Neutral Citation Number: [2024] EWCA Civ 1569

Case No: CA-2024-001981

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
FAMILY DIVISION
MR DAVID REES KC
sitting as a DEPUTY HIGH COURT JUDGE
FD24P00231

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 December 2024

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE LEWIS
and
LADY JUSTICE ELISABETH LAING

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P (A Child) (Abduction: Child's Objections)

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- -

Christopher Hames KC and Jonathan Evans (instructed by **Goodman Ray Solicitors LLP)**
for the **Appellant**
Jacqueline Renton (instructed by **Freemans Solicitors**) for the **Respondent**

Hearing date: 22 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Moylan:

1. The mother appeals from the order made by David Rees KC, sitting as a Deputy High Court judge ("the judge"), on 8 August 2024 dismissing her application for a summary return order under the 1980 Hague Child Abduction Convention ("the 1980 Convention"). The mother sought the return to Romania of the parties' son, now aged 15 (who I will call C).

2. C was living with his mother in Romania until he came to visit his father for a holiday in England in December 2023. He was due to return to Romania by 20 January 2024 but did not do so. Although initially the father did not accept that he had wrongfully retained C in England, he later accepted that he had. C was seen by a Cafcass Officer and the parties agreed that C objected to returning to Romania and that he was of an age and degree of maturity at which it is appropriate to take account of his views (as provided for by Article 13 of the 1980 Convention). The judge decided, in the exercise of his discretion, that he would not make a return order. It is from that decision that the mother appeals.

3. The mother is represented on this appeal by Mr Hames KC (who did not appear below) and Mr Evans. The father was represented at the hearing below and, on this appeal, is represented pro bono by Ms Jacqueline Renton and her solicitors. I am grateful to all counsel for their respective submissions, especially Ms Renton and her solicitors who came into the case not long before the hearing.

4. The mother relies on a number of grounds of appeal, as referred to below. The mother's overarching case is that the judge carried out a flawed analysis when deciding how to exercise his discretion. It is submitted, in particular, that the judge's analysis of certain factors, including the nature of C's objections, matters relevant to C's welfare and the 1980 Convention policy considerations, was flawed and that his decision not to make a summary return order was wrong. Mr Hames submitted that a rehearing is not necessary because this court is well placed to determine the application and that we should make a return order.

5. The mother's specific Grounds of Appeal are:

> "1. The Judge erred by failing to give sufficient weight to the core principle of the 1980 Hague Convention providing for the swift return of children to their country of habitual residence when wrongfully retained in another convention country.
>
> 2. The Judge erred in the discretionary exercise by placing too great a weight on the child's objections to returning to Romania and overstated the strength of the child's objection.
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> 3. The Judge erred by failing to properly consider and analyse the impact of the mother having exclusive exercise of parental responsibility for the child as the result of a previous Spanish court decision.

> 4. The Judge failed to properly analyse and consider the impact on the child of remaining in this jurisdiction with a parent who had perpetrated domestic abuse against the other parent.
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> 5. The Judge erred by disregarding the photographs of the child's life in London exhibited to the mother's statement, and failed to properly analyse potential risks the child is facing in London as demonstrated by these photographs.
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> 6. The Judge erred in failing to properly analyse or place due weight on the likely detrimental impact on the child's relationships with the mother, who has always been the child's primary carer, and the extended maternal family, with whom the child had previously enjoyed a close relationship.
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> 7. The Judge was wrong to use information gained from a meeting with the child when considering whether or not to order a return to Romania."

Background

6. The mother and the father met in Spain when the mother was visiting on holiday from Romania. The mother is a national of Romania and the father is a national of Spain and another non-EU country (M). They lived together for a few years in Spain which is where C was born in 2009. As set out in the judgment below, the parents separated not long after this, since when C has been cared for by the mother alone. As the mother said in her statement, C "has lived with me all his life and never been away from me" for any substantial period of time.

7. At some point the father moved to country M. While he was there, he did not have contact with C who remained living with the mother in Spain. The father says that he moved to live in England in 2017 and has been here since then.

8. The mother and C moved to live in Romania in 2022 when C was 12. They lived in a two-bedroomed flat owned by the mother in what the mother describes as a nice area of Bucharest. The mother also works in Bucharest. C attended school from which he graduated in 2023 and then moved to a Technical College. The mother exhibited a Graduation Diploma and academic records showing the marks achieved by C. It was the mother's case that C was "attending school and enjoying life in Romania prior to his wrongful retention". She exhibited an array of photographs in support.

9. At some point, contact between the father and C was renewed. C visited the father in England for a holiday in the summer of 2022 and the father visited Romania in the summer of 2023. The next contact was when C travelled to England, again for a defined holiday, in December 2023.

10. There are a number of other relevant events.

11. In 2014, the father was convicted of an offence of harassment against the mother. The father was convicted after a trial at which both parties attended. The father accepted

that he had been convicted of "domestic violence" but said that "I have always denied and still deny" that he committed this offence.

12. In June 2015, the Spanish court made an order giving the mother sole parental responsibility. As the judge noted, the effect of this order was to remove the father's parental responsibility because it "allocated the exclusive exercise of parental authority" to the mother.

