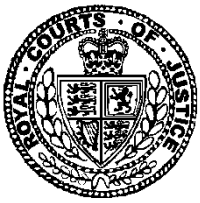

Neutral Citation Number: [2022] EWHC 2133 (Fam)

IN THE HIGH COURT OF JUSTICE **No. FD21P00475**
FAMILY DIVISION

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985
AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 9 May 2022

Before:

MR DEXTER DIAS QC

(Sitting as a Deputy High Court Judge
s.9(4) Senior Courts Act 1981)

(In Private)

B E T W E E N :

ST

Applicant

- and -

QR

Respondent

MR M. JARMAN appeared on behalf of the Applicant.

MS I. RAMSAHOYE appeared on behalf of the Respondent.

J U D G M E N T

(Judge in court; parties via Microsoft Teams)

DEXTER DIAS QC:
(Sitting as a Deputy High Court Judge)

1 Shortly before midnight on 8 February 2022, hours after this court delivered its judgment ordering the summary return of a child to his home in South Africa, his mother walked out of her house in [a northern city of England] and took an overdose of prescribed medication. Or said she did. She told staff in the Accident & Emergency Department she was taken to that she wanted to kill herself. In its barest essentials, this is what has triggered the application before the court today: that the High Court should set aside its own summary return order made pursuant to the Hague Convention 1980 on the Civil Aspects of International Child Abduction.

2 This judgment is delivered in eight sections to help parties follow the court's line of reasoning. There are also two appendices with extracts from the court's previous judgment that flesh out the background.

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3 Extensive anonymisation has necessarily been used. That has the effect of reducing those involved to ciphers. They are not. These are living, breathing human beings with strong and divergent interests, hopes and fears. But their privacy, and particularly that of the child at the heart of this dispute, must be fully protected by the court.

4 This judgment is not published to pry into most painful private corners of the lives of the people involved, but so that the public can see how our system of justice approaches such emotionally fraught and difficult questions. It has the right to know.

§I. INTRODUCTION

5 This is an application under Part 18 of the Family Procedure Rules 2010 to set aside the judgment of this court dated 8 February 2022 ("the February judgment"): see *Re CC (a child: Article 13(b), Hague Convention 1980)* [2022] EWHC 743 (Fam). I emphasise that this judgment should be read in conjunction with my February judgment.

6 I will again call the child at the centre of these proceedings CC. This bright and intelligent child was born on in 2016 and is now 6 years old. In April 2021, when he was four, he was brought to the United Kingdom by his mother, the applicant for the purposes of this application to set aside and the respondent in the Hague proceedings. She is ST. The respondent to this application is the child's father. He is QR. ST is represented by Mr Jarman of counsel. QR is represented by Ms Ramsahoye of counsel. I am grateful to both counsel for their invaluable assistance.

7 After ST took the excess of prescribed medication, she called for medical assistance when she became unwell - or she said she felt unwell. She now disputes whether in fact she called the ambulance or someone else did, but the contemporaneous records make it clear that it was ST who called for the ambulance.

8 In any event, she was taken to hospital in [a northern city]. She was kept there overnight and then released. That was on 8 and 9 February this year. On 8 March the father's solicitors informed the mother's solicitors that the mirror order in South Africa that the court had directed had now been obtained. At that point, ST's solicitors - this was a month after the February judgment - first stated an intention to set aside the judgment of the court. It is argued on the mother's behalf that this event, and her mental health state after it, constitute a fundamental change of circumstances. This is particularly so when combined with further information from her brother in South Africa that she cannot live with him there because of an irretrievable breakdown in their relationship.

9 In law, a set aside requires a fundamental change of circumstances. That condition precedent opens the door to the court setting aside its previous judgment and reconsidering the substantive merits of the Hague proceedings. That is what this application is inescapably about.

§II. THE FACTS

10 The background facts about the parties can be found in my February judgment at paras. 8 to 12. The procedural history can be found at paras.13 to 23. For ease of reference, I include all of this as Appendices 1 and 2 to this judgment.

11 In short, when CC was brought to the United Kingdom by his mother in April 2021, it was with the agreement of his father. But then ST took matters into her own hands. She wrongfully retained him, as this court has found. That said, she vigorously contested the return of her child to South Africa and mounted various "defences" to the father's Hague application. Those exceptions were under Article 13(1)(b). First, that CC would be exposed to the grave risk of psychological harm should he be returned to South Africa because of his

mother's mental health condition. Second, that consequently he would be placed in an intolerable situation. She failed to prove either exception and the court ordered his return forthwith in accordance with the purpose and objects of the Hague Convention. That was on 8 February. Later that evening, she left CC at home with his grandmother and went for a walk on her own. What happened thereafter is at the crux of this application.

12 The narrative of events is documented at p.113 of the medical records bundle. It reads:

> "Descriptive summary of the main risks identified on 9 February 2022, ST [the mother] took an overdose of 10 Naproxen and 10 Promethazine tablets while on a walk at 11 p.m. last night.
>
> "She felt ill after taking the tablets and phoned for an ambulance. She states that she took the tablets with the intention of ending her life and she has ongoing thoughts that her life is hopeless and that it would be preferable if she was dead. She says she is likely to take a further overdoses or attempt suicide by different means, such as walking into traffic at some point, but has no current plans to do this. She reports two previous overdoses in 2003 and 2013, that she took with the intention of ending her life. She has a five-year-old son who lives with her and her mother. He was being cared for by her mum when she took the overdose."

13 I observe that the fact of the consumption of these medications is a self-report by the mother. There is no blood test that has been put in front of the court, nor any other independent confirmation. However, I proceed on the basis that she did consume her prescribed medication in excessive amount. It is this action by her that is said to indicate her psychological instability and therefore, if returned to South Africa, the reason she would expose her son to the grave risk of psychological harm.

14 On 11 March she issued the Part 18 application to set aside the judgment. On 14 March QR filed an application for a collection order. On 17 March this case was urgently listed before me. The court considered the four-part test for setting aside a judgment that it has made. That test was articulated by Moylan LJ in *Re W* [2018] EWCA Civ 1904. It was also addressed by the Court of Appeal in *Re A* [2021] EWCA Civ 94. That was the judgment of Hayden J, sitting in the Court of Appeal. Both authorities insist that it is vital for the court to adopt a structured and systematic approach. The constituent elements of that approach are conventionally sub-divided into two stages. The first stage has two limbs (a) and (b), and the second stage has two further limbs, (c) and (d).

