

**IN THE FAMILY COURT**

**Before MR RECORDER HOWE KC sitting as a Deputy High Court Judge**

**IN THE MATTER OF**

**THE FATHER (Applicant)**

**-v-**

**THE MOTHER (Respondent)**

**MRS DEVALL (instructed by Winston Solicitors) appeared on behalf of the Applicant**

**MR MARNHAM (instructed by Rayden Solicitors) appeared on behalf of the Respondent**

**JUDGMENT**  
**6<sup>th</sup> AUGUST 2024**

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*WARNING: 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.*

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**PROCEEDINGS HELD IN PRIVATE**

RECORDER HOWE KC:

The Parties and the Applications.

1. I am concerned with applications relating to a small baby, who is now ten weeks old. As this judgment may be published on the internet, it is necessary to protect the child's identity, so I will call him Joe. I will refer to his mother as the mother, and his father as the father.
2. On 4 July 2024 the father issued an application for a child arrangements order, seeking a determination by the court about who Joe should live with and when he should spend time with each parent. The father also applied for a prohibited steps order, preventing the mother from relocating the child. Under the "Why are you making this application" section of the C100 application form, the father said "I am making this application to prevent my son from being taken abroad without my consent, as he will most likely never be returned to the UK. I have not seen my son for five days now, prior to which he was living with me, and I was with him every day since his birth. My son's mother is refusing to communicate with a third party family member to arrange child care. I would like the court to consider this application to prevent the unlawful abduction of my child, temporarily hold any passport which may have been obtained for my son, and to consider the childcare arrangements. I would like to see my son for half of the week, so that I can continue to be part of his life. His mother and I were never involved in an ongoing relationship, and we had agreed that she would find her own place, as she was temporarily staying at my house, and that I would have my son for three and a half days per week as we have shared parental responsibility. This was to continue throughout my son's childhood, as I own a home in a fantastic school catchment area, which is one of the best in the UK. Following false allegations made against me, I feel that they have been designed to try and affect the visa system, manipulate the benefit system, and/or try to remove my son from the jurisdiction of England and Wales".
3. The father sought an urgent hearing, without notice of that hearing being given to the mother, because he said in the form he fears his "son will be taken out of the jurisdiction of England and Wales without my consent, and I will probably never see him again". He also said in his application, "My son's mother is a French national, and as far as I know she has no visa to remain in the UK. I am afraid that my child will be removed from the jurisdiction of England and Wales without my consent. I do

not have the information as to the whereabouts of my son or his mother”. The father described the mother as a flight risk, with there being an imminent risk of child abduction. He also described that he had concerns for Joe’s safety. He alleged that “My child’s mum sleeps with the baby in the bed in dangerous positions. The bed was not located in a suitable position to prevent falling. The baby is placed on top of pillows during the night, rather than a flat, clear surface, despite the fact that we have a ‘lay next to me style crib’ and a Moses basket. Every day I am concerned about sudden infant death syndrome as a result of this”.

4. On 4 July 2024 the father’s application came before District Judge Prest KC. His order records that he was satisfied the court has jurisdiction because “the children’s habitual place of residence is in England and Wales”. The Judge made an order prohibiting the mother from removing Joe from England and Wales. A further hearing was listed on 11 July 2024, for the mother to be heard and the order reviewed.
5. On 11 July 2024 the applications came before District Judge Buck. The mother attended and she produced a position statement, in which she said “I am a French national, domiciled and habitually resident in France. Although I travelled to the UK temporarily on 29 April 2024 to give birth, so that the father could be part of this experience and time, my position is that Joe is habitually resident in France along with me. Accordingly, the English court does not have jurisdiction to make orders or decisions in respect of Joe. He is the ward of the French courts, and therefore the prohibited steps order and applications made by the father must be dismissed”.
6. In her position statement the mother also describes incidents of domestic abuse, that she says she suffered in the brief time that she says she spent with the father, allegations that led to the father’s arrest on 28 June 2024. The position statement describes how the mother then moved to an address in another city.
7. On 11 July 2024, due to there being a dispute about whether the court has jurisdiction to make orders about Joe, District Judge Buck transferred the case to be heard by me the next day, on 12 July. The father attended, represented by counsel. The mother attended representing herself and was assisted by a French language interpreter. It was not possible on 12 July to determine the dispute concerning the jurisdiction of the court, nor to consider the welfare issue of whether the orders made by District Judge Prest KC should be extended or discharged, as it was clear there was an evidential dispute between the parties. It was necessary for the parties to file evidence before the issues between them could be properly considered. I gave directions

for the parties to file evidence, and skeleton arguments, and listed the case for hearing on Friday 2 August.

8. On that date, having read the skeleton arguments submitted by counsel and the mother, she then being represented, the Family Division Liaison Judge for the North Eastern Circuit, Poole J, granted permission for this case to be heard at High Court level, and I have therefore heard this case sitting as a Deputy High Court Judge.
9. The father is represented by Mrs Devall. The mother is represented by Mr Marnham. I have considered the skeleton arguments provided by both advocates. I have read all the documents contained in the court bundle that was filed on 31 July 2024. An updated bundle with some additional police disclosure and messaging was provided late yesterday, and I was taken to some of that evidence during the hearing today. I have heard oral evidence from the father and from the mother, and from the father's sister. I have also considered the written closing submissions of counsel.