13. In 2018, the father was found to be in contempt by the Spanish court for the non-payment of maintenance due to the mother.

14. On 7 August 2023, an application was made by the father on behalf of C under the EU Settlement Scheme. The application was made on the basis that C sought to acquire "your parent or guardian's settled status". The form also stated that C was then resident in the UK, which he was not.

15. The father's case was that when he and C were on the way to the airport in January 2024 "the train broke down, causing us to miss our flights". They had to return home and he had to "start looking for a refund for the tickets and buy new ones. This process was not so quick". He then added that: "On the other hand, I saw the opportunity that I believe God gave me to understand that [C] did not want to go to Romania and that what happened was a message from God for him not to return". The father exhibited boarding passes for himself and C for flights from Stansted to Bucharest on 19 January 2024 and train tickets. The train tickets have the same number so, although there are two images, they are both of the same ticket.

Proceedings

16. There was some delay in proceedings being issued in England although the mother had clearly contacted the relevant authority in Romania not long after C was retained in England. Once they were issued, on 12 June 2024, the matter progressed to a final hearing at the beginning of August 2024. Both parties filed statements and a report was obtained from the Cafcass High Court team.

17. The mother's evidential case was set out in the initial statement filed by her solicitor and in the statement she filed.

18. The mother pointed to the fact that C had always lived with her and that she had sole parental responsibility for him. The father had "drifted in and out of C's life and showed little interest or commitment in his upbringing"; he had "only ever dipped into and out of C's life when it suited him".

19. The mother recognised that the move to Romania was "a big change for C and he did miss his friends in Spain". However, he "adapted well"; made "new friends"; was "an excellent student"; and "generally integrated well into life in Romania". He had, as C described it to the Cafcass Officer, "close contact" with his extended maternal family. The mother exhibited a selection of photographs of C with her, with friends and family and at school. The mother also produced C's Academic Records and said that he had received a "merit scholarship that is available to children with high grades". In a letter his form master said that C was "one of the best behaved and most respectful" students and "integrated into the classroom collective".

20. After the mother and C had moved to Romania, the father "got in contact" and asked if C could visit him in London. As referred to above, C visited the father in London in 2022 and the father visited C in Romania in 2023. The mother was concerned that these "visits were destabilising for C" but she did not seek to prevent contact. Although she had been "worried about [the father's] actions and behaviour in the run-up to this trip [in December 2023], I never thought he would or could keep [C] in London without my consent".

21. She referred to other ways in which the father had sought to destabilise C's life in Romania through what she described as a "toxic narrative". This included saying derogatory things about Romania and encouraging C to be "aggressive towards her" and "not listen to me [saying] he could do whatever he wants". He had used C's visit to London in 2022 "to try and influence C to move to London". She had also had a "suspicion" that the father was applying for settled status for C but the father had done this without her knowledge or consent.

22. The mother asserted that her relationship with the father was "one of extreme abuse, physical as well as emotional" which continued after they had separated. She relied on the father's 2014 conviction (as referred to above), which was supported by an official record the mother exhibited. She also relied on other incidents, including one in which she said that the father had attacked her with a knife and for which he was arrested and convicted (but in respect of which she did not exhibit any official record).

23. The mother relied on a report from a psychologist dated February 2015 which had been obtained for the purposes of the parental responsibility proceedings in Spain. It set out that the mother had consulted "the department of Psychological Women Assistance" from late 2009 and that the mother "discloses that there were physical aggressions and psychological abuses"; that she "was subject to an abusive relation (sic)"; and that she was "a victim of gender violence".

24. The mother, "of course", accepted that C is "fast becoming a young man and that he is intelligent and mature in lots of ways" but she believed "the views [C] is expressing about wanting to stay in London are strongly influenced by his father and do not reflect what is best for him". She commented in respect of C's letter, which the father exhibited to his statement, that a "lot of it sounds like things [the father] would say, rather than [C]".

25. The mother expressed a number of significant welfare concerns. One was "the kind of person [the father] is" based on his abusive treatment of her as referred to above and the detrimental effect of the father's influence on C. The father, as referred to above, had "persistently tried to undermine C's life in Romania and cut him off from his friends and family". Since C has been in London, her relationship with him has been adversely impacted and the father "has not permitted [him] to have any contact with [the mother's] family" in Romania. The father had said that "he wants C to integrate with his family in England and that me and my family are nothing to him". She had also heard from some of C's friends (in Spain) that since he has been in London, C has stopped contacting them.

26. The mother relied on photographs of C's life in London which she had seen because they were backed up onto a drive to which she had access. In one C has "a nasty looking injury to his cheek"; "in others he is wearing hoodies and face-coverings, and in others he is in states of undress or looking 'out of it'. It looks like he is trying to dress like a gangster, hanging out with older people and out and about at night in various worrying situations". Adding:

> "It appears that [C] has near total freedom in London to do as he pleases, and his father treats him as an adult and refers to him as a friend in his statement. Although I completely understand that 15-year-olds are on the cusp of adulthood, and [C] of course had a high level of freedom and autonomy when he lived with me, he is still a young person and he needs guidance and boundaries to ensure his safety."

She expressed concern about what he might be involved with and "whether or not he is safe". She was also concerned about the precise circumstances in which C is living. The father had given very limited details and C's school had given a different address for C from that provided by the father.