15 As Moylan LJ stated in *Re B (A Child: Abduction: Article 13(b)* [2020] EWCA Civ 1057 at [89]:

> "I suggest the process, referred to above and adapted as follows, should be applied when the court is dealing with an application to set aside 1980 Convention orders:
>
> (a) the court will first decide whether to permit any reconsideration;
>
> (b) if it does, it will decide the extent of any further evidence;
>
> (c) the court will next decide whether to set aside the existing order;
>
> (d) if the order is set aside, the court will redetermine the substantive application."

16 At the 17 March hearing, the court considered the first two limbs. On (a), the court found that there was prima facie evidence of a significant or fundamental change of circumstances relating to the mother's mental health. On (b), the court gave directions for relevant and proportionate further evidence to address the stage two analysis.

17 Therefore, this judgment exclusively addresses stage two.

§III. ESSENTIAL ISSUES

18 In relation to the set-aside application, therefore, the court considers the following questions:

> **Issue 1:** ***should the court set aside its judgment*** - in other words, has the mother proved to the requisite civil standard a fundamental change in circumstances?
>
> **Issue 2:** ***if so, how and when should the court determine the substantive application***, that is the question of any Article 13(1)(b) exception to the head summary return application. Should there be a full redetermination with further evidence and submissions, or should it be considered summarily within the course of this hearing?

19 Both parties agree that should limb (c) be satisfied, no further evidence in respect of limb (d) is necessary. The parties have made detailed written submissions on limb (d) in their very helpful position statements. Both parties are content, should limb (c) be established, that the court redetermine the substantive application on the material already before it. The parties agreed at the previous hearing in front of me on 14 April this year that the evidence is closed, subject to further application. As will be seen, and in fairness to ST, the court has permitted further evidence that she wishes to rely upon to be put before the court.

20 I also note, before I move on to consider the legal principles engaged in more detail, that the father has made a C2 application for a collection order. I do not ignore it, but applications must be taken in logical and rational sequence. One cannot put the forensic cart before the procedural horse.

§IV. LAW

21 The existence and basis of the High Court's power to set aside its own judgments has been considered recently by the Court of Appeal in *Re W*, *Re B* and *Re A*. Thus I do not need to

rehearse the analysis of the Court of Appeal in those cases. I am grateful for it and am bound by the doctrine of legal precedent. The short point is that the High Court's power to set aside its own judgment exists. About that there can be no question. It is an integral part of the High Court's inherent jurisdiction. But the existential question - why it exists - is of value in understanding this court's approach to such an application.

22 Stepping back, the court is asked to reverse what it has previously decided. It is not because what was decided was legally or procedurally wrong. Equally, this is not judicial review-type scrutiny. The available power is triggered by one thing: the facts have changed. But not every factual change is sufficient. It must be fundamental. I will come to what I understand that to mean shortly, but it involves in itself a finding of fact. The reason is that it is preferrable as a matter of principle for the court which made the original findings of fact, and which determined the return order, to decide itself if the facts have changed sufficiently to require a reassessment of its own substantive decision. In *Re W* at para.66 Moylan LJ characterised the test as:

> "A fundamental change of circumstances which undermines the basis on which the original order was made."

23 I judge that ten implications flow from this formulation:

(1) 'A fundamental change of circumstances' should not be elevated into something akin to a statutory test;
(2) It simply asks the judge to assess whether the basis of her or his decision has so radically change that the decision cannot stand. The term "fundamental" should be understood in that light;
(3) It is more akin to foundational failure. In other words, the foundation for the decision has been swept away;
(4) It is not necessary at this step, step (c), third out of the four-point rubric, for the applicant to prove on the balance of probabilities that an Article 13(b) exception or indeed any other exception exists;

(5) That cannot be so or step (d) would be rendered redundant. (See *Re A* at para.46.)

(6) Thus the question I ask myself is: does the totality of evidence, old and new, that is existing at the time of the original return order and thereafter, indicate that the foundations for that order either no longer exist or are insufficiently secure to continue to support it;

(7) This is a finding of fact;

(8) The applicant must prove it on a balance of probabilities. That is because of the basic principle that she or he who asserts must prove;

(9) If proved, the court must go on to redetermine the substantive application;

(10) The court may make the same or a different decision.

24 I remind myself of the approach of the Court of Appeal in *Re W*, also at para.66, where Moylan LJ said:

> "I set the bar high because otherwise there would plainly be a risk of a party seeking to take advantage of any change of circumstances."

25 This approach is echoed in the practice direction that governs these applications. It is Practice Direction 12F at para.4.1A. It is emphasised that "the threshold is high". But let me stress that I take none of this to mean that the bar should be impossibly high or unattainable. Equally, I do not compare this case to other cases and consider whether this is a rare case or not. Such forensic comparison is of little use to me. Instead, I simply consider whether there is a fundamental chance of circumstances as a question of fact. If so, I must and will redetermine the substantive application. Nothing more, nothing less.

26 In this narrow sense, it is as simple, forensically, as that.

§V. EVIDENCE

27 For the purposes of this application, I have the original trial bundle; an application bundle; a medical bundle; further statements, both from the father and the mother's brother, which I

granted permission to be admitted into proceedings in fairness to ST. I have answers to questions posed to Dr Chahl, the joint single expert psychiatrist in this case. I acceded to the application on behalf of ST that Dr Chahl should give evidence to the court by way of oral testimony. He did. I have also been assisted by two sets of position statements from counsel. Indeed, throughout these proceedings I have been assisted by first class counsel and I pay tribute to both of them. Lastly, as I have indicated, I have granted permission again to ST for further evidence to be put in front of the court. I have considered it and have read it all carefully.