#### The Background and the Evidence

10. In describing the relevant factual history to these proceedings, it will be necessary for me to address the matters upon which the parties are not agreed. When providing a chronological account of why it is these parents are now requiring this court to make decisions about Joe, that they find themselves unable to make, I will make findings of fact on the matters that are not agreed, where such a finding is necessary to decide the applications that require urgent determination today.
11. When making my findings I apply the following essential legal principles:
  - A, the burden of proof rests on the party making the allegation;
  - B, the standard of proof is the simple balance of probabilities;
  - C, any findings I make must be based on evidence, including inferences that can properly be drawn from the evidence but not simply on suspicion or mere speculation;
  - D, the evidence cannot be evaluated and assessed in separate compartments, I must have regard to the relevance of each piece of evidence to other evidence and exercise an overview of the totality of the evidence in order to come to my conclusions; and
  - E, the evidence of the parents is of the utmost importance. It is essential I form a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing, and the court must take into account any vulnerabilities that any witness may have, that will impact on their ability to engage with the

hearing. The court should make such participation directions as are appropriate to assist the parties to give their best evidence.

12. Dealing now with participation directions, the mother's first language is French. She has been assisted at the hearing on 2 August, and at this judgment hearing on 6 August by a French interpreter. During the course of the hearing on 2 August screens were deployed in the court room, to prevent each party being able to see each other, given the allegations made by the mother of domestic abuse.
13. The first meeting. The father works as a music producer and a DJ. He has performed in many locations around the world so travels regularly. The mother works as a commercial animator for a number of alcohol brands and has also, according to the father, worked as an actress. The parties met on social media in November 2022 but first met in person in August 2023 when the father performed at a music festival in Southern France. The mother says that she travelled back to the UK with the father after the festival. The father says they travelled separately, but nothing in this case turns on those travel arrangements. The parties agree that they were together between 30 August and 3 September 2023. During that period Joe was conceived. In his evidence the father says he never expected to see the mother again. For him they had had a short encounter, that he did not expect to repeat. The mother returned to France and very quickly, and she says by 18 September 2023, she realised she was pregnant.
14. The intentions of the parties during the pregnancy. The father's evidence is that mother informed him that she was pregnant on 21 September 2023, and on 26 October sent him a copy of the scan dated 19 October. Mother's evidence is that she told father immediately, but she did not receive immediate response back from him. Mother also told me that, by 26 October, she had decided to proceed with the pregnancy. Father, she says, responded at this point, and told her he would like a paternity test. Father said mother offered to pay for the test but as he had requested it he paid and mother travelled to England, between 6 and 8 November to take the test. Paternity was confirmed on 17 November.
15. The father's statement dated 25 July 2024 describes that it was during the November 2023 visit that the parties had discussions about the benefits of the mother giving birth in England. Father's statement says that it was at this very early stage that the mother told him that she wanted to move to England permanently and talked of her dislike of Paris, of the French police, and of French politics, and of the racism within France. In mother's statement, dated 29 July 2024, she does not accept it was during this

November visit that there was any discussion about where she would give birth. She denies that she complained to father about French politics within the context of any conversation concerning her relocating permanently to England. Mother accepts that she is unhappy with the current state of French politics, but she says she lives in a good area of Paris, loves her country and never intended to relocate.

16. When father gave his oral evidence, and was asked by Mr Marnham about when he says the parties first discussed mum giving birth in the Father's home city, he told me it was during the second visit in January 2024. The purpose of the mother's trip to England in November 2023 was to undertake paternity testing, that had to be done here because the Mother told him it would require a court order to be undertaken in France. Father did not receive the results until nine days after the mother had returned to Paris, and given the father's initial doubts about being Joe's biological father, it seems to me somewhat surprising for there to have been conversations about the mother giving birth in the Father's home city during her November 2023 visit. Father also asserts in the same statement that in November 2023 they spoke of the mother moving to the city where father lives, and father accommodating her after the birth until she found her own place to live. Again, in my judgment, in circumstances in which it was the father who was sceptical that he was the baby's biological father, because he says mother had told him she was five weeks pregnant when they had had sex just four weeks before, it is in my judgment somewhat unlikely that these conversations would have taken place.
17. It is the mother's evidence that it was not until after a visit between 5 and 12 January 2024, and specifically on 15 January 2024, that she decided she would have the baby in England. As the father accepted in his oral evidence that it was not until January 2024 that there was any conversations about the place where Joe would be born, I accept the mother's evidence about when it was that she decided to give birth in England.
18. It is agreed that after the November 2023 visit the mother accessed midwifery services in France, and mother accepts that she kept father updated about those appointments. Mother then returned to England for an eight-day visit in January 2024, and she describes the relationship with father as amicable during that visit, hence her decision to give birth here. However, she says she soon reviewed that decision for reasons I will come on to.

19. It is the father's evidence that the mother had begun her maternity leave early, as her job requires her to visit premises that manufacture alcohol and this was not permissible due to the pregnancy. Father says that mother did not work after 19 December 2023. I have seen a letter from mother's employer that gives the date she is due back at work, 12 August 2024. The end of her maternity leave was to be a little earlier but this date was extended due to the Paris Olympics. In my judgment, it does not assist me when deciding the issues at this hearing to determine the dispute between the parties as to when the mother's maternity leave might have started. What is clear is that it is very soon to come to an end, so a decision has to be made at this hearing as to whether mother is to be prohibited from taking Joe to Paris.
20. In her statement, the mother describes returning to England for eight days on 29 January, as they had been successful registering with the midwifery service using father's address and National Insurance number. In his statement father describes providing mother with the details of 'My pregnancynotes.com', and giving his address and National Insurance number to mother so she could complete the forms and register. He says mother was prepared to pay up to £12,000 to give birth here, and he suggests she would not have done this had she not intended to remain in England permanently. However, I have not been provided with any evidence to show that mother had to pay any medical fees when Joe was born.
21. Mother's next visit to England was on 25 February 2024. She came for three days to meet with the midwife and to have a diabetes test. It is clear from the evidence of both parties this visit did not go well, and there was a significant dispute between them. Mother's complaint was about father's lack of support, practical and emotional, when she was alone in Paris. Mother expressed her frustrations with father's lack of support via WhatsApp messages. In one message mother describes how she was "shocked by your ignorance towards me and the baby". She ends this message by saying "don't tell me everything is going to be all right". Despite this dispute mother lent father over £5,000, that he says, as is confirmed in the message, he would repay to her once he had returned from a tour of Australia, that took place between the end of February and early April 2024.
22. The dispute between the parties about father's alleged lack of support continued. On 22 February father messages mother, denying that he had been ignorant toward her, he says "The baby is not here yet", something he says again in a message on 25 February. In his message he tells the mother that she is being rude to him and not

appreciating what he does for her, that includes providing her “with somewhere safe and comfortable when you are here”. His message ends with “You are rude, I do not need that at all, nor will I accept it”.