27. The mother also referred to certain health issues which were being monitored in Romania. In respect of one condition, C was due to undergo further investigations. The doctor "has been contacting me to try and find out when he will be back so this case can be progressed and they are worried that if it remains untreated, the situation could get worse".

28. The father filed two statements. He stated that he left Spain and returned to country M when C was about 4 years old. He stayed there for 3/4 years until he moved to live in England. He accepted that he had no contact with the mother or C while he was in country M.

29. The father's statements gave very few details of his life in England beyond saying that he lived with his sister, brother in law and nephew and that he worked until 2.00pm three days a week and until 4.30pm on two days.

30. The father considered that he and the mother "did not get along" because she "had a very difficult temperament" and because of "cultural differences". He denied that he ever "mistreated the mother" or that the relationship "was violent and aggressive in any way". As referred to above, he accepted that he was convicted of domestic violence but added: "which I have always denied and still deny". He also said that he was not aware of the proceedings that led to the removal of his parental responsibility because he was in country M.

31. He explained that, although C "expressed to me on many occasions that he wanted to stay or come with me, I never intended for him to stay without the mother's permission". He had, however, decided in January 2024 "to do what any father would do for the well-being of his son at that moment; I only listen to my heart and decided to stay with my wonderful son and explain it to the mother".

32. The father explained that the application had been made for settled status because it "would be beneficial for his future" to secure C's legal status and he had been advised "to act promptly to avoid potential future circumstances".

33. The father also said that C "can travel and return whenever he himself requests or indicates or the court orders it". However, C "has stated that he has never wanted to live in Romania" and "the only thing he desires is to continue living here with me". The father believed that C "feels a little more like himself living with me, as our relationship is not only father and son but also friends"; "with his mother, he does not have the freedom to be himself or have a relationship with her"; C says that "his mother constantly lies to him, and he feels very disappointed by this".

34. He explained that he had sought to "influence" C "to maintain a good relationship with his mother and call her every day [but he] does not wish to do it so often and I cannot force him". He disputed aspects of the mother's evidence and said that he did "not teach C bad terms or ideas. On the contrary, I always encourage him to maintain a good relationship with his mother and her family. He also asserted that, at one point, the mother had agreed that C could remain in England but had then brought these proceedings.

35. The father exhibited a letter from C in which, among other things, he said that no one was "forcing me to stay here. I am here because I want to be here". He described aspects of his life in London in positive terms and said that he is "very happy with my father" and wanted to stay here "with the person that really understands me".

36. C was seen by a Cafcass Officer for the purposes of addressing his "views, wishes and feelings in respect of returning to Romania"; his maturity; whether he should be separately represented; and whether he wished to meet the judge. C told the Cafcass Officer that, when asked, he says that he is "both Romanian and Spanish". He said that he can speak Spanish and Romanian fluently and is in the process of learning English, although it is also recorded that he said "he did not really master" Romanian.

37. The Cafcass Officer concluded that it was "evident from my interview with" C that he did not want to return to Romania. He said he was "happy here in the UK" and was "not able to describe anything positive about life in Romania". In respect of school there, he said that he had "very bad grades at school … [and] failed the most important subjects". He also said that he had thought that his mother had come to terms with him staying in England but she then commenced these proceedings which undermined their relationship. The Cafcass Officer considered that "On this basis, C is therefore likely to strongly resent a return to Romania leaving behind what he has built here in the few months that he has been in the UK. This will not be conducive to his relationship with his mother about whom he has described having a strained relationship".

38. In respect of C's maturity, Ms Odze considered that C "came across as an adolescent with maturity below what would be expected to be commensurate with his chronological age". She also considered that there was "a level of naivety" in his answers which "lacked insight and maturity".

39. The judge heard oral evidence only from the Cafcass Officer. We do not have a note of that evidence but there is reference in the judgment to what, no doubt, were the relevant elements.

40. The judge met with C. Such a meeting remains relatively unusual in proceedings under the 1980 Convention. The judge asked C a number of questions which, perhaps inevitably, touched on C's views about London and being in London.

Judgment

41. The judge set out that it was accepted that C objected to returning to Romania with the result that he had a discretion whether to make a return order, which discretion was "at large". He also expressly noted that C's "views are [not] determinative" and that he needed "to take into account Convention considerations".

42. The judge addressed C's views as conveyed through the Cafcass Officer as follows:

> "17. [C's] views are clearly set out in Mrs Odze's' report. At paragraph 26 of that report, she states:
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> > "It is evident from my interview with [C] that he does not want to go back to Romania. [C] is clear he had not wanted to move there from Spain in any event and that he did not want to be in Romania. [C] told me that whilst in Romania, he had contact with his father every day and *'I kept asking my mother about being with my dad because I did not want to be in Romania*.'"
>
> 18. Mrs Odze indicates in her report that she felt [C] was not able to say anything positive about Romania. He said that he had not wanted to go there and he had wanted to remain in Spain. He told Mrs Odze that he had only one or two friends in Romania, that he had had very bad grades at school, he had not really mastered the Romanian language, and that he had failed most important subjects.
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> 19. He told Mrs Odze that when he had missed his flight in January 2024, he had looked upon that as a heavenly sign, and I note that that clearly reflects the language the father himself used in his witness statement describing the same event.
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> 20. [C] said also that in fact he believed his mother had come to terms with him remaining in the UK and that it was the issue of these proceedings that had undermined their relationship …
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> 21. Mrs Odze was told by [C] that he loves life in the UK and that he has adjusted well to being here. He expressed the view that he wants to be here with his father, and he has indicated that he gets on well with his cousin who also lives with them and that he has found a girlfriend in the UK.
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> 22. At paragraph 30 of her report, Mrs Odze says:
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> > "On this basis, [C] is therefore likely to strongly resent a return to Romania, leaving behind what he has built in the few months that he has been in the UK. This will not be conducive

