The father's conduct in paying for return flights to England and then visiting in October and November expecting to return with the children but being unable to do so, and discussing schooling arrangements in England when he wanted the children to return to the UAE, is not suggestive of a man who was exercising coercion and control against the mother at that time.
- viii) The allegations that the father has abused the children require some scrutiny. There is direct evidence, in the form of messaging, showing the father being petulant with his daughter. The children say that he would physically chastise them and they would become afraid of him. However, B still says that he misses his father. A's messaging with her father before coming to England shows affection between them. In my judgement, both children showed signs of having been subject to direct and/or indirect adult influence and the adult in question is very likely to be the mother. Ms Baker's observation that the origins of A's current hostility are uncertain belies the fact that it appears to have arisen, or at least deepened significantly, since October 2021 when A has been living only with her mother, the mother has been running a case that the father has been abusive, and A has seen very little of her father. There is no evidence that the children suffered injury as a result of chastisement by the father. Whilst they say they were afraid of him they do not appear to have shown any signs of emotional

abuse – there is no evidence from their school in E, or from any other independent source, to that effect. I have no witness evidence from family members or the mother’s friends corroborating the children’s allegations that the father abused them.

- ix) I do not believe that further detailed investigation of the allegations of abuse by the father will assist the court in making the decision about return. Even assuming the allegations of abuse of the mother are all true, there are no incidents since 2019, and the mother would be in a more supportive environment in E than in England. On the mother’s own case, there was not much contact between her and the father. I do not see her allegations as making out a case that the children were being significantly harmed by any ongoing abuse of her by the father after the separation. The extent and impact of the father’s abuse of the children is also quite limited when objectively examined. Again, the mother says that they did not have very much contact with the father. Most of what A alleges is that the father is unkind to her and has smacked her by way of chastisement. B says he has been smacked too. They say the father has been nicer to them on calls recently but put that down to him being “fake”. However, whilst not condoning physical chastisement, the father’s treatment of his children is not so concerning that it would preclude return. If the allegations of abuse of the children are all true, then they do not give rise to a significant concern that return to E would in itself put them at risk of harm in the future. It has not been suggested that contact with the father should cease, indeed the mother complains through counsel that he has not visited England more often. The father will have contact with the children whether they are in England or E. Similarly, the father has accepted at the hearing before me that the children should continue to live with the mother. The allegations of abuse are an important element of this case but they are not so significant as to be determinative. Whilst the father disputes the allegations, I do not believe that making findings about the allegations is necessary.
- x) I accept Ms Baker’s analysis that the separation of the father from the children is damaging to them and that, as she put it in her oral evidence, reparative work is needed. That work needs to begin within the family and will be much more easily begun if the family are living in the same country.
- xi) The children’s relationship with the father, and the destabilising of what was a stable family, school and social life in E, has been caused by their retention in England for which the mother had neither the father’s consent nor any permission from the courts in the children’s home country. This the retention of the children has had consequences. The children have been uprooted. The mother has rationalised her decision by blaming the father. The children have adopted the same beliefs. The children have become wholly dependent emotionally on the mother. An emotional gulf with the father has opened up. The longer the children remain in their current situation, the more likely it is that the damage will deepen beyond repair.
- xii) On the children’s return to E, the mother accepts that she would return with them. Provided she retains custody of the children, they would be able to live in the home they were used to living in and to return to their excellent school. They would have the benefit of the protective care and support of their mother, of their maternal grandparents with whom they would live, and of the many wider family

members who live in E. There is no evidence that the wider family have turned against the mother or the children.

- xiii) The wishes of the children, particularly strongly expressed by A, are to remain in England. That is a significant factor but their views, however genuinely expressed, have undoubtedly been directly and/or indirectly influenced by the mother and by the circumstances of their retention and this litigation.
- xiv) I take into account that return would be against the wishes of the mother as well as the children and that, at least in the short term, that would cause upset to the children, and, most likely for a longer period, to their primary carer. However, there is no evidence that the mother or children have had any mental health problems or would be prone to such problems caused by an undesired return to E.
- xv) I accept the evidence of Ms Hamade that upon return, if a settlement agreement were in place and issued by the E court, some measure of protection of the best interests of the children would be offered by the legal system there. For that to be most effective the father will have to withdraw his custody application prior to the return and a settlement agreement including terms designed to secure the custody of the children with the mother and visitation rights to the father, will need to be entered into the court in E. It is concerning that the father has not yet withdrawn his custody application but these proceedings have been continuing and he has been trying to assert his rights. However, it is an essential condition for protecting the best interests of the children that prior to return his custody application is withdrawn and that a settlement agreement is entered into and issued by the E courts. One caveat to the reassurance such measures would bring, is the apparent lack of sanctions for breaches. Another is the evidential burden on a mother if there were further incidents of abuse, A third is the fact that the wishes and feelings of the children are not heeded in the E courts. A fourth is the fact that a change of circumstances can lead to amendment of a settlement agreement and the concern that the father could, if he chose, frame various disagreements or difficulties as changes in circumstances justifying amendment.
- xvi) The effective inability of the mother to apply for relocation upon return to E does indeed do more than give the court reason to pause. It is a factor that weighs against summary return. However, in my judgement the mother's application would, even applying principles that would be applied in this jurisdiction, be very likely to fail. The children's strong connections in E, the relatively slight connections with England, the close family networks in E, the father's presence there, the mother's retention of the children against his will after October 2021, would all weigh against granting relocation in the children's best interests. Of more concern is that if circumstances changed so that it did appear to be in the best interests of the children to relocate, the E courts would still not countenance it if the father objected and lived in E.
- xvii) The evidence provided to the court indicates that a settlement agreement, once reached, could be issued in the courts in E, so that it become binding there, within six weeks.

