IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD21P00907

[2022] EWHC 3681 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 17 June 2022

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

Before:

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

(**In Private**)

B E T W E E N :

W — Applicant

- and -

X — Respondent

MS C RENTON (instructed by Birmingham Legal Limited) appeared on behalf of the Applicant.

MISS R CABEZA (instructed by Dawson Cornwell Solicitors) appeared on behalf of the Respondent.

J U D G M E N T

(v i a h y b r i d h e a r i n g)

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

1 This is the judgment of the court. I have subdivided it into nine sections so the parties can follow the court's main reasoning:

§I. INTRODUCTION

2 These are proceedings under the Hague Convention 1980 for the summary return of an 8-year-old girl called Y to Italy from the United Kingdom. Y penned a letter to the court. She wrote:

> "Dear Smart Owl,
>
> I want to show you all about my dad being rude to my mum but I feel a bit funny as I have never written a letter before. Amy [that is the Cafcass officer] is helping me today.
>
> I want you to know everything that my dad did to my mum, that my dad shouted at my mum and treats her like a slave and makes her work for him. This makes me unhappy and feel bad for my mum.
>
> My dad thinks he is the king and the boss of my mum.
>
> The situation (dad making me go home to Italy) makes me feel upset, angry, and ruined like he ruined my life.
>
> When I am here, I am happy, glorious, and splendid. I like being here because my teachers and friends are kind, everyone is kind to me here and no one bullies me anymore.
>
> I want you to know I feel sorry for mum and upset with my dad, and I don't want to go back to Italy because I will not have said goodbye to my cousins from Africa who are important to me.

I would feel like crying as I would be upset. If you ask me to go back to Italy, even for a short time I would feel this way.

I want you to know I have better friends and teachers here.

I want my passport back so I can go to Africa.

Y."

3 Y was born in a hospital in C, a city in northeast Italy, in the summer of 2013. She has been living in England since 11 June 2021. When she was brought to the UK by her mother, this was not an abduction. Her father agreed to her coming to England. However, the terms of her stay in the United Kingdom are bitterly disputed.

4 Her father is the applicant in these proceedings. He is W. He is represented by Ms Renton of counsel. The respondent is Y's mother X and she is represented by Miss Cabeza of counsel. The court is indebted to both counsel for their energetic and expert advocacy and their meticulous conduct of their respective cases. Both lay parties are fortunate indeed.

5 The mother was born in West Africa and the parties were married in 2013. They lived in C as a couple. The father, the mother, and Y are all Italian nationals and have Italian passports.

6 On 11 June 2021, the mother brought Y to England. At the end of August 2021, Y did not return to Italy for the beginning of the new academic year that was due to start on 13 September. Sometimes, the parties refer to it as 12 September, but nothing turns on that difference. What is far more important is whether the plan was for Y to come back for the Italian new school year. That is at the heart of this case.

II. PROCEDURAL HISTORY

7 When Y did not return in the second week of September, W reported the matters to the police in Italy. That was 18 September 2021 and then on 23 September. He applied to the central authority in Italy on 13 October 2021 and issued Hague proceedings on 24 November 2021. In this country, the first without notice hearing was held on 25 November 2021 in front of Russell DBE J. Disclosure orders were made against the Secretary of State for Education and the Health and Social Care Information Centre. Directions were also given for the matter to be listed for a first directions hearing for summary resolution on 13 December 2021 and a prohibited steps order was granted prohibiting the applicant and the respondent from removing Y from the United Kingdom pending the determination of the proceedings or further order. A penal notice was attached to this order.

8 The order dated 25 November was served on the respondent by the tipstaff on 6 December. Passport documents relating to Y and X were seized. X was served by email with the pleadings on the next day, 7 December, and she was personally served with the pleadings on 9 December. The first directions hearing was indeed on 13 December. X stated that she sought to defend the summary return and it was ordered by the judge that day, HHJ Matthews QC (sitting as a Judge of the High Court), that the port alerts should remain in place and continue until the conclusion of the next hearing. Cafcass was ordered to file a report and Ms Dunlop, the family court advisor, did so in due course.

9 There was a final hearing listed on 15 February 2022 in front of HHJ Bedford (sitting as a Judge of the High Court). That hearing was adjourned on the first day on X's application. The basis was that she stated she is a vulnerable person. The judge ordered an intermediary assessment.

10 On 14 March 2022, X issued a C2 application and a Part 25 psychiatric assessment. The application was listed on 1 April in front of Morgan J. At that hearing, it was ordered that the parties should jointly instruct a psychiatrist, Dr Sumi Ratnam.

11 On 24 May 2022, in front of MacDonald J, it was ordered that the matter should be listed for hearing on 7 June for three days as a hybrid hearing. That is how this important matter that affects the life of Y, but also that of her parents, came before me.

§III. LAW

(a) Hague Convention 1980

12 The pertinent law around the Hague Convention 1980 is settled in its vital architecture and not in dispute between parties. In very short order, by way of essential legal context, I would add here that the deep philosophy and explicitly stated objects of the Convention are unmistakable: the summary return of children taken from their country of habitual residence to another country, or retained there, without the consent of the left-behind parent or person with rights of custody. The Preamble to the Convention makes plain the vice it is designed to combat:

> "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence."

13 This is not the place for extensive and laborious recitation of that which is not disputed. I never find that useful. But should interested members of the public read this judgment, they should know that the following provisions of the Convention form the structure of this case and indeed virtually every Hague proceedings case. (I have provided the emphasis as relevant to the issues in this case.)

Article 1

The objects of the present Convention are –

a) **to secure the prompt return of children wrongfully removed to or retained** in any Contracting State; and

b) to ensure that **rights of custody** and of access under the law of one Contracting State **are effectively respected** in the other Contracting States.

Article 3

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**; and

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

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, **the authority concerned shall order the return of the child forthwith.**

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of **the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes** that –

a) the person, institution or other body having the care of the person of the child was **not actually exercising the custody rights** at the time of removal or retention, or had **consented** to or **subsequently acquiesced** in the removal or retention;

b) there is a **grave risk** that his or her return would expose the child to **physical or psychological harm or otherwise place the child in an intolerable situation**. *(often called "Art. 13(1)(b)")*

The judicial or administrative authority may also refuse to order the return of the child if it finds that **the child objects to being returned** and has **attained an age and degree of maturity** at which it is appropriate to take account of its views. *(often called "Art. 13(2)")*

14 Art. 11 obliges judicial authorities are obliged to "act expeditiously in proceedings for the return of the child". Ordinarily, the child should be returned "forthwith" (Art. 12(1)). But as Baroness Hale pointed out in *Re D (A Child: Abduction Rights and Custody)* [2006] UKHL 51, at [68], "There are some cases, albeit few in number, where this is not the case".

15 There are exemptions – "defences" to return - where, to use the language of Art. 13, the requested State "is not bound to return the child". This includes where the child would be exposed to a grave risk of harm or where the child would "otherwise" be placed in an "intolerable situation". The Convention is not blind to this. It should never be mechanistically enforced and become, as Lady Hale put it, "an instrument of harm": *Re D.* at [52].

16 I flesh out these governing legal principles at various points of the judgment as necessary, citing key passages from the burgeoning jurisprudence that surrounds the Convention.

(b) <u>Axioms of fact-finding</u>

17 This case involves fundamental disputes of facts between parties. Since they cannot agree, the court must step in and decide. There are numerous axioms of fact-finding, but here I identify those most pertinent to the determination of this case. There are 13 of them, starting from the most elementary, and borrowing from authority across jurisdictions, where relevant.

i. The burden of proof rests exclusively on the person making the claim (she or he who asserts must prove), who must prove the claim to the conventional civil standard of a balance of probabilities;

ii. Findings of fact must be based on evidence, including inferences that can properly (fairly and safely) be drawn from the evidence, but not mere speculation (*Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12, per Munby LJ);

iii. The court must survey the "wide canvas" of the evidence (*Re U, Re B (Serious injuries: Standard of Proof)* [2004] EWCA Civ 567 at [26] per Dame Elizabeth Butler-Sloss P (as then was)); the factual determination "must be based on all available materials" (*A County Council v A Mother and others* [2005] EWHC Fam. 31 at [44], per Ryder J (as then was));

iv. Evidence must not be evaluated "in separate compartments" (*Re T* [2004] EWCA Civ 558 at [33], per Dame Elizabeth Butler-Sloss P), but must "consider each piece of evidence in the context of all the other evidence" (*Devon County Council v EB & Ors.* [2013] EWHC Fam. 968 at [57], per Baker J (as then was)); such "context" includes an assessment of (a) inherent coherence, (b) internal consistency, (c) historical consistency, (d) external consistency/validity – testing it against "known and probable facts" (*Natwest Markets Plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 at [49], per Asplin, Andrews and Birss LJJ, jointly), since it is prudent "to test [witnesses'] veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case" (*The Ocean Frost* [1985] 1 Lloyd's Rep 1 at p.57, per Robert Goff LJ)[1];

v. The process must be iterative, considering all the evidence recursively before reaching any final conclusion, but the court must start somewhere (*Re A (A Child)* [2022] EWCA Civ 1652 at [34], per Peter Jackson J (as then was)):

> "… the judge had to start somewhere and that was how the case had been pleaded. However, it should be acknowledged that she could equally have taken the allegations in a different order, perhaps chronological. What mattered was that she sufficiently analysed the evidence overall and correlated the main elements with each other before coming to her final conclusion."

vi. The court must decide whether the fact to be proved happened or not. Fence-sitting is not permitted (*In re B* [2008] UKSC 35 at [32], per Lady Hale);

vii. The law invokes a binary system of truth values (*In re B* at [2], per Lord Hoffmann):

> "If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does

[1] *Ocean Frost* is a fraud case, but Mostyn J is surely correct that the principle of external verification must be "of general application" (*Lachaux v Lachaux* [2017] EWHC 385 (Fam) at [37]).

> discharge it, a value of 1 is returned and the fact is treated as having happened."

viii. There are important and recognised limits on the reliability of human memory: (a) our memory is a notoriously imperfect and fallible recording device; (b) the more confident a witness appears does not necessarily translate to a correspondingly more accurate recollection; (c) the process of civil litigation subjects the memory to "powerful biases", particularly where a witness has a "tie of loyalty" to a party (*Gestmin SCPS S.A. v Credit Suisse (UK) Ltd* EWHC 3560 (Comm) at [15]-[22], per Leggatt J (as then was)); and the court should be wary of "story-creep", as memory fades and accounts are repeated over steadily elapsing time (*Lancashire County Council v C, M and F (Children – Fact-finding)* [2014] EWFC 3 at [9], per Peter Jackson J);[2]

ix. The court "takes account of any inherent probability or improbability of an event having occurred as part of the natural process of reasoning" (*Re BR (Proof of Facts)* [2015] EWFC 41 at [7], per Peter Jackson J); "Common sense, not law, requires that … regard should be had, to whatever extent appropriate, to inherent probabilities" (*In re B* at [15], per Lord Hoffmann);

x. Contemporary documents are "always of the utmost importance" (*Onassis v Vergottis* [1968] 2 Lloyd's Rep. 403 at 431, per Lord Pearce),[3] but in their absence, greater weight will be placed on inherent probability or improbability of witness's accounts:

> "It is necessary to bear in mind, however, that this is not one of those cases in which the accounts given by the witnesses can be tested by reference to a body of contemporaneous documents. As a result the judge was forced to rely heavily on his assessment of the witnesses and the inherent plausibility or implausibility of their accounts." (*Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [80], per Moore-Bick LJ);

And to same effect:

> "Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence" (*Natwest Markets* at [50]).

xi. The judge can use findings or provisional findings affecting the credibility of a witness on one issue in respect of another (*Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408).[4]

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[2] The *Gestmin* principles approved variously (but see next footnote), including *R (Bancoult No.3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UKSC 3 – see Lord Kerr at [103], where they were said to have "much to commend them"; however, the Court of Appeal subsequently stated that *Gestmin* is "not to be taken as laying down any general principle for the assessment of evidence … [instead] It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory" (*Kogan v Martin* [2019] EWCA Civ 1645 at [88-89], per Floyd LJ).

