Neutral Citation Number: [2024] EWHC 1863 (Fam)

Case No: FD24P00172

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2024

Before :

Miss Nageena Khalique KC (Sitting as a Deputy High Court Judge)

- -

Between :

Social Services of Naples	**Applicant**
- and -	
A Father	**Respondent**

- -

Re P (Habitual Residence, Art 13(b) Grave Risk of Harm)

- -

Mr Richard Little (instructed by Switalski Solicitors) for the Applicant
Mr Stefan Roy (instructed by Bloomfield Solicitors) for the Respondent

Hearing dates: 16 July 2024

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Approved Judgment

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Miss Nageena Khalique KC (Deputy High Court Judge):

Introduction

1. At the risk of stating the obvious, in proceedings brought pursuant to the Child Abduction and Custody Act 1985 for a summary return order under the 1980 Hague Convention, it is important not to lose sight of the child, in this case, a seven year old boy, whom I shall refer to as 'P'. He is described as a confident, bright, young boy who has become anxious, and in my view, has undoubtedly suffered as a result of the dispute between his parents and extended family, leaving him insecure and unsure about his future. The acrimonious dispute between his parents is the subject of ongoing litigation in Italy. This case is a salutary reminder that the child should always remain at the heart of the proceedings and a swift resolution of all litigation is imperative for P's welfare.

2. An application dated 23 May 2024, was brought by the applicant, the Social Services of Naples, (essentially the local authority) for the summary return of P. The applicant asserts that P has been wrongfully removed by the father ("F"), in breach of its rights of custody, which it acquired following the order of the Court of Naples North, 1st Civil Division, dated 14 July 2023. That order placed P in the care of the applicant, suspending parental responsibility of each parent.

3. F attended this hearing in person, represented by counsel, Mr Stefan Roy. The applicant was represented by counsel, Mr Richard Little, and a social worker from Naples attended remotely during the morning of the hearing. The mother ("M") has not participated in these proceedings, of which she is aware, but I am told she is actively engaged in the ongoing proceedings in Italy.

4. I had been provided with a hearing bundle, along with a detailed position statement filed on behalf of the applicant. On the evening of 15 July at 18.23, a further bundle of over 100 pages was lodged with the court. Neither I nor Mr Little had seen this bundle until it was forwarded to me shortly before the parties came into court. Mr Roy sought the court's permission to rely on this additional bundle, which contained a lengthy fourth statement from F as well as documents relating to the Italian proceedings. He also requested further time to take instructions from F. I allowed Mr Roy extra time to firm up his instructions, as there was no position statement filed on behalf of F and it was not entirely clear what F's final position would be.

5. I also granted permission for the extra bundle to be adduced noting that Mr Little did not object to the same. Whilst these documents should have been filed with the permission of the court at a much earlier stage, they were relevant (if repetitious in parts), no prejudice arose from the late disclosure (given Mr Little's stance), and I had sufficient time to consider them in full.

6. I should stress that if I have not mentioned a particular document or piece of evidence in this judgment, that does not mean I have not considered it or taken it into account.

The issues

7. It is well established that the objective of Hague Convention proceedings is to ensure, subject to a small number of exceptions, the prompt return of the child to the jurisdiction

of habitual residence for that jurisdiction to determine all disputed questions of welfare per Baroness Hale in *Re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, at §48:

> "The whole object of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their 'home', but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed. That object is negated in a case such as this where the application is not determined by the requested State until the child has been here for more than three years."

8. F relies on the following exceptions or defences pursuant to the Hague Convention:

    i) the removal or retention was not wrongful within the meaning of Article 3;
    ii) the child is settled within the meaning of Article 12;
    iii) the child is now habitually resident in the United Kingdom;
    iv) there is a grave risk of harm/intolerability under Article 13(b).

9. The burden of proof is on F to prove the exceptions.

Summary of decision

10. In summary, I am satisfied that the applicant had rights of custody and the removal of P from Italy, where P was habitually resident prior to the removal, was wrongful. F fails on the exceptions of settlement, habitual residence and Art. 13(b) and I shall make an order for the summary return of P to Italy.

Background / Overview of Evidence

11. The statement of Ms Judith Glynn, solicitor acting on behalf of the applicant, helpfully sets out the background. I shall summarise the salient facts. The parties met and were married on 2 September 2014. P was born in March 2017 in Naples and is an Italian citizen having lived in Naples all his life.

12. The parties' relationship deteriorated and became extremely acrimonious and hostile around 2018. In the course of divorce proceedings, M brought an application on 27 June 2023, for an order granting her exclusive custody of P, removal of P from F's care, and suspension of F's parental responsibility, on the grounds that F:

    i) was controlling and coercive;
    ii) had removed the child from her care
    iii) prevented her from having any communication with P;
    iv) was violent and abusive to her;
    v) was mistreating P (who has confided in her as such).

13. F denied all the allegations and claimed that M and maternal grandparents were ill-treating P by subjecting him to emotional and physical abuse. F brought a counter application that P be placed with him and for an expert to be appointed to investigate the circumstances and M's parenting ability.