> to his relationship with his mother about whom he has described as having a strained relationship."
>
> 23. Mrs Odze in her report also says that [C] came across as an adolescent with maturity below what would be expected to be commensurate with his chronological age. She described him as demonstrating some naivety in some of his answers and that he did not reflect on the impact of what he was saying on his mother, and he did not also reflect that the answers he gave would be checked. For example, it is clear from evidence provided by the mother that [C] was indeed doing better in school in Romania than he told Mrs Odze.
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> 24. Mrs Odze also recognised that [C's] views were likely to be influenced by the current views of the father. Nonetheless, she told me today that she was satisfied that the views and the wishes that he was expressing were genuinely his own, and she described him to me today as, "Very articulate. He knew exactly what he wanted."”

43. The judge then set out the parties' respective submissions. The father's case was simply that the judge "should give effect to [C's] views". The mother's case was far broader and was considered by the judge under a number of headings. The judge then said that, having "considered all of the factors", he had concluded that he would not order C's return to Romania. This was followed by his reasoning for that decision leading to his ultimate conclusion, which was expressed as follows:

> "55. Overall, taking all these factors into account, I have taken the view that the strength, coherence and consistency of [C's] views in this case is *the* magnetic factor which I need to take into account in relation to my decision." (my emphasis)

I will return to this later.

44. I consider the factors addressed by the judge in his reasoning in some detail because they are relevant in addressing the mother's submission that the judge's analysis was flawed. The first factor referred to by the judge, at [42], was "the purpose of the Convention":

> "I recognise that the purpose of the Convention is to order the speedy return of abducted children. I accept that is a relevant factor that I have to consider. Nonetheless, I also consider it is important that this factor is not so elevated that it drives a decision where a return for a specific child would otherwise be the wrong thing to do."

The judge does not mention this factor again and, although he recognised that, what he referred to as "the purpose of the Convention", was relevant, he did not give any indication that he considered that 1980 Convention policy considerations had any significant place in the balancing exercise.

45. This can also be seen from the judge's consideration of the wrongful retention itself which was limited to one of the submissions made on behalf of the mother, namely that it was a "planned abduction". The judge decided it was not planned although he was in "no doubt that the father has for a period of time wanted [C] to come and live with him in England". The latter could "be seen from the application for settled status that was made in 2023". In describing it as not "planned", the judge meant only that he did not consider that the father had planned not to return C prior to C arriving in England in December 2023, a conclusion based on the fact that return flight tickets had been purchased and on his accepting that the flight had been missed "because of transport difficulties". However, as I have said, the judgment does not contain any further analysis of the context of the wrongful retention in this case or of the broader policy considerations.

46. The judge concluded that there had "undoubtedly [been] attempts by the father to influence" C to come and live in London which was also reflected in both the father's and C's "subsequent attribution of [the transport difficulties] to providence". This was "a matter of convenient licence and perhaps the fact that they have taken the same view does demonstrate the influence the father has over" C. However, the judge was "satisfied that the decision for [C] not to return to Romania is a decision that has been taken as much by [C] himself as by the father".

47. The judge considered that this conclusion was supported, "In particular", because he accepted what the father had said, namely that C "can travel and return whenever he himself requests or indicates, or the court orders it". Accordingly, "if [C] were to say to the father he wanted to return, the father would assist him" meaning that the "decision not to return was as much driven by" C. I return to this below but I question whether the father's assertion does indeed counterbalance the effect of the father's influence in the manner suggested by the judge. In my view, the father's assertion is better seen as his way of seeking to distance himself from the effect of his influence on C although I note that the judge also attributes C's decision to C "enjoying what he perceives as greater freedom in his life in England".

48. The next factor was the evidence from the Cafcass Officer that, if a return order was made, C "will resent it … and would be likely to find an alternative outlet for his rebellion". The judge also considered that, having regard to C's age, "he is likely to be in a position whereby he can vote with his feet very soon" and referred to the fact that the 1980 Convention would cease to apply when C became 16 in March 2025. The judge coupled this with his conclusion that C "wants his voice heard" adding later that, although C "has been influenced by the father, I do not think that influence extends so far that [C's] views cannot genuinely be considered his own". He "recognised that there is naivety shown in his approach to his interview with [the Cafcass Officer] but I do not accept that this amounts to a reason to derogate significantly from the importance that should be given to" his views.

49. It was also relevant that C "had moved twice in less than two and a half years". "It is quite clear that [C] considers himself to be Spanish". The judge reached this conclusion because "when I met with him this morning, I asked him what football team he supported and he told me Real Madrid was his team" and because, "from what I have read in the papers [C] felt uprooted when in 2022 he was taken to Bucharest".