[3] It must be remembered that *Onassis*, like *Gestmin*, was a dispute about recollection of business conversations, where typically there will commercial documentation. Ryder LJ sounds a necessary warning note about "simply harvesting obiter dicta expressed in one context and seeking to transplant them into another" (*Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371 at [23]).

[4] At [120], per Males LJ, "once other findings of dishonesty have been made against a party, or he is shown to have given dishonest evidence, the inherent improbability of his having acted dishonestly in the particular respect alleged may be much diminished and will need to be reassessed." A dishonesty case, but I discern no valid reason a different kind of impairment to credibility, such as unreliability or inaccuracy, is not capable of the same approach. It is an

xii. However, the court must be vigilant to avoid the fallacy that adverse credibility conclusions/findings on one issue are determinative of another and/or render the witness's evidence worthless. They are simply relevant:

> "If a court concludes that a witness has lied about a matter, it does not follow that he has lied about everything." (*R v Lucas* [1981] QB 720, per Lord Lane CJ);

Similarly, Charles J:

> "a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B..." (*A Local Authority v K, D and L* [2005] EWHC 144 (Fam) at [28]).

What is necessary is (a) a self-direction about possible "innocent" reasons/explanations for the lies (if that they be); and (b) a recognition that a witness may lie about some things and yet be truthful "on the essentials … the underlying realities" (*Re A (A Child) (No.2)* [2011] EWCA Civ 12 at [104], per Munby LJ).

xiii. Decisions should not be based "solely" on demeanour (*Re M (Children)* [2013] EWCA Civ 1147 at [12], per Macur LJ); but demeanour, fairly assessed in context, retains a place in the overall evaluation of credibility: see *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371, per Ryder LJ:

> "a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable" (at [23]); so long as "due allowance [is] made for the pressures that may arise from the process of giving evidence" (at [25]).

But ultimately, demeanour alone is rarely likely to be decisive. Atkin LJ said it almost 100 years ago (*Societe d'Avances Commerciales (SA Egyptienne) v Merchans' Marine Insurance Co (The "Palitana")* (1924) 20 Ll. L. Rep. 140 at 152):

> "… an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of the comparison of evidence with known facts, is worth pounds of demeanour."

§IV. ISSUES

18 As a result of an assessment of the applicable law, the issues below were identified. The parties were given the opportunity to make submissions about them and their precise terms. This formulation was agreed as the issue-matrix for the case:

> **Issue 1** – consent. Did the father consent, on any basis, prior to Y leaving Italy that she should live in the United Kingdom permanently? This is a matter for X to prove.

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application of the principle of judging evidence in the context of all other evidence.

Issue 2 – did the father consent on or about 25 June to Y staying permanently in the United Kingdom? Again, this is for X to prove on the usual civil standard on a balance of probabilities.

Issue 3 – if there is no consent, when was the wrongful retention?

Issue 4 – immediately prior to any wrongful retention, what was Y's habitual residence?

Issue 5 – did the father acquiesce in enforcing his rights of custody and seeking Y's return to Italy?

Issue 6 – has the mother proved that upon return, Y will be exposed to the grave risk of physical and/or psychological harm?

Issue 7 – has X proved that if returned, there is a grave risk that Y will be placed in an intolerable situation?

Issue 8 – has X proved that the children's objection/exception is made out? This is a tripartite test. First, does Y object to a return to Italy? Second, has she attained a sufficient age and maturity for her views to be taken into consideration by the court? Third, if these two gateway constituent elements are proved by X, how should the court exercise its discretion whether to return or refuse to return Y to Italy?

I now set out the stance of the parties about each of these issues.

19 **X's Case**. W agreed that while their daughter was in England in the summer of 2021, she should explore whether she wanted to live permanently in the UK. It went well and, therefore, X and Y spoke to the father in a telephone call around 25 June. In that call, he consented to Y's wish to live permanently in England. Thus, there was no wrongful retention, but even if there was a wrongful retention, Y's habitual residence changed to England. She had attained some degree of integration very quickly in the UK and thus, Art.3 is not engaged. Further, W acquiesced and did not enforce his rights of custody promptly in respect of his daughter. If Y was returned to Italy, she would be exposed to the grave risk of emotional and psychological harm and that is due not only to the fact that she does not want to go back to Italy, but because of the risk of deterioration in X's mental health. X has been diagnosed with having depression and she is also at risk of becoming suicidal in adverse circumstances in Italy. In any event, a return would expose Y to the grave risk of being placed in an intolerable situation. There is no adequate housing for Y and X and the package of protective measures offered by W do not adequately meet the risks in this case.

20 Further, Y objects to a return and she is of sufficient age and maturity for her views to have weight with the court. Indeed, considerable weight. She is settled and happy in England. She has been in the English education system for almost exactly a year and she likes it here. She experienced racism in Italy and does not want to go back. Therefore, the court should exercise its discretion to refuse a return.

21 **W's case.** He never consented to his daughter relocating to England, although he did agree to her travelling to England for the summer to go to a summer school, not to enter fulltime education in the United Kingdom. When, on 30 June 2021, X applied for settled status in the United Kingdom, this was a repudiatory retention. Immediately before that retention, Y's habitual residence was in Italy. It had not changed. Thus, Art.3 is engaged. W did not acquiesce, but acted promptly to enforce his rights of custody. He reported Y's retention in

England to the police in Italy twice in September and then made a complaint to the central authority in Italy in October and issued proceedings in November. However, he did not know for sure about X's plan to keep Y in the United Kingdom because she was deceiving him constantly. It was when Y did not return for the new Italian school year in September that W understood what was actually happening. X had strung him along all the way through the summer.

22 Y will not be exposed to grave risk, either of physical or psychological harm, nor placed in an intolerable situation. She will go back to a country she was born in, has grown up in, and has been educated in. The mother has accommodation at her own mother's home, that is Y's grandmother, if she needs it. However, W will fund a studio or one-bedroomed flat, if necessary, until the case comes before the Italian court. That is the correct court. Italy is the home court and should make the decisions about Y's disputed future, not the courts in this country.

23 Although it is accepted that Y objects to the return and has attained a sufficient age and maturity for her views to be considered by the court, she has been influenced by her mother and her views should carry relatively little weight with the court. In any event, the court should exercise its discretion to order a summary return in accordance with the vital Hague policy considerations. The discretionary balance falls heavily in favour of return.

24 Those, then, are the prime arguments. I have outlined them in summary form only. Counsel have developed them with great skill and care. Naturally, I have considered their full formulation and nuanced development beyond this necessarily rudimentary summation.

§V. EVIDENCE

25 In terms of sources of evidence, the court has the written evidence of the parties, the report of the Cafcass officer Ms Dunlop, and the report of Dr Ratnam, the consultant psychiatrist who assessed the mother. I have been given an electronic bundle which extends to 264 pages. There is a supplementary bundle which includes a report of Dr Ratnam that is nineteen pages long. Both parties have assisted the court with position statements and also an outline written submissions.

26 All of this has been of great assistance to the court. In terms of witnesses, both parties gave evidence, as did Dr Ratnam. Let me begin by saying something about Ms Dunlop, the Cafcass officer. The report of Ms Dunlop was considered by the court but not in its full, original form. That is because there were parts that were hotly disputed by X. Ms Dunlop was not available to give evidence and there was no indication when, or indeed whether, she would become available to testify again. In the circumstances, I judged that the fairest approach was for X to have those parts of the reports that she disputed excised from the court's consideration and I have completely ignored those sections.

27 In terms of her evaluation of the subject child, Ms Dunlop stated at para.22:

> "It is my assessment that whilst her maturity may be commensurate with her age, a child of 8 is likely to have difficulty weighing up lifelong decision-making, such as which country she should reside in for the remainder of her childhood. She is too young, however, to understand the impact that her decisions would have on her relationship with her family and, in particular, her father with whom she had previously lived with day to day."

28 Ms Dunlop continues:

> "Y considered she would feel angry and sad if the judge says she has to return to Italy."

29 Ms Dunlop stated at para.14:

> "Y was clear she does not wish to return to Italy now or in the future as she prefers living in England. Y's reasoning further included experiencing racism in Italy, recalling an occasion of being left out by her Italian friends because of the colour of her skin. She also reported seeing her parents shouting, her father treating her mother like a slave, or a dog, as he would not offer her help, and she recalls feeling lonely in her rural hometown in comparison to where she lives now."

30 Therefore, Ms Dunlop's conclusions were as follows at para.36:

> "Y clearly told me of her desire to remain living in the United Kingdom. She would be upset if the courts should direct a return to Italy. However, some of this upset may be upset by X returning with Y and with her parents helping her to understand why this decision has been made."

Ms Dunlop was confident that Y's interests and needs, however, are best met through what she called a "meaningful relationship with both her parents".

31 I next summarise the evidence of each of the parties and then with the evidence of Dr Ratnam. I stress that this is just a summary. I have a detailed note of the evidence of each of the witnesses. Being able to touch-type, it is pretty much a verbatim note and I have considered it in detail. However, it is not going to assist the concision of this judgment to replicate it in full.

The father

32 W is the father of Y. He lives in Italy and he made a statement dated 31 January 2022 at bundle p.151. He said when asked questions by Ms Renton that Y was settled in Italy and had a pet guinea pig, a bird, and a fish.

33 He was asked questions, having adopted his previous statement, by Miss Cabeza and was asked why was it that Y and her daughter travelled to the United Kingdom on 11 June on a one-way ticket if his case is that this was only a temporary stay in England. He said that he was not aware what kind of ticket they bought and whether it was return or not because X bought the ticket and he trusted what his wife was saying. He did not feel the need to check it. In the WhatsApp messages, she said she was coming back at the end of August, or the beginning of September, he said, and there is a medical note of what he called "a treatment" for Y to have before she went to school in Italy because she had a problem in the winter seasons of repeated colds.

34 Indeed, on p.107 of the bundle, there is a course of inhalation treatment due to apparent rhinitis. That certificate is dated 10 August 2021. So that is in the middle of this summer period and about a month before Y was due to go back to school. It was put to him quite properly by Ms Cabeza that the plan was agreed before they travelled to the United Kingdom that Y would go with her mother to England to see if they liked living there and if they did, they would stay longer. His answer was, "That is wrong. X is lying."