14. Due to the high level of conflict and concerns about P's welfare, the, applicant sought an adjournment of the parents' respective applications and the court granted an order suspending parental responsibility from both M and F, conferring sole parental responsibility upon the applicant. I have seen a detailed judgment to which I shall refer below which confirms this. In addition, the court directed that a court appointed psychologist investigate the circumstances of the family and commence counselling for the parents and P.

15. Between July 2023 and January 2024, the applicant agreed that P would live with F. A psychologist, Dr Giustianie, was appointed by the court and prepared a report dated 11 December 2023 in which she opined that P was being psychologically conditioned against M and her family. F disagreed with this report and instructed another psychologist, Dr Latte, whose opinion was more aligned to his views that P was subject to emotional and psychological abuse by M and her family.

16. There was a further hearing on 16 January 2024, to review the situation and the suspension of parental responsibility. That suspension was renewed, and a decision was made by the court on 26 January 2024 that P was to be removed from the care of F and to live with his maternal aunt and uncle. The court also directed that there should be contact twice per week with each parent, pending resolution of the issues as to where and with whom P should live and the completion of further investigative and counselling work with the family.

17. In addition, the court ordered that P could only meet his parents at the applicant's venue (i.e. under supervision) and any other form of contact was prohibited, to include meeting in person, telephone calls and video calls.

18. On 30 January 2024, F removed P from Italy. He states this was a planned holiday and as far as he was concerned, there was no bar to him removing P who had been residing with him at his home, notwithstanding the suspension of his parental responsibility. This does not accord with the observations of the Court of Appeal in Naples in considering F's appeal of the decision of the inferior Court in Naples on 26 January 2024 which suggest the removal was deliberate to evade the decision of the court with which F disagreed:

> "It is worth noting that from 30 January 2024 [F] left with the child to go to England, according to him to save the child from the violence perpetrated against him by his mother's family, on the assumption that the placement with his aunt and uncle 'would not have guaranteed the distance between the abused person and the abuser' (see minutes before the Court of Naples North of 27 March 2024 and statement of defence of the complainant's new counsel)".

19. The applicant states that no notice or agreement had been reached that F could meet with P independently, nor that he could remove him from the care of the applicant, as

the sole holder of parental responsibility with rights of custody. Further, this was not a school holiday and the timing of the removal coincided with the decision to remove P from F's care to live with maternal aunt and uncle.

20. I have also seen a translated copy of an email dated 30 January 2024 from the court appointed psychologist to the applicant stating:

> "please note that some time ago F requested and obtained the child's passport, and although, as of today, he has declared that he does not hold any document, he has not provided any evidence of having officially reported its loss. This raises the possibility that F may take the child to his uncle's home in London"

which suggests that F had concealed his intention to travel to the United Kingdom, stating that he did not have P's passport, when clearly he must have had it in order to leave Italy and travel to London.

21. F also lodged an appeal against the decision made on 26 January by the court in Naples. Meanwhile, F and P could not be located but the applicant suspected that F had abducted P to the UK to live at his brother's address. The applicant provided authority to the International Child Abduction Unit on 4 April 2024.

22. On 19 April 2024, F appealed the decision to place P with maternal family members and the hearing took place before the Court of Appeal of Naples on 22 May 2024 at which F was legally represented. The appeal was refused.

23. On 17 April 2024, the applicant received a letter from a school in London confirming that the F was intending to enrol P at the school. The Royal Borough of Greenwich ("RBG") also received information from that school, that P was still enrolled at a school in Italy. This led to P being removed from the care of F, and being placed into police protection and subsequently accommodated in local authority foster care on 13 May 2024.

24. An urgent without notice application was made on 17 May 2024 when Arbuthnot J made orders to ensure that P was not returned back in the care of F whilst RBG was considering whether it would accommodate P. The applicant provided its consent to RBG accommodating P pursuant to section 20 of the Children Act 1989, pending his return to Italy. P currently remains in foster care.

25. On 23 May 2024, F attended a hearing before Ms Butler-Cole KC who ordered that a report from a CAFCASS officer be prepared to consider P's wishes and feelings and listed this matter for final hearing

26. Meanwhile, there are ongoing family court proceedings concerning P in Naples and I am told that if P is summarily returned to Italy, an urgent hearing will be requested in the family court. In addition, F has lodged a complaint with the Italian police (Carabinieri) regarding M and various professionals, including (but not limited to) an allegation that the social worker, Mr Stefanelli, is biased and 'in favour' of M in the family proceedings, and an allegation that M's lawyer is being investigated for slander. As I understand it, there are ongoing appeals by F in relation to the decision to place P

into a children's home in Italy, and in respect of the criminal complaints but as yet no determinations have been made.

The Law

A. Rights of Custody

27. Article 3 of the 1980 Hague Convention defines the removal of a child is to be considered wrongful where:

    i) 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

    ii) 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.

    The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

28. Article 5 of the Hague Convention provides that 'rights of custody' includes rights relating to the care of the person of the child and, the right to determine the child's place of residence. 'Rights of custody' are an autonomous concept which means that it is not necessary to demonstrate that a person has 'custody' of the child in order to demonstrate 'rights of custody' per Lord Donaldson in *C v C (Abduction: Rights of Custody)* [1989] 1 WLR 654 at 663.