23. Prior to mother coming to England on 25 February, the disagreement that had started on WhatsApp about father’s treatment of mother continued. As the mother had made the decision to give birth in England, she sent the father a message saying she was no longer registered at the maternity hospital in Paris, and she needed the name of the maternity hospital in England that she was to attend. She sent a number of messages seeking this information and expressed her shock at what she saw as the father’s lack of support for her and the baby. The mother said that she needed to book a hotel close to the hospital that she was due to attend for her tests. The Father’s response to the mother’s messages was to tell her that she was ignoring his feelings. He says in his message that he will be “100 per cent there for him”, when the baby is born, but accuses the mother of having “toxic negative energy”, and of “using the unborn as a tool to try and manipulate my feelings”.
24. It is the father’s evidence that the mother wanted a romantic relationship with him and says her complaints about his treatment of her are as a result of him rejecting her. The mother’s response to the father’s message, on 25 February 2024, is not in my judgement supportive of her seeking a relationship, and the wording used is consistent with her wanting more support from him as the father of her unborn child. There is no messaging that has been brought to my attention in which the mother clearly expresses the desire for a romantic relationship with the father. She describes father being distant, but her message ends stating “No pride or resentment, I need to make these appointments”. The father does not reply to the mother’s message and does not give her the name of the hospital that mother is to attend, there being two different hospitals in the city.
25. In her statement, and in her oral evidence, mother accepted that relocating to England was one of the options that she was considering early on, but after father’s conduct and her concerns about his lack of emotional support and his failure to assist her in a very simple way, by telling her the name of the hospital she was to attend, she told me she excluded the possibility of her relocating to England as an option for her. In her oral evidence mother told me that after all the messages on 25, 26 and 27 February, she drew a line under coming to live here “due to his behaviour leaving her out in the street at nine pm in the evening”.



26. Mother said that on her return to Paris she re-registered with maternity services, and she then had two options to consider, giving birth in England or giving birth in Paris. Surprisingly, father does not mention this February 2024 dispute in his statement, or in his position statement that was put before the District Judge who made the without notice prohibited steps order. When it was put to him in oral evidence, he accepted, to use his words, “we were not getting on”, but again said this was because the mother wanted more from the relationship. Mother sent a message to father on 27 February, stating “I have spent a lot of money in the last few weeks, I'd like to get my things and my son's things back, along with the money I lent you as soon as possible”. Father responded to this message, complaining that the mother had used the expression ‘my son’ rather than ‘their son’, and agreeing to bring her and the baby's items to her hotel if she gave him the name of the hotel. The Father failed to address this significant dispute in his statement. This was a material omission from his evidence, and his description of the parties as “just not getting on” was, in my judgement, a minimisation of what occurred.
27. On 12 March 2024 the mother, who had returned to Paris, was messaging a friend. Within this messaging mother said she was looking forward to “stopping work and being able to rest”, casting doubt on father's assertion that mother had not worked since December. Mother also says to her friend, “I'm looking for a flat in the South of France, from June to September. I don't want to stay in Paris with my boy during the Olympic Games”. This message was put to father, and his response was simply that these messages are inconsistent with what the mother was saying to him.
28. It is the father's case that the mother had a large number of boxes delivered to his home, and he asserts that this is evidence that she intended to stay permanently. Mother's evidence was that all that was sent were items that she would need for herself and the baby during the period that she was staying with the father, before and after the birth. Mother said she had been buying these items since she became pregnant. It was put to mother that if she had intended to return to Paris after the birth, she would not have shipped these items over, and would have told father to purchase the items needed. Given the dispute evident in the messaging about mother's concern that father was not supportive, and when taken with father needing mother to lend him a considerable sum of money, monies that have not at the date of this judgment been returned, I do not interpret mother bringing the items listed at page 185 of the bundle as inconsistent with an intention to visit temporarily. Father's

evidence was that he thought mother had brought all of her belongings with her, but he has provided no evidence by way of photographs or even his own list of what she had delivered to support that assertion. The mother has provided shipping invoices and photographs of the items.

29. Despite the dispute that occurred between the parties, the mother travelled to England on 29 April. She had an appointment with the midwife on 2 May 2024. The mother stayed at the father's home but they stayed in separate rooms. In her oral evidence the mother said she wanted father to be part of his son's life in the first months, and to have that joy as a parent. She says she did not want to come over permanently and did not put anything in place to be here permanently.
30. It appears that there was a relative calm between the parties for nearly three weeks, until there was another dispute, this time concerning the name to be given to the child when born. The mother wanted Joe to have her last name. The father wanted Joe to have his last name. In her oral evidence the mother said that the father had violently asked her to move out of the house, as she had told him she wanted her name next to his on the birth certificate. She told me that he said that if she put her name on the birth certificate, she should get out. Mother told me she closed up the boxes that had been delivered and father took the boxes and threw them down the stairs. Mother said that she contacted the logistics company to collect them. She said she was nine months pregnant and that she could not carry them. The mother described the father as being in such a terrible anger that she dare not answer him back. Mother said she made a reservation at a hotel at Manchester Airport, so that she could leave and travel back to Paris.
31. The parties messaged each other about this dispute on 22 May, and it is useful for me to read those messages in full into this judgment. The message on 22 May reads as follows. "I am so disappointed that I have allowed all this to happen but I do realise that regardless of what I say to you that you will never accept your responsibility in what you have said to me, and how you have handled this. Yes, I get upset but I would not have been upset if you did not lie to me and then go on to pack the baby's things just two days before you are due to give birth. Today you called me a bastard twice and told me that you don't trust me, you then threatened to call the police on me even! In the end you do not recognise about any of the things that you are responsible for. You have other agendas, and you have again shown me the true content of your character. I have actually tried my best and made sacrifices to make you comfortable

and share my life with you and the baby. I might be an idiot but I'm not stupid". That is a message from the father.