35 He said that he is aware that Y went to see the optician because the mother sent a copy of the appointment on WhatsApp and it was put to him that the appointment card had Y's address in the United Kingdom. He said he did not see the address on that particular card. At p.150 of the bundle, the prescription does detail Y's address. He said:

> "I don't speak English and I didn't know it was the address on the appointment card."

36 It was put to him that one of the most important features of this case was a telephone call on 25 June, two weeks after arrival. On 11 June there was a conversation when Y and X told him how much they enjoyed living in England and would it be okay to stay on living here. He agreed. His answer to that is, "That is false," or "*falso*" as he put it in Italian. It was put to him that, "You knew that she was registered in a school in England," and the implication of that suggestion by Miss Cabeza is that W must have known if she was registered in a school here in the UK then that was an indication that this was a permanent arrangement and she was not coming back. He said:

> "I thought she was going to a summer school like the summer camps we have here in Italy. Yet, I only knew that she went to a regular school in England in September. I thought it was a camp where children go in the summer and they have children's activities there."

He said he did not know that the English summer term ends at the end of July. It was put to him that he knew that Y was going to go to a regular school in England and he said:

> "No, it was going to be a summer school."

37 It seems that X accepts that she has a GP in Italy and that there is free advice but that if there is a prescription of medicine, the doctor gives a ticket and the costs will be different for different types of medicines. This understanding was put to him and W confirmed it. He also said that he had done some research about getting psychotherapeutic support and he said you could get eight sessions for €80 and the first session was free. He said it was false that in 2019 he went to see a counsellor and that he had stopped going because it was too expensive.

38 It was put to him that the WhatsApp messages in the bundle were not a complete list. In particular, Miss Cabeza put to him that the list between 3 June and 1 July was incomplete and he said that that is not true. It is a complete list. It was put to him that he had deleted messages and he said:

> "I did delete some texts because they were not true. They were offensive and they were false, injurious, and rude."

However, he said the texts that he deleted were much later in September.

39 In the read out that we have got in the bundle, at various points in the list of messages it says "*media omessi*". He says that does not mean that these were deleted messages. The interpreter assisted the court and said that it means that there was something missing, nor not provided, nor omitted. W said if it was deleted, it would say "*cancellata*" (cancelled) and it does not say that because he said he deleted messages in September in the list between 3 June and 1 July. Therefore, no messages that have been deleted. However, Miss Cabeza put to him, "Well, there are only four messages from your wife in that first month away," and he confirmed that that is the case but he said most of the time she was the one who was calling him. The printout of messages was produced with the help of an electronic expert

because he did not know how to do it. So he did not actually produce the list. It was an expert who used some software to produce it.

40 He was asked questions by the court and said that Y was born in C in a hospital. He was at the hospital when she was born but not actually in the delivery room itself. In Italy, with Y, they used to do lots of things, from studying to doing fun things like going to the park and playing with animals. Ms Renton asked a supplementary question about who used to help Y with her homework during lockdown and he said he would help when he was not working. Miss Cabeza put that it was X who did the majority of the home-schooling and he said when he was working, indeed X did the majority of the homework with Y, but he would help when he was not working. However, he used to get home about 5.30.

41 He was asked by the court why it was he was making this application and he said:

> "I want Y to come back to Italy because in Italy there is a house and she has all her friends, and she has her uncle, and her cousins, and her family, and she has her dad."

The mother

42 X lives presently in [XXXX]. She has provided two statements to the court dated 12 January 2022 and 30 May. English is her first language, but she gave evidence with the assistance of an intermediary. She said, when asked questions by Miss Cabeza, that the WhatsApp messages are not complete. So W is lying. She had a conversation, that is a WhatsApp conversation on her phone, but it crashed, the phone reformatted, and she lost it. That was towards the end of August 2021 before her birthday, which is on [XXXX] August. In February, she discussed with W coming to the UK and that Y would go to school here when she came here. He was okay with that. That was a face-to-face conversation. She said about two weeks after they came to England about 25 June, she registered Y with the GP and, indeed, there is a GP registration form on p.149 of the bundle. She also registered Y with the optician. W asked whether the GP's registration covered the optician as well and X said that it did.

43 In her statement, she gave an account of what she says actually happened. This is at p.113 of the bundle:

> "At the beginning, our plan was to stay in England for three months between June until September 2021 as this was a holiday period at school in Italy. However, later, we agreed that I and Y would stay in England for longer and Y could be involved at school here. This was around two weeks after our arrival. We phoned W together and told him that we would be staying in England longer. W said that he would see us in July as he was meant to come to England for her birthday. W agreed to that and even promised to help her with her English."

44 This was X's telephone conversation between her, her daughter, and W and Y was enjoying school in the UK. She said, "When I spoke to W about it, he agreed that she could continue here." She said that there are no WhatsApp messages where he agreed because these were telephone calls and she did not send any rude or injurious messages.

45 She was asked about a WhatsApp messaged dated 19 September. That message at 18:36 is as follows:

> "W, I think it was the right thing we should have returned to Italy two to three days in Italy before September 10th and have a family meeting with your brother, my sister, and my brother in video conference and talk and decide what to do, and decide what is best for Y. Instead, you did your (inaudible)."

46 X says this was after he agreed that Y could stay and continue education in England and that agreement was, she says, by telephone:

> "When we spoke on the phone, he told me he was angry before but he was not angry anymore. He did not tell me he went to the police on 18 September. On 25 September, for the first time, he accused me of taking a lover. I called him and said, 'Would you send me such a message?' and he said, 'I did not know. I thought it was someone else in the house'."

47 She said about her mental health that she first got a prescription in England for depression with the GP. She explained her condition and that first prescription was in February 2022 when her depression got worse. In respect of going back to Italy, she said if the judge says that she has to go back, then … she stopped and she paused. At first, she did not answer. She thought about it and said this:

> "Going back to Italy is not only going to break Y. It's going to break me more but if Y has to go back, I will go back with her. I want her to grow up with me because she is a girl child and she needs her mother more. I can't get a waitress job in Italy as job opportunities are very low."

48 She spoke about the accommodation and she said at her mother's house in C there are other tenants. The mother has one room which is, in fact, the living in which she lives and she cannot live with her mother. Her mother spends more time with her father now that he has retired in Africa. The cost of living in Italy is as follows: to get a two-bedroomed apartment for herself and Y would cost €800 per month. She says that the rest of the people, relatives and friends in Italy, will not support her or pay for her. She says her family are only able to eat and pay their rent. In Italy, she will not be able to pay for her prescriptions or medication and she will not be able to afford a lawyer. She cannot get any help/benefits because she is still legally married to W and his income would stop the availability of benefits.

49 Speaking about return, she said that she told Dr Ratnam if she had to return to Italy, she might commit suicide. She said:

> "Because in Italy, I won't get help with medication. I won't get help with my depression. It will make my mental health worse and that will lead me to think bad thoughts."

50 When she was asked a question by Ms Renton about her work in Italy and she said:

> "I never worked at night in Italy as a cleaner. I worked during the summer. It was cleaning work for two months and that's it."

She said she looked for other work but it is very hard to get job opportunities in Italy.

51 As to accommodation, at p.112 of the bundle, her statement was put to her that:

> "Sometimes, I went to my mother's place to give him [W] some space and to avoid further arguments. However, I was not able to stay with my mother permanently."

52 She said she would spend some nights with her mother. Her mother now spends more time in West Africa because of the father's retirement and she says that, "Most of the time I call her, she is in West Africa."

53 If she has to go back to Italy, she says she will take the opportunities in Italy to get medication and help for her mental health. She thinks antidepression medication citalopram is not €3 as W said. It could be €8 but she will take the citalopram regularly. As to her support network, she has close friends whom she calls "aunties" and they love Y. Her brother loves Y. Y loves her brother's children and Y loves her grandmother, and her aunt and her grandmother (that is X's mother) love Y.

Dr Ratnam

54 Dr Ratnam is a consultant forensic psychiatrist. Her report is dated 4 June. She says X presented with symptoms of moderate depression and anxiety which was not yet in remission. She said we know that stress can impact recovery. So a return to Italy, which is something X does not want, would cause stress and hinder remission. It may well result in a deterioration of her condition. The doctor could not predict to what degree her mental health would deteriorate, but there are other factors that could impact the response. She did not, when she was giving evidence, know what the medication was. So she did not know what adjustments could be made. She said she would need to know the dose level and the nature of the medication. At that point, some enquiries were made but the doctor continued her evidence. X had said that the medication had helped and she has not taken it consistently. So there are "things that can be done", as the doctor put it, to make X more "robust".

55 In terms of social support, there are two aunts in Italy. Thus, there are supporting and mitigating factors as well to support her mental health. X said to the doctor that she had a brother in Italy. Her mother travels to and from Italy and is not as frequently in Italy now that her father has retired but she has those two friends she describes as aunts and has a close relationship with them because that is why she sees them as aunts.

56 The prescription was then produced. It is dated 5 May 2022 and it was for 20 mg, once per day, of citalopram on a 28-day prescription. The doctor, having seen that, said:

> "There is certainly scope to increase it. My first step would be to increase it to 30 or 40 mg. I can also change the medication because different people react to different medications."

57 She said that if X is getting and taking prescriptions constantly, what she called "back-to-back", it would be more effective. She was asked to what extent there is a risk to mental health and a deterioration in this case, and she said:

> "I think it is very difficult to predict. If X was faced with a return, or her daughter was, the probability of recovery from depression is low because of the stress."

58 There was here a history previously where X's symptoms were more severe and this was before the antidepressants. So the doctor concluded it was clear that medication does make

a difference. However, she said in her view, if there was support and structure, like accommodation in Italy, it would mitigate the risk of deterioration.

59 She was asked by Miss Cabeza if there was a deterioration, to what extent would those symptoms impact upon her quality of parenting Y. The doctor said even when X has been depressed but on medication, her depression did not impact her parenting of Y. So there is no indication that her mental health had impacted her parenting in the past. There is nothing in her history that when she is depressed it has affected her parenting. So even if she was moderately depressed, it will not impact her parenting and care of Y.

60 In terms of suicide, she said X does not have a history of previous suicide attempts and so whilst it was possible that she would take her life if she returned to Italy, one must assess the suicide risk in terms of "assessing intent", as she called it. Even when X was in Italy and she thought life was not worth living, she did not act upon it. She does not have the intent and she has her daughter as a protective factor. So it is always a risk, she said, but she would be more concerned if she had intent, which she does not.

61 She said if X was not able to afford the prescription medication, that would be an issue but if she could get the medication and any other mental health treatment or support, those would be protective factors. It is important that she has her medication. If she does not have access to medication, there is what the doctor called "a severe risk of deterioration". She said that social stability is very important. If X faces homelessness, then the risk of recovery is very small and there is a risk of deterioration. Her daughter is an important protective factor and caring for her daughter is important to X. The loss of her daughter therefore would be a trigger. Recovery depends not only on medication but social stability and support, and access to medication. Those are the mitigating factors, but if those are not present, then the prognosis for X is poor.