29. The Court of Appeal in *Hunter v Murrow* held that to determine whether an applicant had rights of custody (see also Cobb J in *NT v LT* [2020] EWHC 1903 (Fam)) involves considering:

    i) what rights the applicant enjoyed under the law of the Requesting State (i.e. Italy), and

    ii) determining whether those rights were rights of custody under the autonomous law of the 1980 Hague Convention.

30. Rights of custody may be used as an exception or defence to the application. If the taking parent can establish that the left behind parent was not exercising rights of custody at the time of the removal then Art 13(a) provides that 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 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.

31. Save in exceptional circumstances, (e.g. where the ruling had been obtained by fraud or in breach of the rules of natural justice), such a determination had to be treated as conclusive as to the parties' rights under the law of the requesting state. Only if the foreign court's characterisation of the parent's rights was clearly out of line with the

international understanding of the Convention's terms should the court in the requested state decline to follow it, *H v M* [2005] EWCA Civ 976, (2005) 2 FLR 1119.

32. Article 12 of the Hague Convention provides:

> "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.
>
> The judicial or administrative authority, even where the proceedings have been commenced after the expiration of one year referred to in the preceding paragraph, shall also order the return the child unless it is demonstrated that the child is now settled in its new environment."

Settlement

33. The effect of Article 12 is that unless the respondent discharges the burden of proof of establishing a defence pursuant to Article 13, the return of the children is mandatory, if the date of removal is less than one year; but if proceedings are initiated after the one year period, and *if the child is settled*, a return order is no longer mandatory and *subject to the court's discretion*.

34. In calculating the period of time from when "*the proceedings have commenced*", Theis J held in *R v P* [2017] EWHC 1804 (Fam) at §111 that the relevant date is when Hague Convention proceedings are issued in the country to where the child has been removed.

B. Habitual Residence

35. A removal will only be wrongful for the purposes of Art 3 of the Convention if, immediately **prior to the retention or removal of the child, that child was habitually resident in the State from which the removal or retention took place**. The concept of habitual residence may be used as an 'exception' or 'defence' where it is argued that the child was not habitually resident in the left behind State immediately before the removal or the retention.

36. In *Re B (a minor) (habitual residence)* [2016] EWHC 2174 (Fam), Hayden J summarised the key propositions to be gleaned from the five Supreme Court judgments, addressing habitual residence, delivered since 2013:

    i. The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (*A v A*);

    ii. The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual enquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence *(A v A, Re KL)*;

    iii. In common with the other rules of jurisdiction in Brussels IIR its meaning is 'shaped in the light of the best interests of the child, in particular on the

criterion of proximity'. Proximity in this context means 'the practical connection between the child and the country concerned': *A v A* (para 80(ii)); *Re B* (para. 42) applying *Mercredi v Chaffe* at para 46);

iv. It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (*Re R*);

v. A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (*Re LC*). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration;

vi. Parental intention is relevant to the assessment, but not determinative (*Re KL, Re R* and *Re B*); vii. It will be highly unusual for a child to have no habitual residence. Usually, a child loses a pre-existing habitual residence at the same time as gaining a new one (*Re B*);

vii. In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (*Re B – in particular the guidance at para 46);*

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

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

x. The requisite degree of integration can, in certain circumstances, develop quite quickly (Art 9 of BIIR envisages within 3 months). It is possible to acquire a new habitual residence in a single day (*A v A; Re B).* In the latter case Lord Wilson referred (para 45) to those 'first roots' which represent the requisite degree of integration and which a child will 'probably' put down 'quite quickly' following a move;

xi. Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (*Re R*);

xii. The structure of Brussels IIa, and particularly Recital 12 to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (*Re B supra)*.

30. As per Lord Wilson in *Re B (a child)* [2016] UKSC 4:

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

Grave Risk of Harm / Intolerability Article 13(b)

37. Article 13 provides:

> 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; or
>
> 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.
>
> 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.
>
> In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

38. The leading case in respect of the defence of grave risk of harm or intolerability pursuant to Article 13(b) is *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27; [2011], 2 FCR 419, [2011] 2 FLR 758. See also *E v D* [2022] EWHC 1216 (Fam) MacDonald J's review of the law (including *Re E*) at paras.29-36, and *MB v TB* [2019] EWHC 1019 (Fam), [2019] 2 FLR 866.

39. The applicable guidance is summarised as follows:

    (i) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process;

    (ii) Factual disputes regarding allegations of domestic violence are likely to be better able to be resolved in the home country [para.8 *Re E*];

    (iii) The assumption underlying the Hague Convention is that the best interests of the child will be served by a prompt return to the country where the child is habitually resident [para.15 *Re E*];

    (iv) The courts and the public authorities in the home country will have access to the best evidence and information about the best resolution of any welfare dispute [para.15 *Re E*];

    (v) It must be established that the risk has reached such a level of seriousness as to be characterised as "grave", and there is a link between the level of risk and harm [para.33 *Re E*]; it is not enough to for the risk to be 'real' (para.29 *E v D*)

    (vi) "Physical or psychological harm" denotes things which it is not reasonable to expect a child to tolerate;

    (vii) The approach is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as grounding the defence given the summary nature of the proceedings;

    (viii) Where allegations of domestic violence are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation; and if that risk meets the test in Art 13(b), go on to consider the situation in the future as it would be if the child were returned, and whether protective measures sufficient to mitigate harm can be identified in the home country [para.36 *Re E*].