32. The mother replies as follows. "I simply told you that I wanted to add my surname and do the French paperwork, so that it would be the same name as mine, like yours, and not ask you every time for a piece of paper authorising me to travel with baby. You started telling me that you can go back to Paris if you put your surname on, and it's not the first time you've said that to me. It's putting me under a lot of stress because I don't have anyone here, you call me a liar, a manipulator, a player, a narcissist, and that I am pretending to cry. I am not the girl you describe and that hurts me. That's who you're making me out to be. I came all the way here so the three of us could be with baby. I am not manipulating anyone. Yes, yesterday I did the baby cards, too much is much for me, I take responsibility for my words. I never called you a bastard, I didn't allow myself. Yes, I said I didn't trust you, but that was because of what happened in February. You scared me with your words and your anger, I hate that, I'd rather leave because I have too much stress before my delivery. I am lonely in [this City], and it's not easy every day, so excuse me for being pregnant and lonely without family and friends. Your words have been hard on baby and me. You tell me that he's not your son and that I'm staying alone with him because you don't want anything more. It hurts the baby, he didn't ask for anything. I just want to go back to Paris and give birth in a clinic, rather than stay alone in [this city] with my son".
33. There was further messaging, in which the father says "It was your choice to pack up the baby's things yesterday and continue with your plan this morning, and so now you're alone and I am too. I don't know who you speak to about immigration issues but nothing you say is correct. All of this is crazy and unnecessary". On 23 May the father sends further messages saying "Good morning. Where are you. I'm coming to get you. I tried to call you, I'm going to start work now". Mother then replies saying "I'm at Manchester Airport". Father's response is "Wow, OK, crazy, so after all you have robbed me of my boy two days before he is being born, all because of a visa". On 23 May mother replies in the following terms, "Air France refused to let me on the plane, I'm not allowed to travel because of my advanced pregnancy, I'm in a hotel. I didn't come to England to get a visa, I don't care about a visa, your words hurt me yesterday. I didn't manipulate you to get a visa, I've been doing everything for baby for nine months and I mean everything. Yesterday you told me he's not your

son anymore and that I should leave with him, that really hurt. I'm due in two days, I don't need this before the birth". That was at 10.44. Shortly after 11 o'clock the mother messages father saying, "I am taking an Uber back to [Father's home city], are you home?" The mother then returns to the father's home but it is clear from the messaging that mother had with her friend, and with her own mother, on 21 and 22 May, that is produced in the bundle, that mother then intended to return to Paris prior to Joe's birth.

34. When asked about this dispute in his oral evidence, father said that mother was trying to hurt his feelings and manipulate him. When I asked him what she was manipulating him for, he said "for sympathy". Father told me that there was "No indication from my point of view that she wanted to go back to Paris to give birth". When cross-examined the father was shown a message sent to maternity services by the mother on 22 May, asking the French hospital to keep open the appointment mother had there on 29 May. Father's response was that he does not believe that mother ever intended to go back to France.
35. As I will explain shortly, on 28 June 2024 mother made a report to the police about father being controlling and coercive. Mother made a statement to the police that has been disclosed into these proceedings. Father relies on the police disclosure as it contains records such as "On 29 April 2024 the victim has come to England to live with the suspect as she wanted her son to have his father in his life". In the mother's police statement it says "We discussed the possibility of me moving to [Father's home city and I decided to make the move on 29 April 2024, one month before the baby's due date". In a document prepared by the interpreter, who assisted mother over the phone or via video call (it is not clear which as this document is not dated), it is recorded that mother said "On 29 April 2024 I moved to the UK full-time and moved in with father as I wanted my son to be around his father". These entries were put to the mother as it was suggested they demonstrate that mother intended to live in England with Joe on a long-term basis. Mother denied that she said she was moving on a full-time basis and said the translation must be wrong.
36. During the hearing before me, mother was assisted by an interpreter. I accept that the mother understands some English, but, as was described by the father's sister when she gave oral evidence, she was able to speak with her, and mother does understand some English. However, I accept that mother's English is not good enough to know if what she said in French is accurately translated. I also accept that a French

language version of her statement was not prepared by the police, so mother had no way of checking whether what she had said was accurately recorded in her statement. In my judgement, the language used in the police documentation does not assist me in determining whether mother had, before Joe's birth, intended to relocate to England on a permanent basis.

37. When considering all the evidence I have heard and read, and when looking at the messages that passed between the parties, I find that the mother had, at the end of February 2024, excluded living in England as a long term option for her, and for Joe, due to what she perceived to be the father's lack of support. I also find that although mother had remained of the view that father being present at the birth would be a good thing for Joe's relationship with father, the disagreement that then occurred about what Joe's registered name should be caused the mother to change her mind, and she tried to leave England and return to Paris. In his oral evidence the father would not accept that the mother had been to the airport, or tried to purchase a flight. He clearly believed it at the time he accused the mother of taking his baby away from him, just two days before the birth. In my judgement father was not being honest with the Court when he said he did not believe mother was attempting to leave, because he knew, at least by this time prior to the birth, the mother had no intention to remain in England permanently.
38. The Birth and Intentions Post Birth. As mother said in her messaging to father, she was unable to board a flight to Paris from Manchester Airport. She was, in cross-examination, asked why she did not attempt to return to France by ferry or by Eurostar. She said her pregnancy was too advanced for her to be able to carry any of her luggage. It is accepted by both parties that mother returned to father's home and Joe was born on 25 May. It was father's evidence that the parties got on well following the birth, and that mother gave no indication that she intended to return to Paris. Mother said in her evidence that she took no action at any time to obtain a UK visa or to even seek advice about obtaining a visa. Mother sent one message to father about visa applications in the very early stages of the pregnancy but there is no evidence before me that any applications were made.
39. Mother's evidence was that she has a job to return to in Paris, has a home in Paris and since discounting the option of relocating to England, has had no intention to remain here. Father suggests that mother has been sofa surfing and has no fixed address in