62 When she was asked questions by Ms Renton, she stated it can also be about unstable housing situations. She would worry about also the instability in a social situation and any adverse impact that that would have on her recovery. It is going to depend on what the actual situation in Italy will be. However, the doctor said she appeared to have what the doctor called "an important and good network for her". That included her brother, her mother, and her aunties as she called them. She told the doctor that she would spend sometimes weekends with her brother and this is a very supportive relationship.

63 So that concludes the summary, and I emphasise it is just a summary, of the evidence. There are other features in the evidence that I will detail as I go through the issues.

§VI. ASSESSMENT OF WITNESSES

The father

64 W gave evidence with the assistance of an interpreter as he speaks no English. W gave evidence over several days in a fragmented way due to the timings of the case. He came across as a forceful person. I can readily accept that he can lose his temper and be angry and shout as X and, indeed, Y have said. There were serious technical difficulties with the connection to Italy. At times, the picture froze and the audio feed would not work. It was all most frustrating, but we were able to hear and receive his evidence. So I take into account those difficulties, but I found W to be a very frustrating witness. Frequently, he did not answer the question and that happened even when the question was repeated to him and he was told to listen. Sometimes, he did not. He spoke over counsel and interrupted

counsel. He accused Miss Cabeza, who was asking questions entirely properly, of being rude. She was not. He is not an easy person to be in a relationship with as a partner, I can fully appreciate. However, the essential question for the court, in terms of his evidence, is whether he was telling the truth or not.

65 He was accused by Miss Cabeza of having reported Y staying in the United Kingdom to the police because on 25 September, there was a WhatsApp message where he accuses X of infidelity, as he puts it, and that was the basis of this malicious report motivated by that and not his desire to get his daughter back. However, that allegation could not be sustained because as he immediately replied in evidence, he had gone to the police the week before. Indeed, the court directed counsel to the case chronology at p.10 of the bundle that shows that, indeed, W had reported matters to the police on both 18 and 23 September as he had said. So this allegation could not be right. It might be seen, subject to other evidence I have to go through, as X searching for an alternative explanation for W's actions other than him not having agreed to his daughter living in England and wanting her back.

66 He was then accused of not reporting matters to the central authority and delaying until 13 October because of malicious intent. The problem with this submission, it strikes me, is that he had already reported matters to the police in Italy. It is hard to understand why this report to the central authority would be differently motivated in mid-October to the reports to the police on 18 and 23 September. He was accused of having deleted important messages and indeed, as I have pointed out, at various points in the record of messages which were downloaded on his phone, it says "*media omessi*". The interpreter states that this means "media omitted". There is no evidence in front of me that media means the same as messages. It is just as consistent with media files such as photographs being omitted. I cannot possibly find, in the absence of expert assistance, that this means that messages, that is text messages, have been deleted. It is speculative in both directions and the court cannot and must not do that. W did say that he had deleted some offensive messages he had received from X. He said that he deleted these in September because, as he put it:

> "Not true. They were offensive, and false, and injurious, and rude."

67 That, of course, would be consistent with the relationship deteriorating from what it appears at times in the messages is affectionate messaging between them where there are terms of endearment that they use, such as "*caro*", Italian for "dear". This subsequent deterioration is consistent with the fact that Y had not come back to Italy in September. Therefore, it is by no means clear that deleted messages would appear as "*media omessi*" as opposed to simply being absent from the record that was downloaded from his phone, i.e. the IT technician or expert he used in Italy. As I have already indicated, W says that "*omessi*" is different from "*cancellata*" which is "deleted". He is not saying nor could he possibly say, because he is not the expert, that cancelled messages would appear on the downloaded record as "*cancellata*".

68 He accepts that in September there were some messages that were deleted and they do not appear as "*cancellata*" but it is interesting that on 1 September there are a number of these "*omessi*" entries but these do not appear to be a sequence of messages. The reason is that if one looks at the time, there are approximately twenty "*omessi*" entries all having the same timestamp of 20:38. Without being conclusive, that points to the media files that the software could not reproduce in the record were, in fact, what was omitted. As indicated, this is a matter of expert evidence, but I am far from persuaded that these entries indicate text messages deleted by W. This is particularly so considering again, just by way of example, these 20:38 entries, these are entries from X's West African phone. These would not therefore be admissions by W that he wanted Y to stay in England. Indeed, the very

next day on 2 September, he is noting with apparent concern that Y was returning to school in England and he asks when she will be coming back to Italy.

69 As to the relatively few messages between parties in certain periods for the month of June, he says they were speaking on the phone more than messaging. X claims there were parallel conversations in them and he was chatting on the telephone to Y exploring staying in England permanently. There is no support whatsoever in the messaging for this. In fact, the opposite is what is indicated by the totality of the WhatsApp messages. What it looks like is that when he gave his phone to the IT expert to download the WhatsApp content, the tool was not able to format and replicate certain media files, but I cannot make a finding in either direction without technical or expert support. It is conjecture.

70 Going back to first principles, it is X who seeks to assert and therefore must prove that W has deliberately deleted messages in which he has accepted that Y could live in the United Kingdom. X has failed to do that on the basis of the "*media omessi*" point but, as ever, there is other evidence that casts light on the truth which is a signpost to what actually happened. There is a message from W on 19 September at p.177 of the bundle which I have already mentioned. This is the message saying that the right thing was for her to have returned to Italy two or three days before 10 September. That may well be 12 or 13 September, which is the start of the Italian school year, but what is significant is what he said about it:

> "I was advising X it would be better to come to Italy and have a meeting about the wellbeing of Y. The date of 10 September was because school was starting on the 12th or 13th. I told her Y was supposed to be coming to Italy because school was starting on those dates. I advised that she should come back to Italy so the family could have a discussion about all of this but she kept saying she was too busy as she was working."

71 When one looks at the message, the last few words are Italian. What does it mean "You did all this"? W says it means that she kept Y in England against his will. What is clear is that *if* W was telling X that she could stay in England, it is odd indeed that on 19 September, as on 2 September, there are messages that are directly contrary to it.

72 Further, there are other messages that the court must look at. There are messages, for example, in relation to schoolbooks in Italy on 3 June. Then there is the message on 17 June where X reminds "everyone", at that is what it says in the message, that she sent in to renew the registration for school meals in Italy. The renewal element strikes me as being important as it indicates that as at that date, 17 June, the plan is for Y to be at school in Italy for the new term, the school year having ended, enabling Y to come to this country in summer. It is hard to understand how this message sent by X, even if she was just forwarding someone else's message to W, is consistent with an intention to live in England.

73 Further, there is a message about putting a deposit for the school, even though it is only a few euros, in or around August. All these point to the fact that W was telling the truth when he said that he did not consent to Y living in England and there was no agreement or plan to the contrary – there is nothing in the messages anything like that. Instead, we have his acts of going to the police in September when Y was not returned for the Italian academic year. We have his going to the central authority in October to progress matters. There are contemporaneous messages consistent with the expectation that Y will be returned to school in Italy. There is no message whatsoever to indicate that Y likes England and wants to stay here so the plan had evolved into her staying permanently in this country. It makes little sense to suppose there were messages of consent and permission indicating that he

consented to her relocating to England permanently interspersed with all the documented plans for her to attend next school term in Italy and W's message on 19 September indicates that X should have brought her back two or three days before school started. Therefore, I find that his evidence about this particular topic, whilst he gave it often in a hectoring and sometimes unhelpful way, not answering questions directly, is completely consistent with the contemporaneous records of the WhatsApp messaging.

The mother

74 As for X, she gave evidence with the support of an intermediary. She began her testimony being very tearful but, by the end of her evidence, she was far more confident and assertive. She was able to contradict experienced counsel very forcefully, stating with emphasis that W's case was all lies and not true. I am bound to say that there is an affable and charming side to X, but also a calculating side. She did not answer questions directly and plausibly at times. I found, as I will indicate shortly, that at times she deliberately lied. I will detail those untruths when I look at the evidence on the specific issues so that the context of a particular lie can be understood and its significance for the case appreciated. As I will detail, I have carefully directed myself about *Lucas*. I do not reject all her evidence because of her lies. I have considered carefully if there are any alternative explanations. However, she has not accepted that she has not told the truth. I cannot find any credible alternatives save that she acted and told lies in an attempt to conceal the truth from the court.

Dr Ratnam

75 Dr Ratnam I found to be a reasonable, thoughtful, and entirely persuasive witness. She is a first-class expert. I take her conclusions very seriously. However, I emphasise that I do not decide a case by expert evidence alone. I take Dr Ratnam's conclusions and thoughts in the context of all the other evidence.

General approach

76 I clarify my approach to these disputed matters, particularly in context of the axioms of fact-finding I have set out. These are summary proceedings and I take X's case at its highest except and to the extent that, first, it is contradicted by other reliable and accurate evidence which I prefer, or second, where it is improbable, inherently week, and inconsistent. I emphasise that the magnetic principle and lodestar I have returned to again and again is the precept of Dame Elizabeth Butler-Sloss in *Re T (Children)* [2004] EWCA Civ 558 not to look at evidence in separate compartments but to look at each piece of evidence in the context of all the other evidence before the court.

§VII. DISCUSSION AND ISSUE ANALYSIS

Issue 1

77 Did W consent on any basis prior to Y leaving Italy for England to living in the United Kingdom permanently? When the hearing began, X's case was that W had provided conditional consent before Y left Italy. This particular basis is not pursued any longer by Miss Cabeza and X accepts that the consent prior to travel must be clear and unequivocal. Even on her case it was not. Therefore, this ground quite properly was abandoned by Miss Cabeza.

Issue 2

78 Did W consent on or about 25 June to Y staying permanently in the United Kingdom? Miss Cabeza submits that there was this conversation around 25 June exactly as X has testified about. It was a telephone conversation in which W consented to Y living permanently in England. The evidence in support of this claim comes exclusively from X. It is denied vigorously by W. X submits that it is of note that there are no messages either way in relation to schoolbooks in Italy after 23 June 2021. However, there is no messaging in the WhatsApp record to confirm W's consent, or even anything that alludes to it, or indicates that that may be what he had done.

79 What is the truth about all of this? It is necessary to review what the contemporaneous evidence shows us. At p.174 of the bundle, there is a message from X of 3 June at 17:49:

> "Remember to book school textbooks for next year. You can go when you want. I think they will start taking bookings at the end of the month. Ask today in the "II" stationery shop opposite the swimming pools."

Then at 17:50:

> "You just need to give name, surname, school and class and they have everything on their PC. Ours stay the same as this year in terms of type just for third grade."

Then 17:52:

> "These are textbooks for state schools. So they already have the list of each school and class. You'll only pay for the cover if you want the shop to add it. Otherwise, they are free of charge."

80 When she gave evidence, X's first claim was that this was about English school books. This struck me as extremely unlikely that a shop in Italy in C would have lists of English school textbooks which could be ordered. "II" is a person who owned a shop, it appears, in C which was pointed out to her. It was only then that she accepted that this was about Italian school books. Frankly, she was forced to have to accept it, but her answers were important because they showed she was not being honest with the court. These steps to secure Italian textbooks are inconsistent with what she asserts, that was that there was an agreed plan for her and Y to try living in England to see if they like it. It makes little sense so early to seek Italian textbooks when the plan was to see whether, in fact, they would not come back to Italy.