50. As to "welfare considerations", the judge did not consider the "history of domestic abuse" was relevant because he did "not accept that now places [C] in a position of risk". This was on the basis that:

> "The evidence I have seen, with the exception of the single sentence in the mother's solicitor's witness statement, indicates that any recent domestic abuse certainly has not been directed at [C], and he is living not only with the father but with wider family, including his cousin, which is clearly an important bond for him. Mrs Odze reports that police and legal aid safeguarding checks have been carried out on the people with whom he lives and that those are clear,"

He also noted that the mother had been prepared to let C visit the father twice which he took as indicating "that any concerns that [the mother] had about [C's] welfare were not so serious as to rule out a stay with the father".

51. The judge discounted the photographs of C in London, which the mother relied on, because he considered that the contrast with the photographs of C in Romania could "as much … be explained by [C] growing up from being a boy to a teenager, who is doubtless wishing to start rebelling against his parents". This does not directly address what can be seen in the London photographs although the judge does note that they are "potentially … cause for concern". However, he then discounts this concern by saying that they "are not such that it seems to me that it would be right on the basis of those photos to return [C] to Romania".

52. The judge considered that C was "settled into school in England" and, while he may need to postpone taking some GCSEs, in any event he would need to drop a year if he were to return to Romania.

53. As referred to above, the judge's ultimate conclusion was that *the* "magnetic factor" in this case was "the strength, coherence and consistency of [C's] views". He additionally considered that C's move to England had given him "some sense of agency" .

54. After he had given judgment, Mr Evans asked the judge to amplify two points. The first was that C had "cut off the mother and that this is likely to continue". The judge commented that it appeared that it was since the proceedings began that C had been particularly resentful of the mother and that once the proceedings had concluded "that point of contention will no longer be there". This would "provide an opportunity for" the relationship to be rebuilt with "work by both parents".

55. The second was "the lack of balance identified" by the Cafcass Officer in C's views. The judge explained that he considered that:

> "[C's] answers … reflect his own, perhaps naïve, attempt at advocacy for his views; that he has sought to perhaps overplay the advantages of England and underplay his life in Romania, with a view to demonstrating the strength of his feelings. Nonetheless, it seems to me that does not in fact reduce the strength of those feelings; if anything, it emphasises the importance that he attaches to them."

Accordingly, although C "has not shown balance, I nonetheless take the view that these are strongly held views and that he is of an age, and of a sufficient maturity, that I need to pay close attention to those views".

Submissions

56. I have taken all the parties' respective submissions into account but I propose to summarise them briefly in this judgment.

57. Mr Hames submitted that the judge had "failed to carry out a comparative exercise of the advantages and disadvantages of a return and non-return respectively". He had effectively treated C's views as determinative and had wrongly ignored or discounted other factors so that he had failed to undertake the required balancing exercise. The relevant welfare factors included that C had been cared for by the mother throughout his life with the father being absent for long periods; the history of the father's abusive conduct; the removal of the father's parental responsibility in 2015; the effect of the father's influence on C which had caused the relationship between the mother and C to be "at a very low ebb" with limited contact; and the concerns raised by the mother derived, in particular, from the photographs on which she relied.

58. Mr Hames also submitted that the judge had failed to appreciate the nature of the abduction or to take into account in any meaningful way one of the most important factors, namely the policy considerations underpinning the 1980 Convention, as set out in *In Re E (Children) (Abduction: Custody Appeal)* [2012] 1 AC 144 ("*Re E*"); *In re M (Children)* [2016] Fam 1 ("*Re M* [2016]"); and *In re W and another (Children)* [2019] Fam 125 ("*Re* W"). He noted that one of the principal aims of the 1980 Convention is to deter a parent from taking unilateral action in the manner in which the father had in this case. This was, he submitted, a wrongful retention preceded by planning, such as the application (on a false basis) for pre-settled status for C, and supported by a doubtful story that a train had broken down on the way to the airport which was portrayed as a "message from God". The fact that the father might not have decided to retain C when C left Romania in December 2023 did not diminish the character of the wrongful abduction nor the significance of this factor.

59. The judge's treatment of his meeting with the child was also challenged. Mr Hames submitted that the judge had wrongly relied on what C had said when he saw the judge to conclude that C considers himself to be Spanish. This was a misuse of the purpose of that meeting and, in any event, overlooked the fact that C had described himself as both Romanian and Spanish to the Cafcass Officer.

60. Ms Renton pointed to the limited circumstances in which this court is entitled to interfere with a trial judge's discretionary determination: *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80, at [12] and *In re R (Children) (Reunite International Child Abduction Centre and others intervening)* [2016] AC 76, at [18]. She submitted that there was no proper basis on which we could do so in this case. The judge was aware of the law and, she submitted, had applied the correct legal principles to the relevant facts. The mother's case on appeal was, essentially, a re-run of all the matters advanced by her before the judge and substantially comprised complaints about the weight the judge did or did not give certain factors when weight is a matter for the trial judge.