Paris, as the address she has provided to the court is owned by someone other than the mother. Mother says the property is in the name of a friend of hers and he now lives in the South of France. She said that her friend left the flat for her to use and she has produced the utility bill that is in the joint names of her and her friend. Mother has also produced the letter from the caretaker of the building, confirming that she lives at that address. Mother has also produced a letter from her employer, setting out how she is not expected to return to the office to work until after the Paris Olympics have concluded.

40. When addressing what evidence there is that mother had, following the birth, formed the intention to remain permanently in England, father relies on a conversation that took place in which it was agreed that during December 2024 the father would provide care for Joe. Mother's evidence was that she is very busy at work during December, and it would assist her if father was able to care for Joe during this period. She accepts that she had a discussion about this with father. She said that father asked her if he could have the baby during December, and she agreed. She denied that this agreement was reached on the basis that she would be living in England. When father's sister gave evidence, she said there were discussions about December 2024, and about her helping father with childcare. The sister accepted that mother had no direct conversations with her about the mother's intentions, be they to remain permanently or to return to France, but the aunt did tell me that her other brother, not the father, had told her that there had been conversation about mother being able to obtain employment in England, but it is not clear from her evidence when it was that she said these conversations took place. I found the father's sister to be a witness who was trying her best to assist the court but her evidence did not assist me to understand if mother's intentions to return to France had changed in the period when she remained in father's home after the birth.
41. On 16 June 2024 mother took a flight to Paris, leaving Joe in the care of father. Mother said she had to return to Paris to collect her work laptop, as her employer had asked her to undertake some remote work and to cover other colleagues who were on summer leave. Mother flew on the 16 June, and returned on the 17 June. I asked mother why, if she intended to return to France with Joe, she did not take him with her on 16 June and have her belongings sent later. Mother's response was immediate and in my judgement reliable. She said that she does not yet have any travel documents for Joe so she cannot yet leave the country with him. Joe's birth was

registered on 18 June 2024 and to apply for a French travel document mother had to provide a French translation of the birth certificate that was, she said, sent to the French embassy on 15 July. Mother told me that the embassy have assured her they will provide her with a document enabling her to travel to France with Joe when she attends the embassy, should this court lift the restrictions imposed by the prohibited steps order.

42. It is submitted on behalf of father that mother is a person who has been shown to be dishonest, as when examining her telephone the police formed the view that there was nothing supporting her allegation that father had controlled her access to appointments. I have not heard any evidence about the allegations of domestic abuse, those allegations can be determined by the court that is to make the final welfare decisions for Joe, should the parents be unable to agree what those arrangements should be in whatever country Joe will reside.
43. I have already described father's failure in February to inform mother of the hospital she needed to attend for her tests, despite her repeated requests, so in my judgement there is some support in the digital evidence of mother's allegations. I am not in any way bound by the views reached by the police concerning the mother's reliability. When asked directly, father is unable to identify any evidence that supports his assertion that mother intended to remain in England so they could co-parent. He says the intention was that mother would live in England, would find her own accommodation, and travel to France for half of each week to work, leaving Joe in father's care. Despite the extensive messaging passing between these parents, there is no message, email or letter that supports such an arrangement having been agreed.
44. Mother says that when she came back from Paris on 17 June father's behaviour towards her deteriorated. In his oral evidence father said the conversations after the discussions after the birth were around child care when the mother went to work, but he went on to say that towards the end of this time he thought it was not healthy for them to be around the baby together as "It got shouty" when she came back from Paris with her laptop.
45. Mother left father's home on 28 June and moved into an Airbnb property. Prior to her leaving, mother says there was never any discussion with father about the time he would spend with Joe after mother moved back to France. It is submitted on behalf of father that the absence of such discussions is evidence supportive of mother having an intention to remain permanently. I agree it is unusual that these conversations did not



take place, but given the disputes that had occurred and the father's own evidence that things had become 'shouty', I do not agree that the absence of an agreement about father's time with Joe in the longer term is evidence supportive of mother having an intention to remain in this jurisdiction.

Discussion and findings on the dispute concerning the mother's intentions.

46. Whether this court has jurisdiction to make welfare decisions for Joe, or whether that jurisdiction sits with the courts of France, does not rest solely on the intentions of the parties, but as father relies on mother intending to remain in England and co-parent with him, it is necessary to make a finding on this issue. I found both parties were understandably eager to persuade the court that their account of the history was the correct one, but I found father's refusal to accept the content of various WhatsApp messages, as conveying the truly held views of mother, concerning. In my judgement, if mother was considering in the early stages of her pregnancy all the possible options, including one of relocating to England, I accept that she had discounted that possibility by the end of February. Her evidence in court is supported by the content of the messaging. I also accept her evidence that had she been able to take a flight on 22 May 2024, she would have given birth to Joe in France.
47. Having reached the view that she wanted to return with Joe to France, in the period after the birth there is no evidence before me from which I can conclude that mother then changed her view and intended to remain. I accept that father wanted his son to remain close to him, but I do not accept father's evidence that it was an agreement that mother would commute to Paris from the city where father lives. I accept the submissions made on behalf of mother that such an arrangement would be unworkable, given the costs and the travel time involved. I also accept the submission that father's own working pattern would make a shared care arrangement very difficult. Father's work has required him to travel for extended periods. He worked in Australia, for example, earlier this year. Father says his DJ work is now far less frequent, and he is able to undertake his music production from home, so I accept mother's evidence that she was happy for father to have Joe during December 2024, as father was due to be travelling in Australia for several months in January 2025. Him having Joe in December assisted mother and allowed father to have time with Joe before he was away.