(a) ST's brother

28 Let me start with the evidence of ST's brother. His statement is sworn and signed on 8 April 2022. He gives his address in South Africa, in the city where he had lived for extended periods with his sister. He states:

> "I make this witness statement in relation to the order for the return of my sister ST and her son to South Africa and save for otherwise where appears on matters referred to herein ... are matters within my own knowledge and are true. I am the brother of the respondent and half-brother of X [the half-sister]. I wish to advise this honourable court that when ST left South Africa with CC in 2021 she and I had a serious falling out, disagreement, before she left South Africa in 2021. We have barely spoken or communicated regularly with one another since. I do not wish to resume regular communication with ST again as the differences between us are irreconcilable. I am only making this witness statement because X contacted me to explain about the proceedings in England concerning CC and because I had been told that the English court may be labouring under the misapprehension that I am in a position to provide ST and CC with support upon their return to South Africa because I am ST's brother and would want to do so. For the avoidance of doubt I am not and do not want to do so. X has also explained to me that there has been a deterioration in ST's mental health over the past

> few months and that she attempted to commit suicide overnight following the decision by this honourable court to order CC's return to South Africa. I make this statement to confirm that I am not in a position to support ST, financially or mentally upon her return to South Africa, nor to offer her any accommodation. I have my own responsibilities ... in my life and I do not have the capacity to assist her in any way and nor do I wish to do so; nor particularly do I want the responsibility of looking after ST when we have not spoken since before she left South Africa, and there is no guarantee that she might try to take her own life again. I should explain that I work for..."

-- and he names his employer –

> "My work contract includes travel and onsite engagement and includes proactive onsite travel to customers' offices. For example, in-country trips and five days per customer per month are required, and I am Covid and travel restrictions dependent. Due to Covid that travel did not take place but it has resumed again. I am not prepared to put in jeopardy my job to support ST either emotionally or financially. In the circumstances I would like it brought to the attention of the court that I will not be assisting ST and her son if they return to South Africa and I do not wish to be relied upon in any capacity by her. "

29 Then there is a statement of truth which he signs. In response to this, the father QR provided the court with a statement dated 27 April 2022. In it, QR doubted the genuineness of the breakdown. At para.4 he points out the very respectful and cordial emails that the brother sent to his sister dated 15 September 2021. There is no hint, it is said by QR, of a relationship breakdown between brother and sister.

(b) Records and reports about ST

30 There is a report, and indeed an amended report, in this case from Dr Fragos. A medical summary of Dr Fragos has been helpfully set out by Mr Jarman at paras.12 to 17 of his original position statement. He states that what can be extracted from Dr Fragos' report, which in turn was extracted from the contemporaneous medical records, is a clear chronology.

31 The mother received treatment at Accident & Emergency at her local hospital following an overdose of her antidepressant medication; that she wanted to end her life and she took the overdose; that she might take a further overdose or attempt suicide in a different way, such as walking into traffic; that she appeared withdrawn with evidence of anhedonia, neglecting her self-care and struggling with motivation and concentration; that she expressed feelings of hopelessness and despair; that she was offered the intensive support service (ISS) as an alternative to hospital admission. At the initial assessment by ISS on 10 February, she presented with low mood, was tearful, feeling exhausted and hopeless. She reported no appetite, poor sleep and expressed suicidal thoughts, of cutting her wrists and running into traffic. She identified her mother as a protective factor and a source of support in looking after her son. ST was offered daily checks and her presentation remained unchanged on 12 February and indeed the 13th. On the 14th her presentation was brighter. There was improved appetite but she continued to have suicidal thoughts but no imminent plan.

32 On the 17th the mother was asleep in bed at the visit and did not get out of bed for ISS staff or engage in any meaningful manner. On 21 February she did not answer the door to ISS staff and spent the day in bed, having received an email regarding her situation about having to return to South Africa. On 22 February she appeared flat, unkempt, dressed in nightwear and sitting in bed during the assessment. She requested compliance aid as she was getting confused about her medication. On 24 February she presented as flat in affect, making limited eye contact with staff. She reported feeling very low and very stressed. On 27

February a telephone review took place as she was out with her sister, and she sounded in bright mood. On 1 March she was described as warm and welcoming with good eye contact and some spontaneous speech. However, she appeared in low mood and flat in affect. On 3 March she reported feeling flat in low mood but detailed some improvement in terms of her sleeping and having a more positive routine. She was feeling overwhelmed and unsure of the date she would have to return to South Africa. She was unsure how to start a conversation with her son about returning there. She was complaint with anti-depressant medication, sertraline 200 mg per day.

33 The report also detailed a psychiatric input from ISS at D23, p.209 of the bundle, which details her acute presentation and the need to dramatically increase her anti-depressant medication. It is reported at D24 that her presentation was "... suggestive of acute stress reaction and a background of mixed anxiety and depressive disorder." Thereafter a management plan was put in place on 11 March.

34 Dr Fragos offered his opinion about the mother's presentation and the impact to CC being removed from her care and returned to South Africa with the father. He stated that the mother had been diagnosed as suffering from an episode of acute stress reaction and a background of mixed anxiety depressive disorder. The aforementioned state could impair the patient's day-to-day functioning. The cause of such mental health conditions cannot be identified clearly and are considered a combination of biological, psychological and environmental factors. The mother was offered support, ISS offering home-based treatment 24 hours a day, seven days a week. Mother's anti-depressant medication was increased to 200 mg per day. It was recorded in the clinical notes that her son, CC, is identified as a strong protective factor, and that can potentially help reduce the suicidal tendencies of ST. The mother received the support of her family when experiencing mental health difficulties, and the overall the family is identified as a stabilising factor for her mental health. The

prognosis and recovery cannot be predicted accurately and engaging with mental health services and being adherent to professional advice and recommendations can potentially reduce the risks of further deterioration in her mental health and support the recovery process.

35 The case notes were obtained and revealed the following. On 10 February [the date may be wrong] there was what is said to be an overdose of naproxen and promethazine with the intent of ending her life, and that she presented as depressed and hopeless with ongoing risk of taking a further overdose. The working diagnosis was acute stress reaction and a background of mixed anxiety and depressive disorder.

36 On 11 February she had not been eating and presented with low mood, was in bed, tearful in contact and reported feeling exhausted and hopeless. She reported thoughts of cutting her wrists and expressed thoughts of running into traffic. Her appetite was poor. She was not sleeping well, unable to take her son to school and was taking medication for migraines. The next visit took place on 14 February when she was fatigued and had panic attacks, poor appetite and fleeting suicidal thoughts. On 15 February she started eating small amounts and she was brighter on interaction than on previous contact. She was sleeping better due to medication. There were ongoing suicidal thoughts but no imminent plan.

37 On 18 February the mother was asleep and did not get out of bed or engage in a meaningful manner. On 23 February she was described as "flat, unkempt, brittle, no change in presentation, lacked motivation, pessimistic, ongoing suicidal ideation, upset with life and does not have motivation to interact with her son."