61. Ms Renton pointed to the evidence from the Cafcass Officer that she considered C's views and wishes to be "genuinely his own" and that he was "very articulate" and "knew exactly what he wanted". C was happy and settled in London and was "likely to strongly resent a return to Romania". This would further adversely affect his relationship with his mother.

62. In summary, Ms Renton submitted that the judge was fully aware of all the relevant factors, including welfare and policy considerations, and was entitled to conclude, for the reasons he gave, that C's views "drove a non-return".

Determination

63. I consider that, regrettably, the judge made a number of errors which vitiate his decision. I recognise, of course, the limited circumstances in which an appellate court can interfere with a trial judge's evaluation but, as explained below, it is clear to me that the judge's analysis was materially flawed and his ultimate conclusion was wrong.

64. It is well-established, as referred to below, that the range of considerations relevant to the exercise by the court of its discretion, whether to make a summary return order when a child objects to returning, is very wide. It is also clear that the child's views are not determinative nor do the other factors "revolve only around the child's objections": *Re M* [2016], at [71]. In this respect, I agree with Mr Hames' submission that the manner in which the judge undertook the required balancing exercise was flawed in that he essentially considered whether there was any reason not to give effect to C's views rather than balancing the factors for and against the making of a summary return order including C's views as one element in that exercise. The judge was wrong to consider that C's views were "*the* magnetic factor" (my emphasis) and his analysis of other key factors, C's welfare interests and the 1980 Convention policy considerations, was flawed.

65. I do not consider it necessary to remit the application for rehearing because we are in position properly to determine the application ourselves. The only oral evidence was that given by the Cafcass Officer and it is clear that the key elements of that evidence are set out in the judgment below and/or have been referred to by the parties. Exercising the discretion afresh, it is clear to me, again as explained below, that we should make a return order.

66. I propose first to consider the nature of the discretion which arises when a child is found to object to returning. The breadth and nature of the discretion has been addressed in a number of cases of which I refer only to the following.

67. The first is *In re D (A Child) (Abduction: Rights of Custody)* [2007] 1 AC 619, a case which was not directly addressing the issue in the present case, but in which Lady Hale commented, at [57], on the "growing understanding of the importance of listening to the children involved in children's cases". She additionally noted, however, that, "As any parent who has ever asked a child what he wants for tea knows, there is a large difference between taking account of a child's views and doing what he wants". She repeated the latter point, at [58]: "Hearing the child is, as already stated, not to be confused with giving effect to his views".

68. The next is *Re M and another (Children) (Abduction: Rights of Custody)* [2008] 1 AC 1288 ("*Re M* (2008)") in which Lady Hale made a number of observations about the breadth of the discretion which arises under the 1980 Convention when a child objects to returning:

> "[43] My Lords, in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare"; and
>
> "[46] In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances."

69. The third is *Re M (2016)* in which Black LJ (as she then was) made the following observations:

> "[46] I referred earlier to the House of Lords decision in *In re D* [2007] 1 AC 619. One of the things which it and *In re M* [2008] AC 1288 together made quite clear was that the fact that a child objects to being returned does not determine the application."

And, at [71]:

> "It would be unwise of me to attempt to expand or improve on the list in *In re M* [2008] AC 1288, para 46 of the sort of factors that are relevant at that stage, although I would emphasise that I would not view that list as exhaustive because it is difficult to predict what will weigh in the balance in a particular case. *The factors do not revolve only around the child's objections*, as is apparent. *The court has to have regard to other welfare considerations*, in so far as it is possible to take a view about

> them on the limited evidence that will be available as part of the summary proceedings. *And importantly, it must give weight to the 1980 Convention considerations*. It must at all times be borne in mind that the 1980 Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned and returned promptly. To reiterate what Baroness Hale said in *In re M*, at para 42, "[the] message should go out to potential abductors that there are no safe havens among contracting states"." (my emphasis)

70. I deal next with C's views themselves. Clearly, C's objections weigh significantly in the balance against a return order especially having regard to his age. However, I consider that the judge was wrong to describe them as *the* magnetic factor because of their "strength, coherence and consistency", as he did in the paragraph which Ms. Renton correctly described as "the crux of the judgment".

71. The judge was entitled to describe them as consistent. He might also have been entitled to describe them as strong subject to the need, as referred to below, to take into account that C had been influenced by the father. I do not, however, with all due respect to the judge, consider that he was right to describe them as coherent.

72. They were not coherent, in the sense of rational or sound, in that C gave an inaccurate account of his life in Romania, certainly in respect of his education and, on the mother's evidence, in respect of his life there more generally. It is clear that the judge did not take these elements of the evidence into account when considering the nature and quality of C's views.

73. Further, their strength and coherence were also affected by the Cafcass Officer's observations that C "lacked insight and maturity" and that his maturity was "below what would be expected to be commensurate with his chronological age". These elements might not in the abstract, as the judge said, "reduce the strength of" C's views, but they affect their place in the balancing exercise and the weight that can properly be attributed to them, and do not support the judge's conclusion that they were *the* magnetic factor.