48. I have come to the conclusion that there was no settled intention by mother to relocate to England prior to or following Joe's birth.

Does this court have jurisdiction under the Hague Convention 1996?

49. France and the United Kingdom have ratified the 1996 Hague Convention and, under Article 5, primary jurisdiction is accorded to the state in which the child is habitually resident. As described in *London Borough of Hackney v P (Jurisdiction, Hague Child Protection Convention)* [2023] EWCA Civ 1213, the court must consider jurisdiction on the date when proceedings were commenced, and be satisfied that it retains jurisdiction at the time of the final hearing. Whether a child is habitually resident in England and Wales is a question of fact, and that factual assessment is one that focuses on the situation of the child. I have been referred to a number of authorities concerning how the court should approach this assessment of habitual residence, including *A v A (Children, Habitual Residence)* [2014] AC 1, *Re B (A Minor, Habitual Residence)* [2016] EWHC 2174, and *Re B (A Child, Abduction, Habitual Residence)* [2020] EWCA Civ 1187.
50. From the authorities, Mrs Devall draws the following list of considerations in her opening skeleton argument:
- (a) The concept of habitual residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions, and reasons for the stay on the territory of Member State, and the family's move to that state, the child's nationality, the place and conditions and attendance at school, linguistic knowledge, and the family and social relationships for the child in that state must be taken into consideration.
  - (b) In addition to the physical presence of a child in a Member State, other factors must be present, which are capable of showing that the presence is not in any way temporary or intermittent.
  - (c) The test is essentially a factual one, which should not be overlain with legal sub rules or glosses. The factual inquiry must be centred throughout on the circumstances of the child's life, as that most likely to illuminate his habitual residence.
  - (d) The criterion does not require the child's full integration in the environment of the new state but only a degree of it.

- (e) In certain circumstances, the requisite degree of integration can occur quickly.
  - (f) The younger the child, the more their social and family environment will be shared with those on whom the child is dependent, giving increased significance to the degree of integration of that person or persons. 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.
  - (g) The focus is on the child's situation with the purposes and intentions of the parties being merely among the relevant factors.
  - (h) There is no requirement that the child should have been resident in the country in question for a particular period of time, nor is there any requirement there should be an intention on the part of one or both parents to reside there permanently or indefinitely.
  - (i) It is the stability of the child's residence as opposed to its permanence which is relevant but this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measure of time a child spends there.
  - (j) It would be highly unlikely for a child to have no habitual residence. If interpretation of the concept of habitual residence can reasonably yield both the conclusion that the child has a habitual residence and alternatively a conclusion that he lacks habitual residence, the court should adopt the former.
  - (k) 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.
51. In addition to the authorities referred to above it is necessary for the court to consider the decision of the CJEU in *UD v XB Case C393/18PPU*, reported at [2019] 1 FLR 289. In its judgment, the CJEU decided that physical presence in a country was essential to establish habitual residence. At paragraph 53, the court stated "It follows from the considerations set out above that physical presence in a Member State in which the child is allegedly integrated is the condition which necessarily must be satisfied before assessing the stability of that presence and that habitual residence". At paragraph 62 the court held, "in the absence of the child's physical presence in the Member State concerned, it is not possible, when interpreting the concept of habitual residence, to give greater weight to circumstances such as the intention of the parent

who, in practice, has custody of the child, or the possible habitual residence of one or other parent in that Member State at the expense of objective geographical considerations without disregarding the EU legislature's intention".

52. I invited the advocates to make submissions addressing the decision of the CJEU, as mother submits that as she had no intention to remain in England, she says she remains habitually resident in France, and as a very young child entirely dependent on her, Joe's habitual residence will largely be determined by her own. It is submitted that Joe's presence in England was temporary.
53. Mr Marnham submitted in his document, filed at the commencement of this hearing, that:
- (a) Given Joe's very young age and dependence on the mother as his primary care giver, the court will need to carefully scrutinise mother's habitual residence.
  - (b) Mother is a French citizen, and resides permanently in France. She has no connection to England, save that father is English. Saliently, he submits, her address is recorded as her Paris address on Joe's birth certificate.
  - (c) Mum's entire family and friends support system is in France.
  - (d) Mother did not intend to settle in England, either in the period before or after Joe's birth, although she accepts that she had limited discussions with father about her potential options after Joe was born, there was never an agreement that she would stay permanently in this country.
  - (e) Plainly, it is submitted, that mother never took any steps to move to England permanently. She did not pack up her flat or move over any of her personal possessions. She did not take any steps to register for a visa or seek welfare payments in this country. She did not search for or obtain any rental properties.
  - (f) As the relationship became more and more strained with father, it is submitted that mother's plan was only to stay here for the birth and the immediate period after, so that father could be present at birth and support her in the weeks afterwards.
  - (g) After 22 May 2024, mother no longer intended even to give birth in England due to father's behaviour. She fled his property, and attempted to board a flight back to Paris, also contacting her French midwife and friends, informing them of the change of plan.
  - (h) Mother's life is rooted in France. She retains her flat and her car in Paris, her car keys, flat keys and work laptop were held by father for a period of time, with

other items, only returned on police intervention. She is expected back at work in Paris on 12 August 2024. Mother continues to meet a number of bills and outgoings on her flat.