38 On 25 February she was in bed, in a flat mood, feeling stressed, feeling overwhelmed; has not been interacting with her son during the day, is difficult to engage and presents with hopelessness.

39 On 2 March she was low in mood with flat affect, similar to the previous presentation. On 3 March the sertraline was increased.

40 On 9 March she was discharged from the hospital mental health team to the community mental health team (CMHT). There is a discharge letter which details that she was “moderately” ill. She was much improved compared to prior to commencing treatment. "Is there a history of significant risk behaviour? Yes." "Was she involved in a serious incident in the past three months? Yes." It says "significant risk of suicide; no apparent risk of self-harm". "Significant risk of accidental self-harm, high risk of relapse? Yes." "Self potentially at risk? Yes." "Further risk assessment: Yes."

41 Mr Jarman, in his position statement, relies on all of that and it is only right that the detail of it is included in this judgment.

(c) Dr Chahl

42 In light of these developments there was a further report from the joint single expert, the psychiatrist Dr Chahl. The mother wanted him to give evidence. These are summary proceedings but to give full and meaningful effect to her Article 6 rights, I granted the application. Therefore, the court did receive testimony from Dr Chahl. This was on 14 April which, this year, was Maundy Thursday. Dr Chahl gave evidence to the court at some inconvenience to him. The court is extremely grateful to him.

43 He stated that the mothers' adjustment order is a direct consequence of these legal proceedings. Indeed, anyone in her situation would struggle with their mental health because of the ramifications. Most of us, he said, will experience an adjustment disorder at some point in life. It is, he says, very common and he told the court that 75 per cent of people between the ages of 15 and 25 experience it. The stress we are seeing in the mother and the anxiety is what he would see, he says, in most individual who either did or did not have her particular psychological factors if placed in her situation. Therefore, her reaction is less manifestation of her underlying psychological structure and more a reflection of her predicament in these proceedings.

44 Adjustment disorders are linked to adverse life events or disappointments, and of course life is full of disappointments. But these are reactions to what he called abnormal life events, not catastrophic life events that can cause the much more serious condition of post-traumatic stress disorder. By comparison to that, he regarded this as mild. Her taking of medication in February was not, he concluded, her trying to end her life. It was, instead, her expressing distress. He said he reached that conclusion because people who actually do want to kill themselves and are in fact suicidal do not call for help. Here, it is worthy of note, that there has been, after the previous court hearing, a number of telephone calls to Dr Fragos to get him to change what was noted on the original and contemporaneous medical records that it was the mother who called the ambulance. It is not the function of this court to reach findings of fact about everything, but the court must take into account the prevailing circumstances in order to reach a decision about whether or not there has been a fundamental change in circumstances. I make it plain that I do not consider that the subsequent special pleadings that there should be a change to the contemporaneous records are persuasive. It strikes me that they are self-serving and the court prefers to proceed on the basis of the contemporaneous records. They are far more likely to be true.

45 What Dr Chahl said was this: "People who seek help are not hoping to die but hoping somebody intervenes." Indeed, if somebody seeks help it is a critical factor in assessing the level of future risk, and the risk is lower if somebody has sought help because it is in the hope that somebody will step in to assist them. Therefore, he assesses the risk that ST presents of self-harm and suicide as mild to moderate. But he does not think that the consumption of the medication on 8 February was in fact a suicide attempt. He stated that by taking the medication she had "upped the ante". He could not say whether that was a conscious or unconscious attempt to escalate. It might have been a conscious attempt, but he concluded that it could be "an act of avoidance of what she was due to face" which is the court order that her son must return to South Africa. It was, he thought, "demonstrating distress" because her wish is not to return to South Africa. There have been no other subsequent attempts by ST to harm herself, or indeed to attempt suicide. I accept Dr Chahl's evidence that this was not an attempted suicide.

46 Indeed, as I have come to be acquainted with the diligence of her legal team, I have no doubt whatsoever that if there was any other evidence of her hurting herself, that that would be put in front of the court. There is nothing.

47 Dr Chahl continues that her behaviour is best understood as a response to her current legal predicament. The current stressor is the legal proceedings for her son to return to South Africa. He cannot "truly" comment whether she is or would be emotionally available to her son. During the course of his testimony, he did make some comments about it, but he clarified the position that this is not his expertise and it would need a dedicated expert parenting assessment in order to reach those conclusions. He said explicitly that such assessments are outside and beyond his expertise. He said that if there were a return to South Africa, in the short-term the risk that she would present would go up. That is because it would be against her wishes, but risk would start to decline after the return.

48 On behalf of QR, he was directed to the medical note dated 22 March 2022. That note stated that the mother was "much improved". It is a testament to the balance of Dr Chahl that he sounded a note of caution about this. He says these forms are useful for directing and signposting patients to appropriate support. They are essentially a box-ticking exercise. There is no narrative, but it does say that the son is a protective factor. CC's presence reduces the risk that she would hurt herself or try to kill herself. Nobody has suggested that ST is a risk to CC and, as Dr Chahl says, knowing the diligence of the medical services in the county in which ST resides, if there was a risk to CC they would have referred him to social services. They have not done so. So it is not being suggested that currently she is presenting a risk to her son or indeed has done.

49 The court asked the doctor some questions. He said that an adjustment disorder tends to be mild compared to severe mental health disorders. Most people fully recover without any treatment. These people go on to live normal lives. Mostly they are treated by GPs and in this case, ST could be treated in South Africa by a GP. Once the stressor of legal proceedings is lifted, the condition should not have a long-term consequence for her mental health and prognosis. Her vulnerability factors are not significant in her presentation and situation. A significant number of people will present as she has to this kind of stress about having to return against her will to another country. The risk of self-harm to her if she returns to South Africa remains in the mild to moderate range. He said that he had come across her type of behaviour before. That is behaviour "upping the ante" as he put it. These are deliberate acts to achieve an outcome. Somebody who talks, for example, to clinicians about self-harm and suicide to get admitted to hospital. Somebody with a personality disorder who does not want to be discharged from hospital may do the same and talk about hurting themselves or committing suicide. He said: "I cannot say she is doing it deliberately, but we cannot ignore the timeline. This may have played a part and this why

we are having this hearing today." That is on 14 April. She has chosen to act in a particular way. Either this was a deliberate act to achieve a strategic outcome or it was a compulsive one or it was a combination of the two. This could be, he judged, an avoidant act. At some point she has to take responsibility. She has full mental capacity. This taking of medication does not sound to him like an attempted suicide.