81 Thus, although the contingent plan basis has been abandoned, it would have faced severe obstacles on the evidence as opposed to simply as a matter of law being a clear and compelling undertaking point. X would have had to prove it and she would have failed faced with a contemporaneous record. Her own evidence on this point was inconsistent and unsatisfactory. For example, at para.28 of her statement, she says:

> "The plan was for her to remain here prior to our travel to England and I believe that W had consented to and acquiesced to this."

82 So here is a claim that there was not a conditional plan but full consent prior to travel. However, in para.18, she says:

> "At the beginning, our plan was to stay in England for three months between June until September 2021 as this was our holiday period in Italy."

83 Here is the suggestion that her time in England was to be limited to a three-month holiday period which, of course, is consistent with W's broad understanding that this was not a permanent relocation. The weakness in X's account is further exacerbated by what happened on 17 June. At pp.161-74, this was an Italian letter, on 17 June at 16:44 she sends a message:

> "I remind everyone to renew the registration for school meals. The circular letter explains everything. Have a good day."

84 Her evidence about this letter is, again, unsatisfactory. She said that she was not reminding W about the registration. At one point, she tried to suggest this was her passing on someone else's message although it was frankly difficult to discern precisely what she was saying. Even if it were the case that she was passing on a school reminder about meal registration, why is she sending this reminder to W to register Y for school meals in Italy? When asked, X said that the decision to keep Y in England had been made by this point. Thus, it makes little sense for her to be reminding the father about a step for buying school meals in Italy for the next academic year.

85 This is the run up to what the court is entirely satisfied is a false claim that there was a conversation by telephone about 25 June by W consenting to Y relocating to England. It is not supported by WhatsApp messages precisely because it is not true. It is an untruth to try to deal with these previous messages but why is it that the date of 25 June was chosen for this conversation? This was because X had to sandwich a phantom call between two events. First, the message on 23 June, then second, and I will come to it, what she did on 30 June.

86 On 23 June at p.174, there is a message from W at 15:45 which says:

> "Hi dear, I need a copy of the tax code photo to book textbooks. Front and back."

87 In evidence, X accepted this was about Italian textbooks. So that is as late as 23 June his questions about booking textbooks in Italy. However, this call that she has, I am completely satisfied, invented had to be before her application to the Home Office on 30 June 2021 for settled status under the EU settlement scheme and that is the function of this suggestion on the 25 June call which X has no doubt chosen with great care to fix the date there. It is to fit in with WhatsApp messages in the settled status application. I remind myself of *Lucas*. I do not dismiss all of her evidence because of this lie, reminding myself of the precept of Charles J in *A Local Authority v K & Ors* [2005] EWHC 144 (Fam) at [28]:

> "...a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B."

88 However, X does not accept that she lied. It has been proved against her. There is no plausible reason for it save for her concealing of the truth. I point out that I direct myself on *Lucas* and I will not repeat that direction at every point of the judgment.

89 The records continue. In August, at p.107, there is the course of inhalation due to the recurrent rhinitis. This is a certificate dated 10 August 2021. It is hard to understand why W was taking these steps for his daughter to be treated in Italy if he had agreed for her to settle in England. The rest of the messaging further supports these conclusions and reveals

an increasing clarity of what was actually going on. At p.176 on 2 January, at 19:57, W says:

> "Y told me she went back to school. I said that school in Italy starts in ten days and she should prepare her backpack and textbook. So when are you coming back? The day?"

90 X agreed that he was saying that the father expected Y to come back to school in Italy. Her explanation for this is that W would chop and change his attitudes and wishes. Frankly, she has invented this false explanation to these messages. They continue on 2 September at 20:21 from X:

> "You need to write to school first and then I will let you know."

91 It is notable what she was saying, "I will let you know when she is coming back," rather than her saying, "We've agreed she is not coming back. Why is it you are asking me this?" On 2 September, at 20:40, X says:

> "She [which is obviously a reference to Y] still has ten days before starting school Italy. Calm down, please."

92 She gave no credible explanation for what this message means, suggesting it might be to do with a missed call but looked at in the context with the other messages, it is perfectly clear what it means. The "calm down" is not about a missed call. Instead, she tried to persuade him that it was not disastrous that they were not back by 2 September because there was still ten days until term in Italy starts on the 12th or 13th. Then she went on to say that she cannot tell him the day she was coming back to return to Italy. She said, for example, at 20:41 on the same date:

> "Also, other things to do here. It is not that easy. My dear, calm down."

93 Again, she is telling him to calm down, that it was not easy for her to get back to Italy, and it was not too late because there is still time before the Italian term started. There is no messaging suggesting she was surprised that he wanted his daughter back in Italy. She explains that by the fact that what he said on the phone, which is not evidenced, was different to what he was saying in the messaging, which is evidenced. This is implausible and I reject her account. She was attempting, it is quite obvious, to keep him in the dark about her intentions and my reading of the messages is that she was leading him to believe that she would bring Y back in time for the Italian new school year. She was fobbing him off and therefore delaying matters and, all the while, seeking to deepen Y's roots in the United Kingdom which would make a return more difficult. This appears to be the plan that X was developing. It has been very carefully orchestrated and Y has been deceived about her actual intentions for months.

94 On 19 September, there is a message I have already repeated where he says to her he wants Y back and "You did all this." That is clearly keeping his daughter against his will in England. This firmly supports his case that what X had agreed with him was a stay during the summer and nothing more but, of course, by this date on 19 September, he had, in fact, made a complaint to the police in Italy. That was on the 18th, the day before. He would make a further complaint on the 23rd. He said that he deleted offensive and rude messages from her later in their communications in September and I accept that. All the messages before the court are consistent with W's case and most of them to the extent that they touch upon Y and schooling are inconsistent with X's case.

95 I have dealt with this background at some length because it has relevance to other issues which the court will proceed to examine. Therefore, let me set out clearly the court's findings about this. The court finds to the requisite standard that:

(1) There was no consent by W before Y left Italy that she should live permanently in England, or even explore whether she should live in England permanently;

(2) After Y reached England, there was no consent by W that she should live permanently in England;

(3) W expected Y to be back in Italy for the beginning of the new Italian academic year on 12 or 13 September;

(4) X led W on and induced him to believe she would bring their daughter back in time for the new Italian school year;

(5) X's accounts of events about the nature of their agreement and W's consent is false; and

(6) W's account of his understanding of the appointment and the lack of his consent is true.

96 I now turn to answer the question raised in issue 2: did W, on or about 25 June, consent to Y living in England permanently? No.

Issue 3

97 If there was no consent, when was the wrongful retention? Having found that W did not consent to Y's permanent relocation to the United Kingdom, I consider the application of 30 June for settled status. Miss Cabeza realistically accepts if there was no consent from W, the application would constitute an overt act that would be a repudiation of his rights of custody. Thus, for *Re C* purposes, she concedes it would be a repudiatory retention (*Re C and Another (Children) (International Centre for Family Law, Policy and Practice Intervening)* [2018] 1 FLR 861).

98 There are three features that emerge from the judgment of Lord Hughes. First, a subjective intent by the travelling parent. I find that X had the intent to retain Y in the United Kingdom contrary to W's rights of custody. Second, an overt act. I find that X acted inconsistently with W's rights of custody by applying for settlement in the United Kingdom. Third, there is no need for the overt act to be communicated to the left behind parent. Here, I find it was not but that does not alter the fact of the repudiation. Thus, I find there was a repudiatory retention on 30 June 2021. There was a fundamental breach of W's rights of custody. Thus, Art.3 of the Hague Convention 1980 is engaged. I do not therefore need to go on to consider other later wrongful retention dates postulated by the parties but I stress that if I had, I would have found that there was a wrongful retention at the latest by the start of the Italian school term which took place at the latest on 13 September 2021.

Issue 4

99 Immediately prior to wrongful retention, where was Y's habitual residence? Miss Cabeza submits that after they arrived in the United Kingdom, Y quickly settled into the fabric of life in England, moving to live with family friends and spending time with her extended family nearby. She was enrolled in a school with the knowledge of the father. I have dealt with the contest about the degree of knowledge and the basis already.

100 By the end of June, three weeks, Miss Cabeza submits that Y transferred her habitual residence in the United Kingdom. There can be no doubt, she submits, that she was fully integrated into a United Kingdom life by 2 September when her father was asking when she would be back. As is clear in *Re B*, habitual residence can change very quickly and Miss Cabeza forcefully submits that it did so in this case (*Re B (a child) (abduction: habitual residence)* [2021] 2 All ER at [78 – 99].

101 W accepts that he knew about the school, but he believed that it was for a summer school, as he put it, like a summer camp full of children's activities rather than a standard academic curriculum. Having heard evidence from both parties, I strongly prefer W's evidence on this point. That is because I must look at all the evidence together and the WhatsApp messages make it clear that W believed that Y would return to Italy for the school term in September. It was agreed between the parties that Y's habitual residence as at her departure from Italy on 11 June was, indeed, Italy. It could not possibly be otherwise. She was born in Italy. She is an Italian national. She has an Italian passport. She has lived all her life in Italy. Her father is Italian. She spoke to him in Italian, as he does not speak English, and her mother is an Italian national although she is also a national, it seems, of her country of origin in West Africa. Y went to an Italian school. She was taught in Italian. Her father's family is in Italy. She has a maternal grandmother and uncle and cousins in Italy along with two friends that her mother considers to be aunties. They all live in and near C where Y was born and lived. With this background, it seems to me inconceivable that between 11 June and 30 June her habitual residence changed from Italy to the United Kingdom.

102 As Lord Wilson held in *Re B (A child)* [2016] UKSC 4, the greater the previous integration, the slower the change of residence is likely to be. Mother's intentions may have been to keep Y in England, but this was against her father's wishes, I have found, and the intention of the wrongfully retaining parent is not determinative, as Hayden J pointed out in *Re B* [2016] EWHC 21 74 (Fam). This was being achieved by subterfuge and deception.

103 By 30 June, Y had just started attending school in England for a couple of weeks. She will have met some other children. It would be artificial to deem them close friends within a couple of weeks, although I accept she is likely to have developed friendships. I acknowledge that habitual residence can indeed change quickly, and X was busy taking steps to strengthen Y's integration into life in England, I have not the slightest doubt, to make the argument that Y was, indeed, integrated sufficiently into life in England so that her habitual residence had changed. However, I judge it had not. One only has to think of the entirety of her life and her deep roots in Italy at that point, almost eight years, and contrast that with less than three weeks in England where Y had only just started attending school. By any rational and reasonable measure, her habitual residence had not changed by 30 June.

104 The consequences of this are far-reaching. The Hague Convention 1980 cases are fundamentally about jurisdiction. Which court should make decisions about the child's welfare and future? The prime yardstick of jurisdiction under the Convention is habitual residence. As at 30 June 2021, Y's habitual residence still was Italy. Thus, the Italian courts have jurisdiction to make decisions about her future subject to any exceptions that are established to the requisite standard, and it is to these I will turn. Should an exception be proved by X, the court then has to conduct a discretionary exercise as to whether or not there should be a summary return.