48. The Court of Appeal in *Re A (Children) (Abduction: Article 13(b))* [2021] 4 WLR 99 referred to the **Guide to Good Practice, at paragraph 40: the court should first "*consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk*"**, evaluating the evidence within the summary nature of the proceedings. In this context, the assumptions must be reasoned and reasonable:

> **[94] "I would endorse what MacDonald J said in *Uhd v McKay* [2019] EWHC 1239 (Fam); [2019] 2 FLR 1159, para 7, namely that "*the assumptions made by the court with respect to the maximum level of risk must be reasoned and reasonable assumptions*". If they are not "*reasoned and***

> ***reasonable*", I would suggest that the court can confidently discount the possibility that they give rise to an article 13(b) risk."**

40. In determining whether protective measures can meet the level of risk reasonably assumed to exist on the evidence, in *Re L (Article 13: Protective Measures) (No.2)* [2023] EWHC 140 (Fam) at [12], Cobb J endorsed the following approach to ensure that the proposed protective measures are:

> i) Forward looking to address the risk(s) which would otherwise exist if/when the child returns;
>
> ii) Effective to address the risk(s); exceptionally, this may involve undertakings or protective measures being in place and remaining in force for a period beyond the first hearing in the courts of the child's habitual residence;
>
> iii) Proportionate;
>
> iv) Appropriate and readily available (whether specifically facilitated by the left-behind parent, or under the country's own laws, or otherwise);
>
> v) Practical;
>
> vi) Focused on the child, and on the effect of the proposed arrangements on the individual child; the situation of the child has to be looked at in 'concrete terms'.
>
> While the court of the requested state will doubtless wish to scrutinise the protective measure proposals carefully by reference to the points which I have listed above, it has no role in micro-managing their realisation, nor will it seek to usurp the role of the court of child's habitual residence. A 'lighter touch' still will be applied where the court is considering the merely practical arrangements to achieve the child's return *S (a child) (Hague Convention 1980: return to third state) [2019] EWCA Civ 352* at §55)."

41. On the issue of protective measures, in *Z v D (Refusal of Return Order)* [2020] EWHC 1857 (Fam), MacDonald J observed that:

> "…it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example *Re H (Abduction: Grave Risk)* [2003] EWCA Civ 355, [2003] 2 FLR 141, *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and Re L *(Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433). However, having regard to the principles set out above, where the social service authorities of the requesting State are relied on as a protective measure, the

> court will still need specific details of the measures it is proposed that those authorities will be taking in order that the evaluative exercise set out in the foregoing paragraph with respect to the efficacy of the protective measures can be undertaken."

42. Whilst establishing the Article 13(b) defence theoretically gives rise to a discretion at large, Baroness Hale in *Re D (A Child) (Abduction: Custody Rights)* [2007] 1 AC 619 at §55 stated:

> "it is inconceivable that a court which reached the conclusion that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation would nevertheless return him to face that fate"

The applicant's position

43. I have considered the statements filed by the applicant dated 18 June 2024 and 9 July 2024 and the social worker's email dated 10 July 2024. In addition, I have had the benefit of Mr Little's position statement and oral submissions.

44. In summary, the applicant's position is that at the time of removal, P was habitually resident in Italy, where the Convention applies and has been wrongfully removed within the terms of Art 3 of the Convention. Further, at the date of the commencement of the proceedings 14 May 2024, a period of less than one year has elapsed from the date of the wrongful removal on 30 January 2024 and as such a mandatory return is required pursuant to Article 12.

45. The applicant asserts that it has rights of custody which it exercised or would have exercised but for the removal including making decisions as to P's residence. F's rights were formally suspended by the Italian court on 14 July 2023 and P was placed in the care of the Italian State. The applicant observes that F has continued to participate in the proceedings, appealing decisions made by the family court in Italy as recently as 22 May 2024 and has ongoing appeals in relation to his criminal complaints.

46. In respect of F's defence under Article 13(b): grave risk or intolerability, Mr Little contends this is unsustainable and notes in his position statement that:

> "the applicant asserts that the evidence provided by F raises more serious questions and concerns about him rather than Naples Social Services. It is respectfully contended that F cannot legitimately sustain an argument that P would be at grave risk of harm if returned to the care of the Italian authorities. It is curious that F has continued to engage in the Italian proceedings despite the case he attempts to pursue in this jurisdiction".

47. Maternal relatives are no longer able to accommodate P and so he will be placed in community care in Italy. F's concern about the applicant placing P with maternal relatives led to him removing P from Italy, and subsequently claim that P would be at

grave risk of harm if returned into the care of M's family. The revised plan removes any purported risk and will allow the opportunity for contact with both parents in Italy pending resolution of the disputed issues in that jurisdiction.