(d) Dr Fragos

50 On Sunday 1 May, QR's solicitors received further documentation on behalf of the mother. Her solicitors had made a C2 application on 29 April of this year to adduce the material that I have spoken about. There was an amended report from Dr Fragos. There were pages of WhatsApp material and messages and records. There was the patient print-out record from 21 March 2021 to 28 April 2022. The most significant point about it and the point that is relied upon in Mr Jarman's position statement is the GP notes revealed that on 26 April the mother was subject to "a fast-track referral for suspected breast cancer". In his careful position statement Mr Jarman relies upon nothing else in the new material aside from that. Ms Ramsahoye, shortly before the court delivered its judgment, made not so much a complaint but a reasonable observation that she had not had an opportunity to address this material in her position statement. But parties agreed that the most important feature was this particular referral for investigation of suspected breast cancer.

51 I considered whether to exclude this evidence. Having thought about it, I felt in fairness to ST that it was appropriate to admit it into evidence. There is, of course, intense frustration on behalf of QR that the goalposts are constantly changing. That can be seen, for example, from the repeated changes in the basis upon which mother contested the return order. See paras.13 to 20 of my previous judgment at Appendix 2. But notwithstanding that frustration on behalf of the father, I have to consider as accurately as I can the situation that his CC is

likely to face on return to South Africa if the court persists with that order. Therefore, I have given ST permission to adduce the evidence.

§VI. DISCUSSION

52 ST relies on two bases to establish is a fundamental change of circumstances. The court must view them cumulatively.

53 The first basis is that ST's brother cannot accommodate her and will not support her in South Africa. The second basis is that her psychological deterioration following the judgment and/or the further evidence of the nature and extent of her psychological state indicate that the foundation, the basis of the previous judgment, has now fundamentally changed, and the court should therefore revisit (and reverse) its decision.

54 I deal with the first topic: her brother. It was submitted forcefully on behalf of ST that the court should assess the risk to the mother at its highest, based upon the evidence in front of it. However, the court is not compelled to accept matters at face value in all circumstances. It is clear from the decisions of the Court of Appeal that the court has the duty to examine the cogency and internal consistency of evidence. Indeed, in my judgment would be a gross dereliction of the court's duty to assess evidence actively and holistically if one were always to accept evidence at face value. The court must do the best it can.

55 The statement from [her brother] was filed just before the set aside application. It claimed there was a catastrophic breakdown in the relationship between him and his sister. That had never been mentioned previously. It was never earlier suggested that the relationship between them had broken down and that the position was "irreconcilable". There are no details whatsoever in his statement about the nature of the conflict between them. It seems puzzling if this were the true position that permission was not sought to adduce this material

prior to the directions hearing on 17 March, or if it was not available in statement form, to bring to the attention of the court that in fact there had been an irreconcilable breakdown between ST and her brother. That would have been known in fact in February at the final hearing before the court because this happened, it is alleged, before ST left South Africa in April 2021. It formed no part of the previous grounds of resistance.

56 In February, as is made clear in the previous judgment, her case was that she could not live with her brother in South Africa because there was a problem about space. As a result, photographs were presented showing the flat in South Africa being redecorated. There was an email from the brother which said that he was planning to sell his home. There was no mention whatsoever of an irreconcilable breakdown. Indeed, ST exhibited communications between her and her brother where he addressed his sister in a warm and cordial fashion. See, for example, C119.

57 All of this points strongly and consistently towards it simply not being the case that ST and her brother have fallen out in the way that is now being claimed. I have no doubt whatever, if this was the truth then it would have been mentioned before in March when the case was in front of me, and in February when the case was in front of me before that. But it was not. I reject this evidence.

58 What has happened, it seems to me, is that after the court rejected the "no room at the flat" argument for the purposes of the February judgment, ST and her brother have devised an alternative basis to eliminate him as a source of support in South Africa. Therefore, I do not find there is any material of a fundamental change in circumstances in respect of the mother's ability to live with her brother in South Africa. I reject the suggestion that she would have no support from him, and remind myself, as I pointed out in the February judgment, that she has lived with him over extended periods in South Africa.

59 I turn to the psychological situation and provide the court's assessment of Dr Chahl.

60 I found Dr Chahl to be a balanced, thoughtful, immensely knowledgeable and convincing expert witness. He was decidedly not hostile to ST and I detected no *animus* or ill-will towards her. He provided, I am quite satisfied, his best possible professional diagnosis and assessment, and I reject the submission on behalf of the mother that he was telling the court what he "perceived the court wanted to hear". That was palpably not the case. What the court wanted to hear was his independent dispassionate expert opinion. He provided it. I do not accept the criticism of Dr Chahl by the mother that his evidence is undermined by his not having seen her for the purposes of his addendum report. He was not asked to do so. The mother's legal team could have made that request; they did not. Indeed, they previously approached him in an authorised fashion to ask him further questions. That was the subject of considerable criticism by Ms Ramsahoye earlier in proceedings. Nevertheless, it demonstrates that ST's legal team are not reticent in seeking to approach Dr Chahl. They did not in respect of this matter. He is a single joint expert. It was open to those representing him to make such an application and therefore it is puzzling and unconvincing for a criticism to be made when they did not seek this step. At the same time, and paradoxically, the mother seeks to rely on Dr Fragos who did not himself assess her.

61 In his February report, Dr Chahl concluded that there will be "a slight worsening" in ST's overall mental state on return to South Africa. It is submitted on her behalf that she has had an "acute stress reaction" to the 8 February judgment. This assertion is supported by the report of Dr Fragos and the medical documents he has referred to. But one must be clear. What is an acute stress reaction? As Dr Chahl stated, it is closely related and akin to an adjustment disorder. That diagnosis has not changed. What has changed is that ST is unhappy, perhaps deeply unhappy, with the judgment of the court. She did not want to go

back to South Africa. She has been tearful, exhausted and has had flat mood and presentation. She states that she has no appetite and poor sleep. The latter are, of course, self-reports, but on the assumption they are true, the court has carefully assessed the consequences. She reports she wanted to end her life when she took the medication on 8 February. Dr Chahl doubts this was the case. She called for medical assistance when she felt unwell from the medication. She has sought to deny it. Dr Chahl confirms that such seeking help is unlikely to be the act of somebody who genuinely wishes to end her life. I prefer Dr Chahl's evidence. It is supported by the fact that the mother has not taken another "overdose", if overdose it was on 8 February. These were anxiety medications, as Dr Chahl points out, not much more dangerous drugs like, for example, common paracetamol, an overdose of which can easily lead to very serious consequences rapidly. She has reported she might repeat her self-destructive acts. She has not. She reported to clinicians she might try to end her life another way. She has not. She has reported that she has thought of cutting her wrists. She has not. It appears that there is no evidence of subsequent self-harm in this way or indeed any other way whatsoever. This is an important context.