74. Another relevant factor was the effect of the father's influence. Although the Cafcass Officer said in her oral evidence that she considered the views and wishes C was expressing were genuinely his own, the judge also needed to take into account the fact that C had been influenced by the father. For example, as referred to above, the "decision" not to return was as much a decision by the father as one by C and had been made "under the father's influence". However, the judge discounted this factor because, "in particular", he accepted the father's evidence that C could return "whenever he himself requests or indicates". Again, with all due respect, this does not diminish the effect of the father's influence when considering C's objections. The father's assertion that C could return if he wanted to does not negate the effect of the father's influence and is a not untypical assertion by a parent seeking to distance themselves from the effect of their influence. As I commented above, the father's assertion is better seen as his way of seeking to distance himself from the effect of his influence on C.

75. I would add that, when deciding how to assess C's views and as part of his analysis of their coherence, the judge clearly took into account his conclusion that C "considers himself to be Spanish". This was inaccurate, as demonstrated by the Cafcass Officer's evidence but, in addition, it was based on what C had said when he had seen the judge. This is not the case for a detailed analysis of the purpose of a child meeting a judge. However, it brings into focus the difficult path that judges have to tread when the purpose of the meeting is not to gather evidence: see *Guidelines for Judges Meeting Children who are subject to Family Proceedings: Produced by the Family Justice Council and approved by the President of the Family Division. April 2010* and *In re C (A Child) (Child: Ability to Instruct Solicitor); Practice Note* [2023] 1 WLR 4065. Where the court considers it appropriate to meet a child in summary proceedings under the 1980 Convention, it should treat the meeting in the same way. The fact that a child's objections defence has been raised should not lead to a meeting of this kind assuming a different or greater significance than it would in domestic proceedings in respect of children. I would additionally suggest that considerable care needs to be taken before a judge decides to meet with a child for the purposes of proceedings under the 1980 Convention. This reflects not only the summary nature of the proceedings but other, broader, factors which support the need for caution.

76. The judge also described C as being "likely to be in a position whereby he can vote with his feet very soon". In saying this, I assume the judge was referring to the fact that the 1980 Convention only applies up to the age of 16. However, the court's inherent jurisdiction is available after that age and would enable the court to make a summary return order. I mention this first because, from a legal perspective, the judge was wrong and, secondly, because it is important that any future decision is made on welfare grounds and not by unilateral action.

77. Accordingly, while C's objections clearly weigh in the balance against making a summary return order, the judge's assessment that they were *the* magnetic factor is unsustainable. In reaching that conclusion, he overlooked the matters referred to above which clearly diminish the weight that can properly be given to them in the balancing exercise.

78. It is also clear that the judge's approach to the issue of welfare was wrong. In particular, there are significant welfare factors in this case which weigh strongly in favour of a return order and clearly outweigh any welfare factors which would support refusing to make a return order.

79. When explaining his discretionary decision, the judge did not refer to a number of important welfare factors. First, the effect of the wrongful retention has been, abruptly and without any welfare determination, to remove C from the parent who has looked after him for nearly all his life. The father does not point to any welfare concerns which motivated him to take this step and I would specifically reject Ms Renton's submission that the retention by the father was "child led and child focused". Further, the objective evidence points to C being settled and doing well in Romania.

80. Secondly, the Spanish courts had removed the father's parental responsibility. While the father sought to diminish the effect of this by saying he was unaware of the application, it is nonetheless significant that the courts in Spain had taken this decision. C was, therefore, wrongfully retained by and has been living with a parent who does not have parental responsibility.

81. Thirdly, the judge was wrong, in my view, in considering that "the history of domestic abuse" was not relevant. The effect, again, of the father's wrongful retention has been that C has been living with a father who is alleged to have been abusive to the mother over a long period of time and who has a conviction for domestic abuse. As the judge said at one point in his judgment, if C were to remain living here, he "will need adult influence from the father". This raises the question of the father's suitability to be that parent. This is another welfare consideration which supports the making of a return order including so that a proper welfare analysis can be undertaken before such a significant change takes place.

82. The matters relied on by the judge, as referred to above, do not, in my view, support his dismissal of this as a relevant factor. The mother's allegations were serious and were supported by the 2014 conviction and the 2015 expert report. The "safeguarding checks" on which the judge relied were not directed to this issue. The fact that "any recent domestic abuse … has not been directed at [C]" also does not justify the manner in which the judge discounted this as a relevant welfare issue. A further matter of concern is that the father denies that he committed the acts of which he was convicted. In any welfare determination, this factor would require careful consideration and the judge, with all due respect, was not in a position to discount it as irrelevant.

83. Another significant welfare factor is the impact of the wrongful retention on C's relationship with the mother and the mother's family. Dealing with the latter first, the absence of any contact with his maternal family, with whom C had "close contact" while in Romania, since C has been in London with the father is contrary to his best interests. There has also been a significant rift in C's relationship with his mother. These are both in stark contrast to the contact C was having with his father while he was living with the mother. In other words, he was having a significant relationship with both parents and wider family members while living with the mother and he has not been since he has been living with the father.

84. I recognise the prospect, as referred to by the Cafcass Officer, that ordering C's return "will not be conducive to his relationship with his mother" because he is "likely to strongly resent a return". This is clearly a relevant welfare consideration. However, this specific element has to be balanced with the real impact there has been on this relationship and his relationship with his maternal family since he arrived in England and the prospect of it improving if he remains here. In my view, the events of the last year do not provide any encouragement that this will be resolved to his benefit if he remains living with the father.