48. Mr Little referred the court to the concluding paragraphs of the Court of Appeal judgment in Naples on 22 May 2024 (an authenticated translation) which set out the detailed observations of the court and the proposals for P's placement on return:

> *...**this Court considers that in the light of the findings in the file, the child's placement in a community is, as things stand, the only one that can preserve [P] from a conflictual and manipulative situation that is highly prejudicial to him, and to the highly dysfunctional conduct of his parents**.*
>
> ***One need only think of the extremely serious conduct of the father, who intended to leave the Italian territory, taking the child with him, so as to evade the enforcement of a court order that had placed him with his maternal aunt and uncle and to show that he did not understand the need to comply with the prescriptions issued by the Court.***
>
> *With the community placement, which it is obviously hoped will be as brief as possible, the child will be able to regain control over his life, school, relations with peers, his interests, elaborate, with the help of a psychologist, his history and emancipate himself from the experience of a parental couple that has so far been unable to adequately accompany his growth process and to build an image of parents who complement their competences and are not incompatible.*
>
> *If, at the end of the process initiated, the social services consider that the placement no longer meets the child's best interests, they shall report this to the proceeding judge. Arrangements must be made for meetings between the child and his or her parents to be carried out in a protected manner, to be identified by the services entrusted to us, at least every fortnight after the child has been prepared.* (my emphasis)

49. In short, the applicant contends that the article 13(b) defence is not made out but in any event, there are sufficient protective measures. Further, the applicant says arrangements will be made for social services in Naples to collect P from this jurisdiction in the next 7 days in the event that a summary return is ordered.

F's position

50. I have not had the benefit of a position statement setting out F's final position but have carefully considered the evidence filed by the respondent, in his answer and statements dated 5, 6, 27 June and 12 July 2024 and the oral submissions made by Mr Roy on F's behalf. I have also been able to review the translated Italian documents.

51. In oral submissions, Mr Roy asserts that P was habitually resident in the UK at the time of retention. In his third statement, F states:

i) From June 2023, P was habitually resident in Melito di Napoli;

ii) From 1 February 2024, P's habitual residence transferred to London, on the basis that P was attending school and had family ties in London.

52. F argues that the applicant i.e. the local authority based in Soccavo-Naples, has had no involvement with P and questions its 'jurisdiction' given that Melito di Napoli is the town where F previously lived with P. The social services team in Melito have undertaken welfare checks and have reported P as well cared for by F and his family. Although Soccavo is a different town/municipality both Soccavo and Melito are within the jurisdiction of the civil court authorities who have been dealing with the family proceedings.

53. F's position has been revised in light of the applicant's change in plan. The initial proposal that P live with the maternal aunt and uncle has been withdrawn. F's concerns as to physical, emotional or psychological abuse by reason of *living with P's maternal family* fall away. The plan now is to place P in a community home in Naples (essentially a children's home) pending resolution of the matters before the family court in Italy.

54. F's evidence has evolved through four statements (with some repetition) and his final position was set out in oral submissions by Mr Roy. In summary, F contends that:

i) The judge making the order on 16 July 2023 suspending parental responsibility of both parents made an 'unusual and contradictory' order by placing P with F. Accordingly, F claims he has rights of custody and/or the applicant does not;

ii) The applicant was not exercising custody rights (Art. 13(1)(a)) on the basis that P lived with F in Melito di Napoli after the order suspending parental responsibility in July 2023 and F was responsible for P's day to day care and there was nothing to prevent him leaving the jurisdiction;

iii) P is settled in his new environment within the meaning of Article 12 of the Hague Convention. F states that P is well-integrated in the United Kingdom, without any problems at school, and has relatives here (a paternal uncle, aunt and two young cousins aged 5 and 2). F has also applied for asylum in the UK although the application has simply been registered and there has been no decision as to his asylum or immigration status;

iv) The applicant is not concerned with the welfare of P but aims to place him back in an abusive environment. Further, the social worker, Mr Stefanelli '*wants to bring P into the abusive environment.....to prevent him from further reporting episodes of abuse, to mislead ongoing criminal investigations involving M and her relatives, and to cover up the social services repeated failures and omissions in protecting P....the attempt is clear, to silence P, isolate him, to avoid the continuation of criminal investigations involving too many people*". F says this puts P at grave risk of harm (the Article 13(b) defence);

v) F asserts that the applicant is biased against him evidenced by, for example, accepting M's evidence rather than his, and because of a connection between M and the applicant and/or Mr Stefanelli (through work). He insists that the applicant will ultimately place P back with M or the maternal family;

vi) F casts doubt as to the integrity of the Guardian, Eccellente Colomba, alleging that the Guardian has misled and/or failed to inform the court of all relevant information regarding ongoing investigations and P's allegations against M and her family;

vii) The applicant and the court have accepted Dr Giustianie's evidence (a court appointed expert) rather than Dr Latte's opinion (the expert instructed solely by F), which he says is irrational and suggests that the applicant is conspiring against him, as in his view, Dr Latte's evidence is plainly to be preferred;

viii) In relation to the applicant's revised proposal to place P in a children's home, F argues that P will not thrive in such a placement, his education will be substandard (compared to his current schooling) and refers to investigations conducted in 2012 resulting in proceedings being brought against 'the Municipality of Naples and other social workers' in respect a conflict of interest and personal financial gain by placing children in such homes.

ix) F also refers to a further investigation in 2015 targeting officials and social workers from the Municipality of Naples which identified systemic corruption resulting in financial gain for the officials. Finally, F refers to a probe into the activities of politicians and the suggestion of collusion with social workers and a 'Neapolitan Mafia' laundering money through children's homes. In short, F expresses his concern that social workers may collude with criminals to misappropriate public funds. All these matters give rise to a grave risk of serious harm according to F.