105 I briefly consider the alternative and what would have been the position should the date of wrongful retention be the term start date in Italy on 13 September. It is unquestionably the case that X's argument about a change of habitual residence by 13 September is stronger. However, it is not unassailable or irrefutable. The presence of Y in England was, I am

entirely satisfied, by fraud, deception, and subterfuge. It was entirely contrary to the wishes of the father. I still have to weigh the almost eight years of her life in Italy against the three months in England achieved through lies and deceit. I take into account that the preponderance of X's family remained in Italy rather than these relatives in England. Her mother, the child's grandmother, was in Italy, although she travelled backwards and forwards to West Africa. The mother's brother was in Italy. Those people Y had grown up with were in Italy, save for her mother who was now with her in England. Again, Lord Wilson's precept is significant. There is likely to be a slower change of habitual residence if the degree of integration in the previous state was profound and deeply rooted. I find that Y's integration in Italy was, indeed, very deep and it would take more than the twelve weeks from mid-June to mid-September to dislodge it, despite the undoubted efforts of X.

Issue 5

106 **Acquiescence**. X submits that W did not make an application for a return order until November 2021. Accordingly, it is submitted that the evidence clearly shows that W acquiesced in his daughter remaining in England.

107 W applied to the central authority in Italy on 13 October 2021. He issued Hague proceedings on 24 November 2021. Was there acquiescence? X submits there was. The date of the wrongful retention is 30 June 2021, but I find that W did not know the true nature of X's intentions to retain Y in the United Kingdom until September because she was stringing him along. The law on acquiescence was clarified by the House of Lords in *Re H* [1998] AC 72. The court must determine the state of mind of the applicant party.

108 Here, I am quite satisfied that W wanted his daughter back in Italy. He made two complaints to the police. He applied to the central authority. He issued Hague proceedings. All of that was within a two-month period from when he realised that X was not bringing Y back to Italy. *Re H* identifies a subcategory of cases where the left-behind parent has induced the other parent into thinking that he or she would not be asserting the right of summary return. However, the House of Lords stated that this was an exceptional category. It is for X to prove that W falls within it. She does not come close to doing so. Frankly, the indication in this case is in the opposite direction.

109 The basis of this ground is essentially twofold: delay, the lack of promptness; and W's words, his vacillating between agreeing to relocation and then opposing it. On that latter point, I reject the suggestion that that is what he was doing, on the one hand, agreeing that she could stay and then on the other hand asking for her back. So that basis falls away.

110 As to delay, I do not find that there was any material delay by W. The Hague period runs for twelve months from the abduction or wrongful retention. Each case is different. In the circumstances of this case, I do not find that the delay in issuing proceedings could possibly have led X to believe that W was not asserting his rights. One only has to think of the WhatsApp message on 19 September where he is telling her that she should have brought Y back to Italy. X could have been in no doubt that he wanted his daughter back in Italy. On 2 September, he specifically asked her when that was going to happen.

111 As to this issue of mixed messages or vacillation and a host of undocumented discussions which contradicted the contemporaneous evidence of the WhatsApp messages, this suggestion depends exclusively on X's evidence that this was W's behaviour. It is not supported by any independent or contemporaneous messaging. Importantly, the suggestion was not raised in X's filed evidence. This is puzzling because the allegation has now attained real significance for her case. I reject it as self-serving and untrue. Thus, the acquiescence exception is not proved by X.

Issue 6

112 Psychological or physical harm. The physical harm must be to the child. There is no suggestion that Y is at risk, let alone grave risk, of physical harm. Therefore, I move to consider psychological harm.

113 Miss Cabeza helpfully reminds the court that the key factors for Dr Ratnam were the removal of Y from her mother's care and security of accommodation. X stated she is not eligible for state support because she remains married to W and there is no evidence, Miss Cabeza submits, to contradict this. When considering the grave risk of harm, the court must take the mother's case at its highest and then consider if the protective measures protect against such a risk, Miss Cabeza submits.

114 Thus, there are a number of routes by which X submits that Y is at grave risk of being exposed to psychological harm. First, the separation from the mother. Although W has contributed to the care of Y, I have no doubt that X is the primary caregiver. I also find that if Y was separated from her mother, this may cause Y psychological harm. X's case originally was that she would not return to Italy. For example, in her position statement filed at the outset of this trial, Miss Cabeza stated at para.14(a) that:

> "There is a probability that the mother will not return to Italy. The mother states that she will not return to Italy even if a return order is made."

115 Therefore, on that basis, a return would entail a separation between X and Y. This raised the spectre of what Miss Cabeza submitted was:

> "Y being forcibly ripped out of the life of the mother in England and returned unwilling to a father she does not perceive as a 'safe' parent. This will be a source of significant emotional harm and/or will place her in an intolerable situation."

116 I will deal with intolerability later, but this separation is simply not going to happen before this case comes in front of an Italian court because during her evidence, when X was asked about this, she accepted that, in fact, she would go back to Italy with her daughter. That was because, as she put it, her daughter needed her mother as she grew up. Although W states that Y could live with him if a return was ordered, given what has happened since arriving in England, I do consider that it is better for Y in the interim not to be separated from X. Dr Ratnam has said as much, and I accept her evidence on this. Therefore, without prejudging intolerability and child objections, if there were a return, it should be on the basis that Y stays with her mother in Italy until the Italian court becomes seized of and makes welfare decisions about living arrangements and contact.

117 It would be highly inappropriate for this court to presume to dictate to the Italian state how it should decide welfare issues of one its citizens Y, in a family law dispute between two of its nationals W and X. It would be a flagrant breach of comity. I have no doubt whatsoever that the Italian court would consider very, very carefully all the relevant evidence, including the report and evidence of Dr Ratnam and no doubt would supplement the existing evidence base with updating reports of its own.

118 The next basis of psychological harm is X's suicide and mental health risk. The way it came across in Dr Ratnam's report is rather different from how X presented it in evidence. What she is actually concerned about is that if she did not get her antidepressant medication in Italy and she did not get psychological support if she needed it, she would start to have bad

thoughts, as she put it, with the stress of the return and that may lead her to think about suicide.

119 I assess that there is not a real as opposed to a fanciful risk of suicide here. I take into account the precept that where one is considering serious outcomes and serious harm, the issue does not require that there is a serious risk of it. You can have a relevant risk of a catastrophic outcome, but in this case, there is no history of any suicide attempt. As Dr Ratnam has explained, X does not have the suicidal intent. There is no history of self-harm. Dr Ratnam explained that self-harm typically related to a coping mechanism or emotional relief for people with personality disorders and there is no evidence to suggest that X does have a personality disorder. The fact that she has no history of previously attempting to kill herself is, it seems to me, significant. Dr Ratnam clarified that X lacked intent even when she did not have the benefit of medication. This was a vital factor in Dr Ratnam's estimation because X has made no plans to end her life. Dr Ratnam concluded that the risks could be mitigated by medication, that having her daughter with X was a crucial protective factor, and creating living arrangements that reduced stresses on X would also reduce the risks. This is where protective measures are important and I will come to those shortly.

120 Third, however, I consider other impacts on X's mental health functioning short of suicidality. I am asked to consider X's fears that W will hurt her or kill her. Miss Cabeza accepts there is no objective foundation for these suggestions, but it is a question of X's subjective belief. This court must take X's case at its highest but not where it lies against the weight of other evidence. There is no suggestion whatsoever that W has ever threatened or used physical violence. I place very little weight on X's professed subjective belief that upon her return, he would hurt her or kill her. It appears to me so implausible to be self-serving and strategic. At para.53 of his statement at p.158 of the bundle, W gives an undertaking not to remove Y from her mother's care. That undertaking significantly reduces the risk of psychological deterioration by X.

121 As to access to medication, a lot of time was spent on the ability to access antidepressants in Italy and the cost. These are summary proceedings. It is frankly implausible to believe that it would not be possible for X to receive antidepressant medication in Italy. Further, while there is no clear evidence as to the precise cost, I find it inconceivable that if X is looking after a child and was diagnosed in Italy with mental health problems, and deemed to be in need of antidepressant medication, that the cost would be prohibitively expensive so that she would not receive it. X disputed that the citalopram would cost €3. She stated it would cost €8. That, it seems to me, is not excessive nor out of her reach.

122 Equally, X complains that she would not be able to receive help and therapy with her depression in Italy. It is the case that, medication aside, she is not getting any therapeutic support in the United Kingdom presently. Ms Renton asserted by way of the most cursory Google search that Italy has one of the best healthcare systems in the world. I repeatedly informed counsel that this case should not degenerate into a trial by search engine or Google. So, with great respect, I do not rely on Ms Renton's research. These are summary proceedings and I put those suggestions completely to one side. That said, I am perfectly satisfied that X would be able to be prescribed antidepressant medication as necessary in Italy and that she would be able to afford the cost of them, particularly if she was working as she has worked in England, and as she has worked in Italy, and/or if W makes a financial contribution until the Italian court is seized, or both.

123 X is diagnosed with moderate depression. She does not want to return to Italy. That is because she believes that she will have a better life in the United Kingdom. Dr Ratnam was clear that with appropriate medication and family support and accommodation, plus a

package of financial support, X's condition is manageable. What was telling is what Dr Ratnam concluded that even when X was depressed and without medication, it had not affected the care she was able to provide Y. That is most definitely to X's credit, but it gives a real and telling context to the risks here.

124 The conclusion of the court, therefore, is X has not proved that there is a grave risk of Y being exposed to psychological harm upon return to Italy. Such risks as exist are manageable with a package of protective measures. This must include the undertaking of W not to remove Y from X's care and his provision of living expenses, the details of which I will come to. Dr Ratnam also mentioned the risk of psychological harm of inadequate accommodation. I will deal with this on the next issue on intolerability. I emphasise that I look at these matters in the round.

125 As to the enforceability of the undertakings in Italy, Miss Cabeza submitted that it was for W to prove that they would be enforceable in Italy. I asked counsel if they knew of a case where there had been expert evidence about enforceability of the United Kingdom undertakings in Italy, a respectable EU nation. Neither could bring any such case to the court's attention. Frankly, I am not surprised. As I have indicated, these are summary proceedings. It would not be proportionate to insist upon such expert evidence and the delay that it would entail. There were no previous orders by experienced judges that this should happen. I am invited to proceed on the basis of W's undertakings save for those on finances being enforceable in Italy under the 1996 Convention. For example, monetary undertakings are explicitly excluded and I will deal with those separately.

Issue 7

126 Intolerability principally stems from the accommodation situation. W suggests that Y could stay with him and then X can make her own arrangements. This is not something that should happen. As I have indicated, until the Italian court is seized, mother and daughter should not be separated. The father says there is no accommodation difficulty: X can live with Y at her mother's (the grandmother's) house in C. This a three bedroomed house but the bedrooms are occupied by guests, one by a couple and with two individual residents. They are X's mother's tenants. The grandmother lives there too but she lives in the living room. The kitchen and bathroom are all shared by the residents. Thus, if X and Y live there, they would have to share with four other people.