62 She was sometimes in bed when she was visited by support services. She was visited at home because she was discharged from hospital the very next day. Sometimes her mood is elevated and much better, such as on 27 February when she was found in a bright mood on the phone to services. On 1 March she appeared "warm and welcoming" and had good eye contact. Some of this is exactly as would be expected by Dr Chahl's diagnosis. This pattern may continue in South Africa, but her overall mental state is likely to improve. Adjustment orders are about adjusting to a life situation and find it hard to do so. As Dr Chahl said, for the purposes of the previous judgment, the best thing that can happen “is time”. The thrust of his evidence is that in time after her return she will adjust. As he previously stated, time to adjust is the best expedient. He believed the improvement would occur over a period of approximately 3-6 months, although he could not be precise.

63 South Africa, it should never be forgotten, was her home. South Africa has been her son's home. She brought her son up there. She married another man in South Africa. Presently she prefers to stay in the United Kingdom. She is entitled to have that preference, but that cannot stand in the way of the existing court order to return her son to South Africa, unless there has been a fundamental change in circumstances to necessitate the court revisiting its order.

64 Mr Jarman has very helpfully provided a checklist of what he submits the impact of the return to South Africa would have on the mother. This is at para.36 of his position statement dated 3 May 2022.

65 **Factor 1: "No practical or emotional support from any significant family member."** I do not accept the mother and the brother's evidence that there has been an irreconcilable relationship breakdown. Dr Fragos noted that the mother had reported that she would have no family in South Africa. That documented assertion was also the subject of further representations on her behalf about its inaccuracy. I am bound to say I prefer the contemporaneous records. Dr Fragos said that that might potentially affect her mental health state, the fact that she would have no family in South Africa. It seems to me that what has been reported by her, as was recorded contemporaneously, was not factually true. Whether she deliberately did that or not, whether she has sought to make the situation sound bleaker than it is on return to South Africa or not, the most important point is the conclusion of the court that if she did return to South Africa with CC she would have support.

66 **Factor 2: "Living at home with the sole care of CC".** Again, I am perfectly satisfied that if necessary she could live with her brother as she has done previously.

67 **Factor 3: "No employment or prospect of employment in the foreseeable future."** It is impossible for the court accurately to judge this, but QR has been providing her with maintenance as part of the protective measures. He has undertaken if necessary to provide her with extra maintenance for 12 months.

68 **Factor 4: "Wholly dependent on QR to pay maintenance in the absence of any state benefits being available to mother."** There is a dispute between the parties whether she would be entitled to receive state benefits in South Africa. But as I have indicated, QR has undertaken to pay an enhanced level of maintenance over and above what has been sanctioned by the South African court. It is also important that previously his record of providing maintenance to her was excellent.

69 **Factor 5: "No secure accommodation and only three months funded by QR in a location on the very outskirts of [a city in South Africa] and at a location she is unfamiliar with."** She has been living in that city. If she returned to South Africa she would live there again. It is very difficult for this court in summary proceedings to make value judgements about the relative merits of suburbs in cities thousands of miles away.

70 **Factor 6: "She is already moderately depressed and anxious which will further deteriorate upon return."** Dr Chahl's conclusion was that there would be a “slight worsening”, but even if it was more than that, it would be for a relatively short period. He assessed that the symptoms will decline after her return as she adjusts to life back in South Africa. He stated that the risk to her would remain within the moderate range.

71 **Factor 7: "No time frame as to when the symptoms will abate".** Dr Chahl’s best assessment is that it would take approximately - and I emphasise "approximately" - between 3 to 6 months for the situation to improve.

72 **Factor 8: "Legal proceedings in South Africa in which QR will seek the sole care of CC now with the evidence of mother's incapacity by way of depression and anxiety."** This is classically a matter for the South African, that is the home, court to resolve. Whether this child is in terms of overall welfare better placed with his mother or his father is not a matter for this court to give an indication upon at this point. It is not certain what the outcome of legal proceedings in South Africa in any event will be, and it would be wrong for this court to speculate about the conclusion.

73 **Factor 9: "Mother will have no ability to fund legal representation."** ST has a law diploma and she has worked for a law firm in South Africa. She is better placed than most unrepresented court users.

74 **Factor 10: "No mental health support in terms of psychological services and counselling."** Dr Chahl's view is that such interventions for an adjustment order are of very limited value. In fact, as he put it, no amount of medication or psychological support will make a difference. That said, QR is willing to fund a health care professional to provide therapeutic support for the mother. He is also willing to provide health insurance.

75 **Factor 11: "Any medication will have to be paid for".** As I have indicated, QR has undertaken to the court to provide extra maintenance for 12 months. He is also offering health insurance.

76 **Factor 12: "In her current health state and presentation, low mood, anxiety and lack of energy, her emotional availability to CC will be compromised."** Dr Chahl cannot give expert evidence about this. There is no independent evidence to confirm that if she goes back to South Africa, she is likely to be unavailable to her son emotionally. Indeed, her son

is a protective factor reducing the risk to her. There is no suggestion that she would be returned to South Africa without him, despite what she might have conveyed to professionals in this country. The question is whether or not he must go back to South Africa for the purposes of the Hague Convention application, the court having made a regular judgment about it. Nobody is suggesting that should she wish to go back to South Africa that she would not be living with her son. Equally, it is not correct that she will only have accommodation for 3 months. The father has offered accommodation for 12 months.

77 **Factor 13: "The risk of self-harm and suicide will be moderate with a risk increasing upon her return."** This risk is likely to subside after a relatively short time. It will, in any event, according to Dr Chahl, remain within the moderate range. The doctor concluded that she did not try to kill herself in February. She has not attempted other acts of self-harm subsequently. He assessed that the risk of "misadventure" is low.