The Cafcass report

55. I have considered the Cafcass report dated 25 June 2024 prepared by Ms Kathleen Cull-Fitzpatrick. The focus of her report is on P's wishes and feelings I shall highlight the relevant key passages:

> "*I found him* [P] *to hold an age-appropriate understanding of the topics we discussed…whilst P presents as a confident boy there are signs that he is feeling insecure and anxious, and he is seeking reassure* [sic] *and comfort from the adults in his life*".
>
> "*Whilst exploring P's life in Italy, he informed me that his teachers did not listen to him when he said that his mother would 'scream and hit'. P would like to return to Italy because he left some of his toys behind and he misses his dogs. Upon leaving Italy, P was unaware that he would be moving to London to live and he did not get an opportunity to say goodbye to his old school or friends.*
>
> *P is very worried that if he returns to Italy, his father 'will get in trouble' and 'be arrested'. P loves his father a lot and since moving to his foster home on 13/05/24, he has not had any contact with his father. P became tearful whilst discussing his father and said that he doesn't know why he cannot see his father.*
> *P provided the following message to the Judge: 'Okay, how come I keep thinking of my dad every day. He had his birthday, he is 46. I also miss my father and grandparents. Why did you bring me to those (foster carer) houses? I was protected with my father. Thank you.' (Translated by the interpreter). P proceeded to share that he wants to live*

in Italy, with his father. He misses the food, his (paternal) grandparents, dogs and toy trains.

56. Ms Cull-Fitzpatrick also commented as follows:

"*It is important to note that this application has been issued by the Italian authorities and there are ongoing proceedings in Italy. The Italian courts have been significantly involved and expert reports have been undertaken, with the authorities determining safeguarding and welfare decisions. The court within this jurisdiction will have confidence therefore that the family will be assisted by the appropriate authorities in P's home country*"

"*I would urge Naples Local Authority to undertake a direct piece of work with P to explain his current circumstances in an age-appropriate sensitive manner*".

"*I would strongly recommend that Naples Local Authority provide a robust and detailed plan, which would include details of the direct work they intend to undertake with P to prepare him for any change*".

57. The essence of her report is that P wishes to return to Italy, his preference being to live with F and to see paternal grandparents and that direct work is undertaken by the Italian authority to ensure as smooth a transition as possible upon a return to the jurisdiction which has thus far been dealing with the family proceedings.

58. In response to these observations in the Cafcass report particularly around what measures can be put in place, the applicant relies upon the email of Mr Stefanelli and statements filed, submitting that:

i) A community placement (i.e. a children's home, as envisaged in the judgment of the Court of Appeal in May 2024) has been identified but the location remains confidential so as to prevent the risk of P's abduction and to ensure his protection;

ii) The placement is based on a family model with educational provision;

iii) Supervised contact with each parent will be arranged by the applicant;

iv) An application will be made speedily upon P's return to Italy in the family court with a request for an urgent hearing;

v) There will be discussion with the social worker at RGB to prepare P for his return alongside consultation between the social services teams, and the parties regarding P's return to Italy, within seven days;

Analysis and conclusions
Rights of custody

59. Art. 3 of the Hague Convention means that I must consider whether the removal was in breach of the relevant rights of custody, i.e. those which arise under the law of the State in which P was habitually resident immediately prior to the removal. I also take into account Art. 5, which partially defines rights of custody as including rights relating to

the care of the person of the child and the right to determine the child's place of residence.

60. I have followed the two-stage approach outlined by the Court of Appeal in *Hunter v Murrow* [2005] EWCA Civ 976, and Cobb J in *NT v LT* [2020] EWHC 1903 (Fam):

i) What rights of custody does the applicant enjoy under Italian domestic law?

ii) Are those rights, under the autonomous law of the 1980 Hague Convention, rights of custody?

61. The burden is on the applicant to establish that there was a breach of its rights of custody. The meaning of 'rights of custody' includes rights relating to the care of the person of the child *and, in particular, the right to determine the child's place of residence*. I have considered the later House of Lords decision in *Re D*, in particular, paragraphs 8-10 per Lord Hope. I find that the order from the Court in Naples permitted the applicant, which is an institution or 'other body' within the meaning of Art. 3, to determine the child's place of residence.

62. Only if the characterisation of the rights of custody is clearly out of line with the international understanding of the Convention's terms should this court decline to follow it: *Re D* at [8], *H v M* [2005] EWCA Civ 976. I do not find any evidence of such mis-characterisation and accept that having been granted sole parental responsibility, the applicant was in fact exercising rights of custody under Italian domestic law immediately before the removal, by placing P with F, and subsequently obtaining an order in January 2024 to remove P from F's care and place him in an alternative place of residence (or the applicant would have exercised custody rights but for the removal on 30 January 2024).

63. I am therefore entirely satisfied that the applicant's 's rights as provided for in the order of 14 July 2023, subsequently renewed, and recognised by the Court of Appeal in Naples did amount to rights of custody within the autonomous meaning of Art.3 and Art.5.