- (i) The father appears to accept that mother's stay was temporary as she was only temporarily staying with him. It is said he now understood that he seeks to retain the bulk of the £5,000 lent to him by way of rental costs for mother staying in his house.
  - (j) Father's unrealistic proposal for him and his family, when he is travelling, to look after Joe at such young age on a shared care arrangement, alternating twice a week, is further evidence that his proposal is clearly not in Joe's best interests and would not have been agreed by mother. Father travels a lot for work and is able to travel to Paris to spend time with Joe.
  - (k) Following the birth, Joe's stay in England has been very unstable. Mother's account of her stay post birth at father's is very concerning. She alleges that father was controlling, verbally abusive and would lock himself in his room with Joe. Even if the court takes these accounts at their lowest, they led to mum reporting father to the police, and feeling forced to leave his property for the second time. It was submitted that the home situation has been very uncertain, with mother having to move between hotels and short term rental apartments in different cities. Father's actions have, it was said, effectively left mother and Joe stranded and isolated in England, and at a very vulnerable time in both of their lives with no support and away from mother's home and family and friends.
54. In his closing submissions, Mr Marnham argues that this court is no longer bound by the decision of the CJEU, since the UK left the European Union, and the transition period ended on the 31 December 2020. Neither Mr Marnham nor Mrs Devall were able to identify any domestic case law that had considered *UD v XB* either prior to or after the transition period had ended. It is submitted that this court is not bound by the decision of the CJEU and Mr Marnham points out that, in that case, the UK government argued against habitual residence being dependent on a physical presence. He also identifies the judgment of the Court of Appeal in *London Borough of Hackney v P (Jurisdiction, 1996 Hague Child Protection Convention)* [2023] EWCA Civ 1213, as an example of case law developing in this area and the court having to depart from EU regulations, given that the 1996 Hague Convention has now

- replaced Brussels 2A, although the issue in that appeal concerned the dates when the court had to be satisfied that it had jurisdiction due to the child's habitual residence.
55. On behalf of father, Mrs Devall submits that Articles 86 and 89 of the Withdrawal Act, as implemented by section 7A of the Withdrawal Act 2018, renders the CJEU's pre exit judgments binding on UK courts. Mrs Devall submits that section 6.3 provides that EU law and case precedent "so far as unmodified" and "so far as they are relevant" is binding on the UK courts, in that they are expected to determine cases concerning retained EU law "in accordance with" pre-exit case law, and "retained general principles of EU law", as they existed pre exit. Mrs Devall then submits, even if the court is of the view that the CJEU decision set out above is not binding, it is argued that in situations of dispute, as a matter of common sense and in accordance with the principles enshrined in the UK case law "derived from the many international cases considered by the higher courts", in respect of habitual residence the physical presence of a child in a country must be the starting point for determining habitual residence, and in this case Joe has known no other country.
56. In the CJEU case referred to, it is clear that a child who had lived in one country did not obtain habitual residence in another country as a result of mutual intention that he or she was to return to the other country with at least one of the parents, even if that intention was a mutual one. In this instance, Mrs Devall submits the intention that the mother would return to Paris with Joe was most definitely not mutual, and it was absolutely not understood by father that mother would be returning to France with the child.
57. I have considered the decision of the Court of Appeal in *Re A (A Child Habitual Residence 1996 Hague Child Protection Convention)* [2023] EWCA Civ 659, in which the court considered the meaning of habitual residence under the 1996 Hague Convention, in addition to making a determination of when habitual residence needed to be established for the court to have jurisdiction. The advocates are correct when they submit that physical presence has not been considered in a reported authority of English courts under the terms of the 1996 convention since Brexit. However, the authorities addressing habitual residence under EU law are relied upon in cases concerning habitual residence under the 1996 Convention.
58. During the course of submissions, the opinion of Baroness Hale in *Re A (Children)* [2013] UKSC60 was considered, and specifically paragraph 55, in which Baroness Hale was of the view that physical presence at some point in the child's life was likely

to be required to acquire habitual residence but, at paragraphs 56, 57 and 58, she explained why she concluded that a referral to the CJEU would be required to determine the issue.

59. In my judgment, Mrs Devall's submission that physical presence of a child in a country must be the starting point is persuasive. The test is habitual residence, and as set out in *UD v XB*, the court's task is to assess the stability of that residence to determine if it has become habitual. Joe has had no residence in France, let alone any period of stable residence there. He has no integration with any family, friends or services in France. The only residence he has known is in England. I have found that mother had no intention to remain in England, but father is named on Joe's birth certificate, and I can discern no reason why mother's intentions concerning her own place of residence should be seen to trump the intentions of father. I find, as father said this in a number of messages, that he intended that he would be the best father he could be, after the DNA test proved him to be Joe's biological father.
60. Whilst the mother's ties to this country have been only in place for a short period between 29 April and now, father's ties to this country have been life long. Joe has been in the primary care of mother, and Joe has only seen father on two occasions since mother left father's home on 28 June 2024. However, in my judgement, relying on mother's intention to prescribe habitual residence to Joe in a country he has never visited does, in my judgement, ignore the simple meaning of the words that are used in the treaty.
61. In my judgement, a physical presence in a country is required before a child can be found to be habitually resident there. I have considered whether this is a case in which Joe has no habitual residence, but as he has been in England now for some ten weeks, in my judgement he has habitual residence here. It is the most stable and indeed the only residence that he has. It is to this jurisdiction, by reason of his presence, his integration here and use of services in this country, and also by reason of the relationship he had and has with his father that he has the greatest connection.
62. I therefore find that I have jurisdiction to make welfare decisions for this child.

Should the without notice prohibited steps order be extended?