127 X's mother does not live there permanently now. She has been increasingly spending time in West Africa because of the retirement of X's father. Indeed, X stated in terms that most times when she calls her mother, her mother is in West Africa. This leads to the real possibility that X and Y could live in the grandmother's absence. However, I must consider whether it would be an intolerable situation for Y.

128 Intolerable, as Lady Hale has emphasised, is a strong word. In *Re E (Children)* [2011] UKSC 27, at [34], Lady Hale emphasised that:

> "...Every child has to put up with a certain amount of rough and tumble, discomfort and distress..."

129 Is it intolerable to the high standard of the word to expect Y to live with X in her grandmother's house for a few weeks until the Italian court is seized with this matter? I have every confidence that a smart and sensible girl like Y would be able to adapt to sharing a bathroom on a temporary basis. In the past, and X concedes, she has stayed overnight at her mother's house in C. I find that it would not be intolerable and it would not create a grave risk of intolerability using the recognised standard for this to happen.

130 I find that X has sought to erect as many obstacles as possible. She has sought to exaggerate the difficulties that would, in fact, be faced practically and as a matter of common sense on the ground. She has a loving relationship with her mother, with her brother, and her two aunts. The idea that X would be homeless and destitute should she return to Italy with Y is implausible. I am completely convinced that this close family wound undoubtedly rally round. For example, X has had holidays abroad in the past. Money for the holidays in West Africa, Sweden, and Austria was found. When she was asked where the money came from, she said she was given that money for her travels by family. If this is true, it appears, contrary to what she told the court, there is disposable income if needed, or there could be, yet she stated that she had asked her family if they would help financially upon her return and they allegedly said they would not. The explanation for their refusal to help someone who they love, and Y whom they also love, was that X could work in England and so why would she come back.

131 If the grandmother is already spending much of her time in West Africa, there is little reason why she could not do so once a court ordered that Y has to return until the court made decisions about Y's welfare. This would be to help her daughter and her granddaughter whom she undoubtedly loves, as has been confirmed in evidence. It is telling, however, that X has not even asked her mother whether it would be possible for Y and her to live there on a temporary basis until the Italian court is seized.

132 Naturally, a vital welfare issue is where Y should live, including in the interim. If an Italian court held that in the interim, until there was a trial, that Y should live with mother, it is inconceivable that the court would not consider anxiously where it was that Y would, in fact, be living. It is entirely possible that W would be required to contribute more than he proposes. If it were not possible for the accommodation at the grandmother's to continue, then the Italian court would without question fully explore other solutions if it is agreed that there should not be separation from X which would be a matter for the Italian court once seized. However, I reject the submission on behalf of X that this court should look at and make provision for the medium- and long-term situation upon return to Italy.

133 It was pointed out during the course of submissions that this would be a fundamental breach of comity. The submission was then modified, or, in fairness to Miss Cabeza, "clarified" to be that the court should ensure that X would not be put in a position where the Italian court would be bound to remove Y from her. I am clear that this court should not seek to interfere with the decisions of the Italian court should return be ordered. However, what this court must do and, to this extent, Miss Cabeza is correct, is that in these summary proceedings this court must do its best to ensure that the situation on return is a safe and appropriate one, a soft and safe landing. But once the Italian court is seized, it must be free to make its own decisions about a child who is an Italian citizen and should never have been retained in England in the first place. However, I am sympathetic to the submission, largely conceded by Ms Renton that this court should deem a lump sum payable sufficient for living and, if necessary, accommodation expenses that X can access until the Italian court makes its decisions.

134 In this case, return is subject to Art.13(2) objections. I have considered what would be reasonable and necessary. I agree with both counsel that a ten-month window is reasonable. Living expenses are agreed between the parties at €500 per month. The question is what is the necessary accommodation figure. As I have indicated, I find that it would be possible, certainly for the first few weeks, for X and Y to live at the grandmother's house. That would not place Y in an intolerable situation with a grave risk of it. It is submitted on behalf of X that Y has not shared facilities with other people before and there is no desk for studying. But whilst being sympathetic, one cannot be too precious about these things. At

one point in her evidence, when X was being asked about what would be a reasonable accommodation solution, she stated on oath that she would "go for" the two bedroomed option. This court process should not be a shopping list for the most desirable outcomes for X, but that was how she appeared to view it.

135 What the court must do instead is decide what is reasonable and what would not place Y in an intolerable situation or the grave risk of one. There is no need, is strikes me, for her optimal desired outcome of a two bedroomed flat. She and Y could live for a few weeks in a one bedroomed flat or even a studio. When X was asked why she could not live for that temporary period in such premises, her answer was not satisfactory. She said, "I don't know. I can't say."

136 I reject the suggestion that €800 a month is the correct figure for accommodation with two months advanced rental deposit as well. Doing the best I can, I find that something closer to €500 per month is a more reasonable and realistic figure. It would not be for the full three months because I have no doubt that X and Y could stay at the grandmother's house for part of that period, or certainly a lot of the period, until the Italian court begins to make decisions and is seized. However, I direct subject to the children's objections exception that the sum, should there be a return ordered, that is paid in advance by W is €1,500 for living expenses and €1,500 for accommodation.

137 During that three-month period, I have no doubt also that should she actively seek it, X could obtain work in Italy. As an Italian national, she does have the right to work. Indeed, she was working previously in Italy albeit not on a permanent or regular basis. It strikes me that if she was intent on finding it, she could find waiting or cleaning work in the C metropolitan area within that three-month period and that could supplement the income that she has in addition to the €3,000 that W would have to pay.

138 Therefore, if, and I emphasise if, a return is ordered, I direct that as a condition precedent for return there must be €3,000 paid into a bank account that is in the name of X's solicitors. The money cannot be used for anything except living or accommodation expenses but, of course, all this presupposes that the court does, indeed, order a return. It may not. I have to consider next what is a genuine and pressing issue in this case and that is the question of Y's objections to return.

Issue 8

139 This a tripartite test. I can deal with limbs (a) and (b) swiftly: (a) I find that X proved Y does object to return to Italy; and (b) I also find based on the report of Ms Dunlop of Cafcass, that Y and X proved that Y has obtained an age and maturity for her views to be taken into account by the court and I do so. These two findings open the important gateway to discretion, and this is the third limb which I consider shortly. Miss Cabeza submits that the court will need to consider Y's welfare, which is a primary if not paramount consideration. She submits that Y's welfare demands that she remains in England.

140 The evaluation of discretion requires the court to consider all the relevant circumstances and I remind myself of several important principles. First, that discretion is at large. Second, that it is unfettered, as Munby J (as he then was) once termed it in *C v H (Abduction: Consent)* [2009] EWHC 2660 (Fam). Y's welfare is of great importance, but it is not the court's paramount consideration. The range of factors to consider may be greater than the other exceptions under the Convention. No factor is itself innately predominant. So the weight of any particular factor is exquisitely case-sensitive but the checklist of factors identified by Black LJ (as she then was) in *Re M* [2015] EWCA Civ 26 is a useful tool. The

further away from the removal or wrongful retention, the less weighty the Hague policy considerations become.

141 I also take into account fully the authorities agreed in the note on the law. *Re G (Abduction Consent/Discretion)* [2021] 2 FLR 972 was an abduction rather than a wrongful retention case. There, the court held that the exercise of discretion in Convention cases was acutely fact-specific. The court should evaluation weight in all the circumstances, including the desirability of a swift restorative return, the benefits of decisions relating to children being made in their home country, comity between states, deterrence of abduction, and consideration to the welfare of the child and whether the welfare considerations outweighed policy issues (see [34]-[42] of the judgment).

142 Therefore, the factors against the return include, importantly, the fact that Y objects to a return and so refusing a return is in accordance with the voiced wishes of the child. I do take her views seriously. She has expressed them forcibly in the letter to the court outlined at the start of the judgment and also to Ms Dunlop. Y has been in the United Kingdom for a year now. She has nearly completed an academic year in England as well as part of the summer term last year. She has made friends. She has some wider members of her family here, "cousins" as she calls them, and her mother wishes to stay here to have a better life in England for both of them. X has worked in England and they are residing in the house of a friend. So there is at least some stability of accommodation, and the test is stability not permanency.

143 The factors in favour of a summary return are several. I take into account, first, the question of separation from her mother. As indicated, she has changed her stance. So it is not going to be an issue of Y having to return to Italy without her mother. I have indicated that there should not be a separation between mother and daughter until the Italian court decides the issue in either direction. Thus, any harm from separation does not feature in the discretionary balance and W has given an undertaking not to remove Y from X's care. Of course, it does not stop the father from making any applications he would wish to the Italian court. Although W has cared for Y and contributed to her care all her life, I accept that he is not the primary caregiver. Thus, the undertaking he has given not to remove Y from X on an interim basis is an important factor in the discretionary evaluation.

144 There was the issue of domestic abuse. This court will never minimise the significance of domestic abuse. Both X and Y have said that W shouted at the mother. Although, as Ms Renton points out, Y also says in her letter that she is aware of the parents' shouting at each other. While I must take X's case at its highest, where possible, that is not where it is inherently weak or implausible. It must at all times be seen in the context of the other evidence. As previously noted, there is no suggestion of physical violence in the past. In the WhatsApp messages, X refers to W at times as "*caro*" or "dear". It seems hard to understand how that term of endearment would be used if he had been abusive towards her to the extent that she had grounds to fear for her life or from being physically harmed by him, as she claims. However, as I have emphasised, this court takes domestic abuse seriously and recognises fully that it is a complex matter.

145 This is not a case where there have been separate allegations of domestic abuse upon which parties have invited the court to make findings. I have to look at matters in the round and do the best that the court can do. The critical feature, and I do take into account the wider and more sophisticated understanding that courts fortunately have nowadays about coercion and control, but the critical feature is that until the Italian court is seized, in no circumstances would X be living with W. Thus, her encounters would be limited to handovers at contact and this significantly reduces the impact of any concern about harm to X. The managed

contact will undoubtedly occur through the Italian courts in due course and that is a factor in favour of return.

146 It is axiomatic that it is better unless the contrary is proved that Y should have the close involvement of both her parents in her life. Indeed, Ms Dunlop speaks about the importance of that point. Y speaks about her father being kind. He has been involved in her life from her birth, being present at the hospital. He does sometimes help her with her schoolwork, albeit as X puts it on a scale of ten, only at two. However, he works to support this family. It is hard to criticise him for financially supporting X and Y through his hard work and thus being less available to help her with homework when she gets back from school because he works until 5.30. I accept his account that he spends time with Y and takes her to the park and to other places to have fun, as he puts it. I accept that he used to look after his daughter when her mother was out working as a cleaner.

147 What is revealing is how Y communicated with him in the WhatsApp messages. On p.168 of the bundle, there is an exchange of messages between W and his daughter. It is dated 14 September, the day after the Italian term should have started. He tells her how he misses her and how various pets miss her. She replies, "I miss you very much" and then there is a heart emoji. This does provide insight into the true nature of the relationship between Y and her father. The need to have a father being part of her life is important and it is important for Y to see him regularly. That is a factor in favour of return.