78 **Factor 14: "Her recent referral for breast cancer adds stress to the mother's already 'horrendous stress'."** It is not confirmed that she has got breast cancer. This is a referral for investigation. There is no suggestion that mother could not receive appropriate investigation or treatment in South Africa, and this is not something the court should speculate about. In any event, the package of protective measures that QR has put in front of the court should be repeated. An extended duration of extra maintenance for 12 months; a car for six months; health insurance and a health care professional to provide therapeutic support. Previous authority makes it clear that when the court is assessing these important issues, it is vital to have an understanding of the steps that can mitigate the risks that have been identified. QR has put a very substantial package of protective measures in front of the court and given undertakings that these will be there to support ST and therefore, indirectly, reduce the risk to his son. Dr Chahl's opinion is that ST’s anxiety and depression symptoms

could be managed by a GP in South Africa. This is not a severe nor enduring mental health history, as he put it.

79 I therefore draw the strands together. I start with the new evidence. I do not consider that it materially changes the picture in respect of ST. She has not been diagnosed with cancer. She has been referred for investigation. That is very different. I proceed on the basis that it may increase her level of stress, but absent any confirmation I do not consider that it makes a significant difference to any of the assessments about her psychological state. That said, I accept Mr Jarman's submission that the court now has "a much broader and more detailed picture of the mother's mental health". She did experience an acute stress reaction to the court's return order judgment of 8 February. Her prescription medication has been doubled. Her mood is generally flat, but not always so. She has reported suicidal ideations at times to clinicians, but I accept the evidence of Dr Chahl that the 8 February incident was not a suicide attempt. If mother returns to South Africa with her son, her distress will increase in the immediate short-term. That is because she just does not want this to happen, but I also accept the evidence of Dr Chahl that the distress and anxiety will decline as she adjusts to life back in South Africa where she has lived most of her life, and CC also has lived most of his life.

80 What the court concludes is this: ST is going to have accommodation for 12 months provided by QR, should she want it. She could, I am perfectly satisfied, live with her brother again should she want it. She has options. Thereafter, I am perfectly satisfied that she will be able to return to life in South Africa. Her psychological position has not materially changed since the court handed down its judgment of 8 February. I accept the careful evidence of an eminent psychiatrist, Dr Chahl. It is significant that immediately after taking an excess of antidepressant medication she called for medical assistance. It is significant she has not attempted to seriously harm herself in any other way. However,

regrettably, what she hopes is that what she has done is sufficient to set aside the court's previous judgment. I do not find, therefore, that there has been a change in her medical health and psychological position. I am satisfied that this has been instead a carefully veiled exercise in trying to reopen and reargue this case. That is emphatically not any criticism of Mr Jarman who has performed his professional duties impeccably, but I am quite satisfied that the mother is determined to frustrate the return order of the court.

§VII. CONCLUSION

81 I conclude that ST has not proved to the requisite standard that there has been a fundamental change of circumstances on either basis. Indeed, I find that there has not been.

82 As a cross-check, I consider the brother's evidence and the updated psychological and medical evidence together, and do not find that there has been a fundamental change in circumstances.

83 As Hayden J said in *Re A*, a fundamental change of circumstances is deliberately set high. The circumstances in this case come nowhere near that threshold. The question of the set aside threshold having been answered in the negative, I do not need to go on to consider issue 2, that is limb (d) in stage 2 of the set aside rubric - reassessment of the substantive application. However, if I had, parties agree that no further evidence is necessary. Both of them have made helpful submissions. The submissions on behalf of ST are summarised in Mr Jarman’s position statement between paras.33 and 37.

84 I am satisfied that for the purposes of these summary proceedings - and I emphasise the summary nature of the proceedings - I have sufficient information to judge this issue. Thus, adding the new evidence to the pre-existing store of evidence from the February hearing, I find that ST has not proved, on a balance of probabilities, that her son would be exposed to a

grave risk of physical or psychological harm on return to South Africa. Nor would he be placed in an intolerable situation.

85 As Dr Chahl stated, an adjustment disorder is an isolated event that most people fully recover from and they go on to lead normal lives. As Dr Chahl told the court, what happened in February and March was an attempt either consciously or unconsciously by ST to escalate the situation and make the court's decision that much harder.

86 I remind myself of the words of the "outline" that accompanies the Hague Convention 1980. It accurately captures the spirit, intent and purpose of this crucial international treaty that binds this nation and is designed to protect children. It states:

> "Save in exceptional circumstances, the wrongful removal and retention of a child across international borders is not in the interests of the child."

87 There are no exceptional circumstances here. There is no change of circumstances and certainly not a fundamental change that would justify setting aside the previous judgment of the court. None of the exceptions or defences to the Convention have been proved to the requisite standard by the mother. The central philosophy of the Hague Convention must not and cannot be ignored.

§VIII. DISPOSAL

88 Accordingly, I dismiss the application to set aside the judgment of 8 February. That judgment stands with full legal force and effect.

89 CC's continuing retention in the United Kingdom is wrongful. It must end and forthwith. "Forthwith" means exactly that - forthwith. Nothing more, nothing less.

90 That is my judgment.

UPDATE

91 Following this judgment, the mother agreed to return to South Africa with CC and indeed returned with him. The court in South Africa will decide all future matters about the welfare of the child. The Hague proceedings have concluded; the objective of the Convention fulfilled.

APPENDIX 1

8 The parties to the application are, first, CC's father Mr QR. He is a South African national. He is represented by Ms Ramsahoye of counsel. Then second, the respondent Ms ST. She is CC's mother. Ms ST is a national of [another African country] with indefinite leave to remain in the United Kingdom. She has been represented by Mr Jarman of counsel. His position today, with permission of the court, is covered by Ms Slater of counsel to whom the court is most grateful.

9 What happened was this. CC's parents met in high school in South Africa. Their relationship started as a youthful romance, but it inevitably had to end when her mother left for England and Ms ST went along, too. Several years later, Ms ST returned to South Africa and took up the relationship with Mr QR. Frankly, it did not go well. They separated in 2016, after CC was conceived but before he was born. Approximately three months after his birth in [a northern city of England], he was taken by his mother to South Africa. This was on 26 September 2016. From then until 8 April 2021, he had been living in South Africa. Indeed, he had been attending the YY College preschool, certainly before Covid struck, as it ultimately did so devastatingly in South Africa.