63. The application before me is father's application for a prohibited steps order. In deciding whether that order should be extended, I must take Joe's welfare as my paramount consideration, and I must assess his welfare through the prism of the

welfare checklist. The welfare checklist requires me to consider Joe's ascertainable wishes and feelings in light of his age and understanding. Clearly, at ten weeks of age, Joe is unable to express any wishes or feelings. He is dependent on his care givers to meet all of his needs. I recognise the principle relied upon by Mrs Devall, that there is an assumption that Joe's welfare will be enhanced by having involvement with both of his parents.

64. I have to consider Joe's physical, emotional and educational needs. I have no evidence before me to suggest that Joe's needs cannot be met by his mother, she is clearly meeting them at the current time. The mother makes allegations of coercive or controlling behaviour about the father. She did allow two periods of supervised contact, and I am told and I accept, that her solicitors wrote to the father offering further contact to take place at a contact centre, but those offers were not responded to by him.
65. I have no evidence before me that father was not meeting Joe's physical or emotional needs prior to the mother leaving the home on the 28 June. Clearly, mother was content that father was able to meet Joe's needs, as she left Joe in his sole care on 16 and 17 June, when she travelled to France.
66. What is the likely effect on him of any change in circumstances? Joe has been in the sole care of his mother since 28 June. For a baby of ten weeks of age, that five week period is significant. He will be well bonded with his mother, and fully reliant upon her. For him to be removed from her care would, in my judgement, be harmful for him. Of course he is entitled to a relationship with his father, if that relationship can be a safe one, but the current circumstances are that he has had no relationship with his father, save for the two short periods of contact following two court hearings.
67. His age, sex, background and any characteristics of which the court considers relevant. Joe is very young, he is dependent on his care givers to meet all of his needs, and he has, at this time, his primary bond with his mother.
68. Any harm which he has suffered or it is at risk of suffering. As Joe's primary bond is with his mother, in my judgement he will suffer harm if that bond is broken. Similarly, if Joe is not given the opportunity to develop a relationship with his father, he will also suffer harm. In his application to the court, the father asserted that if the mother was permitted to leave the jurisdiction with Joe, that he would never see Joe again. No evidence has been adduced before me that such a threat has been made. There is mention in the police document of the mother expressing a concern about



future contact but I do not take what was said at that time by the mother as being a real expression of her intention. When she gave her evidence, she explained how distressed she was at the time that she spoke to the police, and I accept that she said or used words that now, with the passage of time, should not be seen to be reliable, or a statement of her intention for her son's relationship with the father.

69. How capable are each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs. As I have said, the mother is capable of meeting Joe's needs. On 16 and 17 June the father was capable of meeting Joe's needs. Allegations of domestic abuse have been made, and they need to be determined, but the mother is agreeable to supervised contact at this time, so it is not her case that the father's conduct towards her is an impediment to him developing a relationship with his child.
70. The range of powers available to the court under this act in the proceedings in question. What would be the effect of extending the prohibited steps order? The mother is quite understandably wishing to return to France. I accept the list of factors set out by Mr Marnham, that I have read into this judgment. The mother's connection is, save for her involvement with the father, entirely with France. If she was to remain here her employment would be in peril, and that would be harmful for Joe. Joe is a child of two parents, who reside in different jurisdictions. Therefore, the need to travel by one parent or the other, in my judgement, has always been a factor that these parents needed to consider. I have already rejected father's evidence that there had been an agreement that the mother would live in England, and commute to Paris for half of each week. I accepted the submission that that was unworkable, and I accepted the mother's evidence that no such agreement was made. Therefore, Joe would always be living in one jurisdiction, with a parent living in another, unless that parent chose to relocate.
71. If the court requires the mother to remain here she has no form of accommodation, save for the Airbnb accommodation she has been paying for as a temporary measure. She is expected back in Paris on 12 August, in just six days' time, to continue her employment following the end of her maternity leave. All her support network is in France. As I said, Joe is primarily bonded to his mother. Any harm that befalls the mother in my judgement also falls on Joe. The court has to make a difficult decision but that decision has to be made now, it cannot wait until further down the line to a different hearing.



72. I have carefully considered all the submissions made on behalf of the father against this court making a welfare decision now, but I see no alternative. The nettle has to be grasped, because these are two parents from different countries. I have found that I have jurisdiction to make welfare decisions for Joe, and in my judgement, when considering all of the factors in the welfare checklist, the balance falls in favour of the prohibited steps order being discharged.
73. The father is a man who is used to travelling, in the same way that he said the mother should travel between England and Paris, leaving Joe here and going to Paris to work. In my judgement, the same arrangement can apply to the father. The father told me he is able to work anywhere for his music production business. He does not have to travel for that; it is something that he can do at home. The welfare considerations really come down to whether, or not, it is in Joe's interests to have his mother deprived of her home and her employment and all the stability that brings for her and to Joe. In my judgement, keeping the mother in this jurisdiction where she feels she has been kept captive by the making of the prohibited steps order is not in Joe's interests. The father is able to seek assistance with establishing a relationship with Joe in the courts in France. I recognise that is not ideal, but in my judgement the mother has to return to France, and Joe should go with her, given his primary bond with his mother. I discharge the prohibited steps order that was made by District Judge Prest KC, which will enable the mother to obtain a travel document and return to Paris with Joe.
74. I recognise that my decision will come as a blow to the father. Despite his initial scepticism that he was Joe's biological father, I accept that he is delighted to be a father and wants to be part of Joe's life. In my judgement, the father will need to pursue an application, if contact cannot be agreed, in France as when Joe leaves this jurisdiction, and has a physical presence in France, in my judgement his habitual residence will change to France, because his mother's connections are all there, and the physical presence criteria, if it is such, will then be met.
75. Consequently, I have also considered and I determine that the provisions of Article 8 of the 1996 Hague Convention are met, namely that Joe has a substantial connection with France and the courts of France are best placed to assess his best interests, and invite the relevant French court to accept a transfer of jurisdiction pursuant to Article 8.
76. That is my judgment.

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