64. I have also considered the actions of F to remove the child, against the wishes of the applicant, without its consent or knowledge and adopt a purposive approach in keeping with the autonomous concept of the Hague Convention: per Butler-Sloss LJ at p.231 paras. D-E:

> "*In applying the convention we are not bound by the mother's right under Colorado law to remove the child from the United States and that information is in my judgment irrelevant to the decision the English court has to take whether the removal from the United States was wrongful. We are concerned with the mother's unilateral decision to remove the child without the consent of the father and with the knowledge that if he knew he would have opposed her removal of the child. By the removal she frustrated and rendered nugatory his equal and separate rights of custody, in particular that the child should reside in the United States. In so doing she was in my judgment in breach of the*

> *father's rights of custody under the convention and the removal was wrongful.*"

65. Applying this case to the present facts, F's rights of custody, such as he asserts, are irrelevant to my decision as to whether the removal from Italy was wrongful. I am concerned here with F's unilateral decision to remove P without the consent of the applicant and with the knowledge that if the applicant knew, it would have opposed F's removal of the child. By the removal, F frustrated and rendered nugatory the applicant's separate rights of custody (which I have found to be established), particularly that P should reside at a placement in Italy. In so doing, F was in breach of the applicant's rights of custody under the convention and removal was wrongful.

66. Although F does not concede that he concealed his plans to remove P from Italy from the applicant, alleging that this was a planned holiday, an email dated 30 January 2024 (noted above) suggests F gave misleading information when questioned about whether he held P's passport, whilst knowing that he would be travelling to London with P. Furthermore, F's intent to remove P was noted by the Court of Appeal of Naples in the judgment of 22 May 2024:

> "One need only think of the extremely serious conduct of the father, who intended to leave the Italian territory, taking the child with him, so as to evade the enforcement of a court order that had placed him with his maternal aunt and uncle and to show that he did not understand the need to comply with the prescriptions issued by the Court".

67. I find that F deliberately planned to remove P in the full knowledge that the applicant was seeking to remove P from his care and place him in an alternative place of residence.

68. For all the reasons set out above, I find that when P was removed to the United Kingdom, the removal was wrongful under Art.3, and that a mandatory obligation to return P arises under Art.12.

Settlement

69. Art. 12 of the Convention provides that where a child has been wrongly removed, if proceedings for recovery of the child have been commenced within a period of less than one year from the date of wrongful removal **the court must order the return of the child forthwith**. P has only been in the UK for a total of six months, and proceedings were issued on or around 23 May 2024. In calculating the period of time from when "*the proceedings have commenced*", I have followed Theis J's approach in *R v P* [2017] EWHC 1804 (Fam) at §111 (the relevant date being when proceedings were issued here). Clearly proceedings have commenced within a few months of the date of wrongful removal (a period significantly less than one year), and therefore a return is mandatory. There is simply no exception to a summary return on the basis of settlement in this case.

Habitual residence

70. F asserts that he did not wrongfully remove P but simply extended his stay beyond a planned holiday in accordance with F's belief that he had rights of custody and so any *retention* of P after the holiday was lawful. F does not recognise the applicant's rights of custody. Mr Roy submits that P was habitually resident in the UK at the time of the retention. However, there are conflicting references in F's statements to habitual residence, e.g.:

    i) F states that since June 2023 the habitual and exclusive residence of P has been in Melito di Napoli;

    ii) Specifically in his third statement, F states that **prior to arriving in the UK P's habitual residence was Melito di Napoli**;

    iii) F then also states that ‘starting from 1 February 2024’, P's habitual residence was London where he started school and that he has family ties (with a paternal uncle, aunt and cousins), thus suggesting P acquired habitual residence on one day.

71. For the purpose of Art.3, I must look at the relevant rights of custody, i.e. those which arise under the law of the State in which P was **habitually resident immediately prior to the removal**.

72. Prior to January 2024, P had never been to the UK. Whilst it is possible in principle for a child to acquire habitual residence in a single day, there is no evidence of the child putting down those ‘first roots’ even by July 2024 which represent the requisite degree of integration in the environment of the new state, as referenced in *Re B*. In particular:

    i) There had been no co-ordinated pre-planning of a relocation to the UK, and F does not produce any evidence suggestive of this;

    ii) F (and by extension P) had no settled accommodation in the UK, instead staying with relatives. Moreover, P now lives in foster care separately from F and his relatives (since May 2024) and his residence is aptly described by Mr Little as being ‘in a state of flux’;

    iii) F's asylum and immigration status is unsettled, and has not progressed past the registration of the application stage;

    iv) F's employment status in the UK is unknown. He refers to being a Professor in Italy;

    v) Although P has attended a school in the UK, he remains registered with an Italian school;

    vi) P refers to missing living in Italy (the Cafcass report states that P wishes to live in Italy and misses seeing his relatives). P was not expecting to go to London and feels sad that he was not able to say goodbye to school friends and left behind many personal possessions (suggestive of the intent of F to abscond rather than an intent to relocate to the UK and a lack of integration).

73. The lack of stability of P’s residence in the UK in foster care is a relevant factor and does not suggest integration of P into the environment *(Re R and Re KL and Mercredi* as referred to in *Re B (habitual residence)* per Hayden J).