xviii) A welfare enquiry in the courts in England would be likely to take many months to resolve.

In my welfare evaluation I must have regard to the welfare checklist under s.1(3) Children Act 1989. I must have regard to all the circumstances including, in respect of each child,

- (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.

27. The salient matters I have set out above feed into the welfare checklist. The children have clearly expressed their wishes and feelings which are that they wish to remain in England and not to return to E. I note that these children need stability, they need to be connected within the wider family, they need healthy relations with both parents. They have no particular physical needs beyond those of healthy children of their ages. They have a great deal of academic potential and they need consistent, good quality teaching to fulfil it. The change in circumstances has already been damaging to them. On the one hand, return to E would help to restore some stability in their lives, on the other hand, it would be another disruptive experience. They appear to have a strong sense of family and their wider family, with a few exceptions, is located in E. They have a strong cultural connection with E given their upbringings to date. I do not believe that they would be at any greater risk of harm living in E than living in England, indeed the harm from the emotional and geographical distance from their father is likely to be greater were they to remain in England. Taking the allegations of abuse at their highest the children might be at more risk of harm from the father were they in E and spending time with him more frequently. In England, the mother has no independent financial means and no home save for one provided out of goodwill by the father's parents. The father is financially

comfortable and can support the children. The mother has been failing to meet the children's emotional need to have a good bond with the father. The father has at times been unkind, even abusive to the children and has failed to meet their emotional needs in that respect. The court can impose conditions on return to seek to protect the welfare of the children.

28. Not all of the factors point the same way. The court has to consider all the circumstances and balance them. The allegations against the father, the wishes and feelings expressed by the children, and the E courts' approach to relocation applications, the voice of the child, and allegations of past domestic abuse, weigh in favour of refusing the father's application for summary return. The children's strong connections to their home country, E, the damage caused by their retention in England which is likely to deepen the longer they remain here, the protective factor of the wider family and their school in E, weigh in favour of ordering summary return. These are some of the key relevant matters, but all the matters set out earlier in this judgment must be taken into account.
29. The approach of the courts in E to a relocation application by the mother gives me most reason to question whether summary return is in the best interests of the children, but in the circumstances as they would be on return, I would regard such an application as being without substantial merit in any event. The allegations against the father, at their highest, are not a determinative factor in this case. The children's wishes and feelings have, I conclude, been heavily influenced by the circumstances of their retention in this country, their isolation from the father and the wider family and their emotional reliance on the mother as the only person close to them with whom they now have regular contact. Their wishes and feelings are taken into account but their weight is reduced by the circumstances leading to their expression. Weighing all the evidence and considerations together, in my judgement it is in the best interests of the children to be returned now to E.
30. To protect the best interests of the children, the court's return order is made on conditions, namely that,
 - i) The father withdraws his custody application in E and provides documentary proof that the application has been withdrawn prior to return.
 - ii) A settlement agreement is reached and then issued by the E courts.
 - iii) The settlement agreement includes the following terms:
 - a) The father shall pay for the mother and children's economy flights to E.
 - b) Without prejudice to the divorce proceedings in the UAE the father will pay the mother child maintenance of AED 2500 (£566) per month per child until such time that the courts in E determine the appropriate level of maintenance.
 - c) The father agrees not to institute or support any criminal proceedings for the punishment of the mother arising out of her wrongful retention of the children in England.
 - d) The father agrees to the mother continuing to be the custodian of the children during their childhoods (until they are 18).

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- e) The parties agree indirect contact between the children and the father and direct contact on special occasions, during school holidays and during weekends. That agreement must be reached within two weeks of this judgment, and the terms included in the settlement agreement.
 - f) On a without prejudice basis and with no admissions the father shall undertake/pledge not to use or threaten violence against the mother or children and not to instruct or encourage any third party to do so.
 - g) The father shall not have direct or indirect contact with the mother save for as agreed.
 - iv) The settlement agreement shall be drafted by Ms Hamade or another lawyer with expertise in civil and family law in E. It must be confirmed to have been entered into a judgment in the court in E prior to the children's return.
31. The pre-conditions for return should be capable of being completed within two months from today. It would be preferable if they could be completed and the children returned prior to the start of the new school term, but that may have to be sacrificed in order to ensure the pre-conditions are satisfied.