148 I also have concerns that should Y and her father live in different countries in future, there would be difficulties in both his seeing her regularly and also speaking to her. X was not supportive of Y's relationship with her father. He was forced to seek an interim contact order in this court. The WhatsApp messaging indicates that he was becoming frustrated with the lack of contact with Y. This is unfortunate, especially, as the messaging demonstrates, that she told the father that she missed him. This is a material context to view the strength of her objection to Italy and that is a separate head. I take into account what Ms Dunlop said about Y's maturity and due to Y's age, her finding it hard to understand the implications of her wishes to be in England, in particular in respect of her relationship with her father as she grows older. That diminishes the weight I attach to her wishes.

149 This is a father she has lived with all her life prior to the trip to England and retention. I have re-read Y's letter at p.201 of the bundle. She may speak English at home to her mother but there is certainly an artificiality of the language in the letter. She says that her life would be "ruined" and it is "glorious and splendid" in England. This language is very surprising for a 7-year-old child born in Italy and schooled in Italian, and whose father speaks no English. One of the factors of Black LJ (as she then was) identifies in *Re M* is whether the child has been influenced or coached by the retaining parent. I am not satisfied that the language Y uses in the letter is authentic and spontaneous for such a 7-year-old child, but I cannot find that this language has been deliberately coached. However, it does bear the stamp of an adult's influence.

150 When she was interviewed, she had been with her mother for some six months and had not seen her father. She was upset with her father because she was being prevented from going to Africa. Police had attended the home and had removed documents. She knew her mother did not want to return to Italy. This causes me to reduce the weight I place on the objections of Y to some extent, but emphasise that I do not reject them altogether. They must and do have some weight with this court. Y said that she would be upset and angry if she had to go back to Italy. This may be the case, certainly in the short term, but there is no evidence of any lasting serious emotional impact that is likely to accrue to Y should the court order

summary return. Thus, there is no evidence that she would not be able to resume her life which she had experienced exclusively almost eight years before her removal to England.

151 The additional benefit would be that she would see her father regularly as regulated by the Italian court. The court must consider what sort of contact there would be if there would not be a return. As I have indicated, there would be limited face-to-face contact and I also harbour concerns about the extent that there would be at other types of contact promoted by X. The reason I say that is that in the WhatsApp messaging there are a number of complaints by W that X has not facilitated contact between him and Y.

152 I look at education. I am entirely persuaded that Y is doing well at school in England and that she prefers school here to Italy. However, she has completed one academic year in England. She has completed several more in Italy. I have no doubt if she is returned, she can resume her education in Italy and progress well after a period of adjustment and refocus.

153 I turn to promptness. There has been a delay between the wrongful retention on 30 June 2021 and this decision on 17 June 2022. I do not hold W responsible for this. I find that he complained promptly about retention to the police in September and then to the central authority in October but he was deceived by X for several months. There have been procedural delays but they are not the fault of W. In the February hearing, there was an adjournment so that X could be assessed by an intermediary. W cannot be criticised for that. However, one must take into account the fact that Y has now grown more accustomed to England and thus it will be a bigger wrench to return to Italy. However, I find that would not be an insurmountable problem for her.

154 As to racism, Y mentioned one incident to Ms Dunlop. Racism is always serious and unpleasant, but one has to consider how much confidence one could have about there not being a single racist incident in the United Kingdom in the almost eight years of Y's life if she had grown up here. Further, I cannot accept X's claims of isolation in Italy. She chose to go to Italy to join her mother there. C is plainly a multicultural city. As W states, X has family there. There are people, indeed, in X's mother's house who are not only from her country of origin but from other African nations. It is not possible in these family proceedings for the court to conclude that there would be less racism in Britain rather than Italy. Racism, regrettably, is a real feature of British society also. One mentions such facts of life with a heavy heart but I place no weight on this objection by X.

155 Black LJ also identified that nationality is significant. The child was born in Italy. She is an Italian national, speaks Italian and has been schooled in Italy. Her father is an Italian national and speaks no English and has had to use an interpreter for these hearings. X came to join her mother in about 2006. She has an Italian passport. She worked, albeit part time, from time to time in Italy and she had post office accounts of her own in Italy. Looking at the network, I consider, first, the paternal family who live in Italy and then X's family in Italy which I have already detailed. This, of course, was the reason she came to Italy from West Africa because her mother has a business in C exporting and importing African goods to Italy. However, X's brother lives in Italy in C. He has children who are therefore Y's first cousins. There are the aunts in the area who are very close both to X and to Y.

156 All these people have much love for Y. As Dr Ratnam stated, this is a good and important support network for X. The true nature and depth of X's connections to England, however, are unclear. She appears to have some relatives here in England and Y has met and associated with them. However, it strikes me that in terms of closeness of relationship, it is certainly not as strong as the connections that X had to her direct family in Italy.

157 I have to consider the impact on the mother's mental health of return. Although I have found that the psychological harm exception is not proved, I still proceed to consider the impact on her mental health for the purposes of discretion. Dr Ratnam could not predict the exact degree of deterioration if she had to return to Italy. She mentioned important mitigating factors, such as medication. If it is taken consistently, it would be more effective and it would promote recovery and reduce the risk of mental health deterioration. There can be an adjustment of the dosage. It could increase to 30 mg or doubled to 40 and that should result in an improvement of the symptoms of depression, but the doctor said that the normal practice is to adjust it and then to review it judiciously because one does not want to increase medication to levels that are unnecessary.

158 Other medications could be tried along with a mood stabiliser, but typically a GP would refer a patient to specialist mental health services for that and Dr Ratnam did not think that that was a stage that had been reached. What she indicated, and what was of significance, was that what should be tried was to ensure that there was continuous medication and that should be the next step, that it was provided continuously and taken continuously.

159 I am unimpressed with the submission that the Italian healthcare services could not manage X's mental health, nor do I accept that the cost would be prohibitive for having adequate medication. It is not clear what the cost is but, as I have indicated, I do not regard it as being something that is completely out of the reach of X. I do not accept that she would be homeless in the sense of being destitute on the streets but I have considered in the intolerability section the prospect of interim accommodation and the impact upon both Y and X. It strikes me that there is no evidence to speculate about exactly what the Italian court will do. That is not the purpose of these proceedings. However, the court must make sure that when Y goes back, if that is the decision, that it is to a situation that is manageable and that it is not intolerable.

160 What struck me, as X gave her evidence, was that she showed a different side to herself. She was feisty and robust, surprisingly self-composed, and confident when she wished to be, and was able to stand her ground and make a point. All of this was when she was being questioned by very experienced counsel. It frankly was as though there were two people in the witness box. The timid and tearful X at the outset of the evidence and then another person who was far more confident and assertive later on. It strikes me she would be able to make a significant contribution to representing herself in Italy in proceedings in front of the Italian court if that was necessary, but I do not speculate about whether or not funding is going to be possible and, on this, I proceed on the basis of what X says, that she could not afford an Italian lawyer. That being said, in proceedings in this jurisdiction, frequently parents do represent themselves. The most important factor that strikes me in terms of the impact of return and discretion is the fact that Y is going to be with her mother until the Italian court makes its own decisions.

161 I consider lastly the Hague policy considerations. There is a delay of a year since Y left Italy. That renders the swift return imperative of the Hague Convention less pressing, although I do not completely ignore the policy. This is because the court has concluded that X has deliberately retained Y in the United Kingdom and it was wrongful. She used deception and subterfuge. The policy of deterring such blatant acts and unlawful interference with the customary rights of another parent must weigh in the court's evaluation. It is not to punish X. It is to assert the policy and object of this vital convention designed to reduce the harm to children from wrongful abduction and removal.

162 I must also consider whether there are other exceptions besides Y's objections, and I stress I have weighed the impact on Y and, indeed, on X in the balance. The risk of deterioration in

X's mental health upon return is materially and significantly mitigated by having adequate safeguarding arrangements in place. Her condition is likely to improve with consistent medication. It is significant that Dr Ratnam did not recommend even any increase in dosage and felt that the regularisation of taking the antidepressants would improve the symptoms of that depression. That is a very good indicator of the range and level of risk in this case.

163 X has moderate depression. It can be improved by the regular taking of antidepressants. All of this is important in the exercise of discretion and points in favour of a return rather than refusing return. That is because the impact of return can be properly managed medically through support networks and through proper arrangements. What is important is that even when X was depressed and before she took the medication, her condition did not affect her parenting of her daughter. There will not be a significant or serious impact on X's welfare if a return is ordered. The subjective child will cope; she will adjust; she will return to life in Italy, even though she will be cross and frustrated at first. However, I am persuaded that this will pass particularly with the support of both parents and her Italian family.

§VIII. CONCLUSION

164 Having looked at all the factors on both sides of the equation, Y's welfare is important, but is not paramount. However, equally, and an inseparable part of that welfare, is the right to have a meaningful relationship with a father she regards as kind and whom she misses. I conclude that the factors in favour of return very significantly outweigh the factors of Y remaining in the United Kingdom. Here is a wrongful retention perpetrated through systematic, prolonged, and premeditated deceit. The court must deter such matters. There are positive welfare advantages to a return to Italy, particularly the ability for Y to see her father regularly as dictated ultimately by the Italian court. I find the home court in Italy is in the ideal position to determine these issues. This is an issue about Italian nationals and the Italian court should have jurisdiction to resolve it. This is precisely what the policy and objective of the Hague Convention 1980 is directed at.

165 Y's habitual residence was Italy on departure on 11 June 2021. W has proved that Art.3 is engaged. He has proved there has been a wrongful retention as of 30 June 2021. Immediately before that, Y's habitual residence was still in Italy. X has failed to prove that it had changed in that period. X has failed to prove that W acquiesced or consented in any way. She has not proved any of the exceptions under Art.13(1) and while X has proved that Y objects and has attained sufficient age and maturity for her views to be taken into account, the court exercises its discretion and orders summary return.

§IX. DISPOSAL

166 Therefore, the court orders the summary return of Y to the jurisdiction of Italy. As Lady Hale said in *Re D* [2006] UKHL 51 at [68]:

> "...The United Kingdom may be justifiably proud of its record in speedily returning abducted children to their home countries..."

167 This return is about wrongful retention and is anything but speedy. But return it must be. It must happen expeditiously from this point. There must be sharp focus on ending the harm of wrongful retention. As Mostyn J stated in *FE v YE* [2017] EWHC 2165 (Fam) at [16]:

> "...Obviously, justice delayed is a bad thing whatever the subject matter of the dispute, but it is especially bad if the dispute is about a child..."

168 The return should be after the end of the current academic year in England and that is at the end of July. X must begin to make arrangements now. There is ample time to do so. I expect that Y will be returned forthwith after the end of July. However, a condition precedent to the return is that W places €8,000 in the bank account of X's solicitors. These sums are to assist X, if necessary, to arrange accommodation and living expenses, although I fully anticipate that she and Y will be able to live at her mother's house. These funds will assist X with day-to-day living expenses until the Italian court is seized with this case and can assess the situation on the ground and make the appropriate orders.

169 Last, I direct that counsel agree an order to reflect the term of the court's judgment.