74. As at the point of his departure, P was deeply integrated in Italy. He was born in Italy and it had been his permanent place of residence since birth. He is an Italian National with an Italian passport and has extended family (on both sides) all of whom live in Italy. He has personal belongings still in Italy.

75. When considering the ‘see-saw’ analogy per Lord Wilson in *Re B (a child)*, taking into account the changes in P’s residence in the UK within six months, in my view, P has not laid down ‘first roots’ which represent the requisite degree of integration in the environment of the new state, and P's roots in that of the old state (Italy) have by no means ‘come up' to the point at which P has achieved the requisite de-integration (or disengagement) from it. In other words, the see-saw had not tipped away from Italy. It is therefore clear to me that P was habitually resident in Italy prior to the wrongful removal and remains so.

Article 13 (b) - Grave Risk of Harm and/or Intolerability

76. F maintains that he has rights of custody notwithstanding the order suspending parental responsibility (which removed his right to determine where P resides) and seeks to rely on an Art.13(b) defence. Mr Roy addressed me succinctly on this issue in oral submissions only, but given the lengthy written statements prepared by F in relation to the Art.13(b) defence I shall address the issue further below.

77. F argues that a return to Italy whereby P is placed with his maternal relatives would expose P to a grave risk of psychological harm and/or an intolerable situation. Mr Roy revised his submissions in light of the applicant's decision **not** to place P in the care of the maternal aunt and uncle.

78. The focus of these revised oral submissions was that the Italian State (i.e. the applicant, the Guardian and the social worker) are and would be acting improperly, contrary to P's best interests and in some instances criminally (I do not propose to repeat the allegations which are set out at paragraph 54 above).

79. F alleges in broad terms that placing a child in a community or children's home can give rise to institutional psychological/emotional harm. He also suggests that there is a malign motive behind the applicant's decision to send P to such a placement, namely to isolate and silence P from reporting any abuse, and further describes the decision as a form of punishment by the applicant. It is also argued that placing P in a children's home would place P at grave risk of harm and in an intolerable situation, as it will effectively stunt his academic, social and personal development and isolate him from his paternal family.

80. I have seen no evidence to support these allegations (all denied by the applicant), and must therefore treat them with considerable caution. F has provided links to historic articles relating to previous charges brought against various public authorities (including the Municipality of Naples) for misfeasance or criminal conduct around financial transactions.

81. There is no evidence suggestive of such conduct by the current authorities, other than F's assertions and strongly held beliefs that there is institutional corruption and a campaign against him and in favour of M. I am aware that some of F's complaints have been referred to the police and he has challenged the applicant's conduct and decision-making in respect of P and is currently appealing the decision to place P in a children's home in the Italian courts.

82. I note that the decision to place P in such a placement is only an interim decision with the Court in Naples retaining oversight with a view to resolving the issue of P's long term residence and care. Whilst F understandably feels anxious about P being in a children's home, ultimately it is a matter for the Italian courts seized of the welfare proceedings, with expert evidence and full knowledge of the case to determine what is in P's best interests both in the interim and long term.

83. I remind myself that I am not conducting a fact-finding hearing in relation to the allegations made by F. I have summarised the evidence and disputes on various issues and do not intend to repeat them. On an evaluation of all the evidence against the civil standard of proof, I do not find that there is a grave risk of psychological harm to P on return to Italy when these allegations are taken at their highest, without having made any findings of fact. Moreover, I am satisfied that **they** are not of such a nature and of sufficient detail and substance (**see** Guide to Good Practice, paragraph 40), that they could constitute a grave risk to P. In this context, the assumptions I make with respect to the maximum level of risk are reasoned and reasonable: *Re A (Children) (Abduction: Article 13(b))* [2021] 4 WLR 99.

84. The court's focus is on the future risk of harm and the concrete situation that P will face on return. Protective measures exist within the Italian administrative and judicial system to protect P from any psychological or physical harm. I am satisfied that I can infer the administrative machinery there would consider these allegations to reduce any grave risk of harm going forward to protect P and F has full access with legal representation to challenge any decision made by the applicant or other agencies through the civil and criminal courts and appeals processes. Indeed F has two ongoing appeals and has progressed his complaints through the Italian judicial system.

85. Notwithstanding that I have not found that there is grave risk of harm or intolerable situation, I am satisfied that on looking at all the evidence and assuming a competent level of State protection in Italy, as I am entitled to, the applicant has put appropriate protective measures in place to prevent the risk of any harm.

Conclusions

85. In the final analysis I am satisfied that:

    (a) The applicant had rights of custody which it was exercising immediately before the removal;

    (c) P was habitually resident in Italy immediately before the removal;

    (d) P's removal (and this is not a case of retention) was wrongful for the purposes of Art.3 of the Hague Convention;

(e) F has not made out any of the exceptions or defences to summary return (settlement, habitual residence or grave risk of harm);

(f) The principle of comity is particularly significant in this case. The courts in Italy are seized of the matter and best placed to deal with issues relating to P's welfare. In my judgment, as a co-signatory to the Hague Convention, the objectives and policy considerations of the Convention (per Baroness Hale in *Re D*) weigh heavily in the balance in this case.

86. I therefore order a summary return of P to Italy and ask that counsel draft an order to give effect to this decision. I am grateful to counsel for their assistance.