10 Mr QR has rights of custody within the meaning of Art 3 of the Convention and also pursuant to the Children's Act 2005 in South Africa. The significance is that scheme of the Convention is the enforcement of rights of custody as opposed to court orders. The right to assert and enforce custody rights exists, therefore, independently of any pre-existing court order. Here the parents were signatories to a joint parenting plan endorsed and approved by the Family Court in South Africa. It is dated 7 August 2017. This agreement was mediated. Both parties were present in court and it was approved by the court. So that was 2017.

11 In 2018, Ms ST met and later married Mr G, a national of [another African country]. Unfortunately, that marriage failed in 2021. The breakdown was around the time that Ms ST travelled to England with her son. That was on 8 April 2021.

12 It must be pointed out that at first Mr QR agreed that his son could go to England. He says that he believed it was to be for a three-week holiday. Thus, CC should have returned to South Africa on 29 April 2021. Or thereabouts. However, once Ms ST sought to keep her son here, Mr QR did not consent to that. He had agreed to a holiday and then a prompt return to South Africa not, he says, to his son's wholesale relocation to the United Kingdom. Therefore, on 18 May 2021, his South African attorneys sent the mother a letter seeking for CC's return within twenty business days. CC was not returned before the expiry of that period. So his father took legal action.

APPENDIX 2

§II. PROCEDURAL HISTORY

13 On 29 June 2021, Mr QR made an application to the Central Authority in South Africa. That was the appropriate procedural mechanism. Mr QR sought the summary return of his son to the jurisdiction of the Republic pursuant to the Child Abduction and Custody Act 1985 ("CACA 1985") in this country which incorporates the Hague Convention. His application for return was sent to this court for issuing on 12 July 2021. A first without notice hearing was listed on 4 August.

14 Ms ST's answer to Mr QR's claim is dated 23 August 2021. In it, she advances what essentially amounts to an Art 13 exemption - more accurately: a series of them. She conceded that at the material time CC was habitually resident in the Republic of South Africa within the meaning of the Convention. It was hard to envisage how she could not. CC had lived in South Africa all his life bar three months. However, in mounting her determined opposition to return, Ms ST relied upon five bases:

a. That the removal of the child from South Africa was not a wrongful removal but a lawful removal;

b. The applicant was not actually exercising custody rights at the time of the removal or retention;

c. He had consented or subsequently acquiesced in the removal or retention;

d. That there was a grave risk that CC's return would expose the child to physical or psychological harm or otherwise place him in an intolerable situation;

e. That CC objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his views.

15 On 25 August, Ms ST and her counsel appeared before the court. That was in front of Newton J. Her application for her son to be seen by Cafcass was refused by the learned judge. This was to found the Art 13(2) exemption to return, based on the child's objection. This provision is consistent with the international obligation under the United Nations Convention on the Rights of the Child (UNCRC). Art 12 of that instrument provides:

> "12 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

16 The UNCRC erects a presumption, therefore, that the child's views will be heard unless they are inappropriate. In the case management order of 25 August 2020, it was recorded that:

> "The mother's application for the child to be seen by Cafcass for the purpose of an assessment of his age and degree of maturity and whether he objects to returning to South Africa is refused."

17 I am bound to observe that such a conclusion by Newton J was inevitable. CC is too young for his views to have any credible legal meaning. Thus, such an exemption was bound to fail. Bluntly, Ms ST had better points. Thereafter His Lordship gave helpful case management directions, including granting permission to instruct an expert about Mr QR's custody rights in South Africa. The significance is that Art 3 of the Convention provides insofar as it is material that:

> "The removal or the retention of a child is to be considered 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."

18 The parties jointly instructed Ms Amanda Cato to prepare the report and this was filed with the court on 21 September 2021. Her evidence is uncontroversial and agreed. Mr QR has enforceable rights of custody. Ms Cato makes it clear that the parenting plan entered into by the parents with the assistance of two mediators has been endorsed by the court and therefore, in South African law, is a court order. Furthermore, she advises that the parents have shared full parental responsibilities as contemplated by s.18 of the Children's Act 2005 in South Africa. In addition, Ms Cato states that the father as co-guardian has the right in terms of s.18(3)(c) and s.18(4) - (5) of the Act:

> "... to give or refuse any consent for the child's removal or departure from South Africa."

19 The matter was listed for final hearing on 15 November 2021 before this court. At that hearing, Ms ST abandoned all the bases for opposition (all exemptions) save for Art 13(b). On the evening before that hearing, Ms ST for the first time raised the issue of her mental health. She now stated that her profound mental anguish and abiding psychological condition was highly pertinent to the question of whether CC should be returned to South Africa.

20 Time is unquestionably of the essence in child abduction cases. This is to prevent the harm of retention away from the child's habitual residence. Indeed, judicial authorities have a duty to act with due expedition: see CACA 1985, Schedule 1, Art 11. Nevertheless, the court must balance expedition with fair hearing rights and due process. Therefore, on 15 November, the court granted the application to adjourn proceedings for an assessment of Ms ST's mental health. In the first instance, the hearing was adjourned to 19 November. On that date, Ms ST made a successful Part 25 application for a psychiatric expert. Permission was granted to instruct consultant psychiatrist Dr Chahl. His report was filed with the court on 18 January 2022.

21 On 28 January 2022, the mother's solicitors sent the doctor a list of eleven further questions. They also provided him with evidence. First, there was a standalone JPEG image entitled "One page of medical records received on 21 January 2021". Second, a letter to Dr Chahl setting out a list of the mother's current mediation and a screenshot from her doctor's portal. Third, there was a Word document with the list of the medication. There was not any confirmation of who prepared this list. Last, there was a patient summary record. None of this was done either with the permission of the court or notice to the other party, let alone with the other party's consent.

22 Dr Chahl is a single joint expert. On behalf of Mr QR, serious criticism is made of this unilateral approach to Dr Chahl. It was said to be an attempt to persuade him to change his conclusion rather than the seeking of clarification. In any event, Dr Chahl provided his answers in a letter dated 1 February 2022. Nothing that was sent to him caused him to change his diagnosis or prognosis.

23 The matter was relisted for a final hearing and two days were set aside. The case came on for hearing on Monday 7 February 2022. On that day the court received submissions from counsel. Without objection, the hearing was conducted using the MS Teams remote video platform. That of course enabled Mr QR to join from South Africa. Remote hearings do have several undoubted advantages. That said, there was no conceivable curtailment of the Art 6 ECHR rights of parties, since by agreement no oral evidence was to be called. The second day was 8 February, when the court indicated it would hand down its judgment. That is today.