85. I also do not consider that the judge was entitled to dismiss what the photographs revealed. They raised questions of real welfare concern as to the nature of C's lifestyle in London which go significantly beyond the process of growing up. These questions too would require careful consideration in any welfare determination and the need to ensure that a proper welfare analysis is undertaken before deciding that living in London with the father is consistent with C's welfare is another factor supporting a return order.

86. In summary, therefore, I consider that the relevant welfare factors strongly support the making of a return order. Balancing the potential consequences of making an order contrary to C's views with the welfare factors which support the making of such an order, the latter clearly substantially outweigh the former.

87. I next deal with the general policy considerations under the 1980 Convention which are engaged when the court is exercising its discretion.

88. The preamble provides:

> "Desiring 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, as well as to secure protection for rights of access …"

There are many cases in which the objective of protecting children from the harmful effects of abduction has been emphasised: e.g. *In re K (A Child) (Reunite International Child Abduction Centre intervening)* [2014] AC 140, at [1]-[2] and *In re W and another (Children)* [2019] Fam 125, at [46].

89. There are "various aspects of the Convention policy" (see below) which go beyond the "relevant factor" referred to be the judge of "order[ing] the speedy return of abducted children". As was observed by Lady Hale in *Re E*, at [8]:

> "The first object of the Convention is to deter either parent (or indeed anyone else) from taking the law into their own hands and pre-empting the result of any dispute between them about the future upbringing of their children. If an abduction does take place, the next object is to restore the children as soon as possible to their home country, so that any dispute can be determined there. The left-behind parent should not be put to the trouble and expense of coming to the requested state in order for factual disputes to be resolved there. The abducting parent should not gain an unfair advantage by having that dispute determined in the place to which she has come. And there almost always is a factual dispute, if not about the primary care of the children, then certainly about where they should live, and in cases where domestic abuse is alleged, about whether those allegations are well-founded. Factual disputes of this nature are likely to be better able to be resolved in the country where the family had its home."

This reflected her earlier observations in *Re M* (2008) in which she had said, at [42], that the "general policy considerations" under the 1980 Convention:

> "include, not only the swift return of abducted children, but also comity between the contracting states and respect for one another's judicial processes. Furthermore, the Convention is there, not only to secure the prompt return of abducted children, but also to deter abduction in the first place. The message should go out to potential abductors that there are no safe havens among the contracting states."

90. Of course, the weight to be given to these considerations will vary from case to case but it is relevant to note that Lady Hale agreed, at [42], subject to one alteration, with Thorpe LJ's observation in *Cannon v Cannon* [2005] 1 WLR 32, para 38:

> "For the exercise of a discretion under the Hague Convention *requires the court to have due regard to the overriding objectives of the Convention* whilst acknowledging the importance of the child's welfare (particularly in a case where the court has found settlement), whereas the consideration of the welfare of the child is paramount if the discretion is exercised in the context of our domestic law." (my emphasis)

Lady Hale disagreed with the word "overriding":

> "I would, therefore, respectfully agree with Thorpe LJ in the passage quoted in para 32 above, save for the word "overriding" if it suggests that the Convention objectives should always be given more weight than the other considerations. Sometimes they should and sometimes they should not."

91. Finally, mirroring what Thorpe LJ said, I would repeat what Black LJ said in *Re M* (2016), at [71], namely the court "*must* give weight to the 1980 Convention considerations" (my emphasis).

92. The present case is one in which I consider that the policy considerations of the 1980 Convention carry considerable weight. The judge's assessment of these considerations was flawed because they go significantly beyond ordering a speedy return and their relevance is in no way diminished, as the judge considered, by the fact that it was not "a planned abduction", in that the father had not specifically decided to retain C in London in December 2023. This was a classic wrongful retention and one which the 1980 Convention is designed to deter and address.

93. The father had clearly been planning for some time to seek to procure C moving to London. He can be seen to have been planning to achieve this most notably by the application, made on a false basis, for C to acquire settled status but also, as the judge found, by seeking to "influence" C. Indeed, the policy considerations are enhanced by the fact that the father had clearly, as the judge said, "wanted" to achieve this for some time but had chosen not to achieve this by making an application to a court, when he had had the opportunity to do so, but had achieved it by a wrongful retention. There was no precipitating event and it is clear that the father took no steps to seek to persuade C to return to Romania so an application could be made to the court there. Indeed, he could be said to have abrogated having any role or responsibility by stating that, absent any court order, it was up to C to decide. This was, indeed, as Mr Evans had submitted to the judge, a paradigm example of a wrongful retention.

94. In summary, taking into account the relevant factors as referred to above, the balancing exercise comes down clearly in favour of making a summary return order. Adopting what Lady Hale said in *Re M* (2008), at [46], the primary factors in favour of a return order, namely the nature and strength of C's views, subject to the matters referred to above, and C's age, are significantly at odds with welfare considerations and the general

1980 Convention considerations as set out above which militate strongly in favour of a return order.

Conclusion

95. For the reasons set out above, I have concluded that the mother's appeal should be allowed and that we should make a summary return order under the 1980 Convention.

Lord Justice Lewis:

96. I agree.

Lady Justice Elisabeth Laing:

97. I also agree.