Neutral Citation Number: [2021] EWHC 3110 (Fam)

No: FD21P00466

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 October 2021

IN PRIVATE

IN THE MATTER OF THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
AND IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

AND IN THE MATTER OF TH (A CHILD)(HAGUE CONVENTION: HABITUAL RESIDENCE)

Before:

MR DAVID REES QC

(Sitting as a Deputy Judge of the High Court)

(In Private)

- - - - - - - - - - - - - - - - - - - -

Hilary Lennox (instructed by KT Family Solicitors) for the **Applicant**
Edward Devereux QC (instructed by Francis George Solicitor-Advocate) for the **Respondent**

Hearing date: 16 September 2021

I direct that no official shorthand note shall be taken of this Judgment and that copies of this judgment as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 20 October 2021.

David Rees QC Deputy High Court Judge

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.

Mr David Rees QC :

Introduction

1. This is an application made under the 1980 Hague Convention ("the Convention") and the Child Abduction and Custody Act 1985 for the return of a young boy, TH, to the United States of America. The application turns upon whether TH is habitually resident in England or in the USA.

2. TH is slightly more than 18 months old and has dual US and British Citizenship. TH's mother is a US Citizen; the father is a British Citizen. I will refer to the parents throughout this judgment as "the Mother" and "the Father" respectively. TH is the Mother's only child. The Father has an older daughter by a previous relationship. She is about 5 years old.

3. The parents first met in late 2017. The Mother lived in the USA. The Father lived in the UK, but the nature of his work meant that he travelled to the USA several times a year. There is a dispute (which I do not need to resolve for the purposes of this hearing) as to precisely when their relationship commenced, but it had had certainly begun by early 2019. In April 2019 the Mother travelled to the UK for a holiday to spend time with the Father. In June 2019 she discovered she was pregnant. She returned to the UK for a further trip in August 2019, but this was cut short after four days following an argument.

4. In September 2019 the Father travelled to the USA and the parties resolved their differences and became engaged. Although the Father subsequently returned to the UK, he travelled back to the USA again in time for TH's birth in early 2020 which took place in the USA.

5. In March 2020 the parents married in a ceremony that took place in the USA About a fortnight after the marriage the Father returned to the UK. The parents' joint intention at this time was that the family would be based in the UK and on 9 July 2020 the Mother and TH flew to the UK and moved into the Father's house. Because the Mother did not have a visa entitling her to live permanently in the UK, she was only able to remain in the UK for a limited period, and on 20 October, she and TH returned to the USA. Return flights had been booked for 27 November 2020. However, the Mother delayed their return; first for a week, and then indefinitely.

6. In December 2020 the Father made an application to the ICACU for assistance in seeking the return of TH from the USA to the UK under the Convention on the basis that TH was habitually resident in the UK. However, he asked for the application to be placed on hold pending a trip that he was making to the USA to visit the Mother in person. He made this short trip in December 2020, but matters between the parents remained unresolved. In January 2021 the Father's application for TH's return was sent to the US Central Authority. Later that month, after he had told the Mother that he was beginning legal proceedings under the Convention, the parents agreed to an arrangement whereby TH

would spend alternate periods of four months with the Father in the UK and with the Mother in the US. On 28 February 2021, the Father flew to the USA to collect TH for the first of these agreed periods. They arrived back in the UK on 3 March 2021. On 5 March 2021 the Father informed the ICACU that TH was back in his care and that he no longer needed his application for a return under the Convention to proceed.

7. Consequent upon the agreement that the parents had reached about TH's care, the Mother was due to fly to the UK at the end of June 2021 to collect TH and return with him to the USA for the next four months. However, on the day before she was due to fly, the Father issued proceedings in the Family Court seeking a Child Arrangements Order that TH live with him and spend time with the Mother and for a Prohibited Steps Order preventing the Mother from removing TH from the Father's care. An *ex parte* prohibited steps order preventing the Mother from removing TH from the Father's care or from the UK was made in the Family Court on 30 June 2021.

8. A remote *inter partes* hearing was held in the Family Court on 7 July 2021 by which stage the Mother had herself issued an application in the relevant State Court in the USA seeking TH's return to that jurisdiction. At the Family Court hearing on 7 July the Mother confirmed that she would make an urgent application to the High Court in this jurisdiction seeking TH's return pursuant to the Convention and the Child Abduction and Custody Act 1985.

9. That application was issued on 14 July 2021. On 20 July 2021 the Mother arrived in the UK. Her application under the Convention came before me for initial directions on 22 July 2021. On that occasion I gave directions for the final hearing which was listed before me on 16 and 17 September 2021. The parties were also able on that occasion to agree arrangements for the Mother to have contact with TH whilst she was in the UK. She returned to the USA on 31 July 2021. TH has remained in this jurisdiction with the Father pending the outcome of these proceedings.

10. The final hearing took place remotely on 16 September 2020. The Mother was represented by Ms Hilary Lennox of Counsel; the Father by Mr Edward Devereux QC. I permitted cross-examination of both parties, limited to the issue of TH's habitual residence.

The 1980 Convention

11. The application falls to be determined by reference to the provisions of the Convention. As Article 1 makes clear, one of the objects of the Convention is:

> "to secure the prompt return of children wrongfully removed to or retained in any Contracting State."

12. The wrongfulness of a removal or retention is governed by Article 3, which provides that:

> "The removal or the retention of a child is to be considered wrongful where –
> (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, or under the law of the State in which the child was habitually resident immediately before the removal or retention; and
> (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
> The rights of custody mentioned in subparagraph (a) above, may arise in particular by operation of law or by reason of judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

13. It is accepted here that both parties enjoyed rights of custody in relation to TH within the meaning of Art. 3 of the Convention.

14. The substantive obligation to return is provided for by Article 12 of the Convention. This provides that

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

15. The Convention provides for a number of limited exceptions to the obligation to return. These are not relevant to the application before me as the Father does not seek to rely upon any of them.

16. The case before me turns on the question of TH's habitual residence. The Mother's position is that TH is habitually resident in the USA:
(1) Because he has always been habitually resident there; or (if TH became habitually resident in England during his stay here between July and October 2020)
(2) Because he reacquired habitual residence in the USA on his return to that jurisdiction and has not since reacquired habitual residence in England.
The Mother thus argues that TH has been wrongfully retained in England by the Father, thereby engaging the Convention.

17. The Father's position is that the Convention has no application in the present case as TH has been habitually resident in England and Wales since shortly after he first arrived in the UK in July 2020. In the alternative, the Father argues that (were I to conclude that TH was habitually resident in the USA when he travelled to the UK in March 2021) he

has since become habitually resident in the UK and that this occurred before the date of retention (which the Father argues occurred when he issued his proceedings in the Family Court on 28 June).

18. The purpose of the Convention was explained by Baroness Hale and Lord Wilson JJSC in *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27 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."

19. It is important that the limited nature of an application for summary return under the 1980 Convention is properly understood. At times the parties' evidence and counsel's submissions (and in particular those on behalf of the Mother) appeared to focus on wider questions of welfare and where, and with whom, TH should live. I made clear to the parties in the course of the hearing, and do so again now, that the application before me is not to decide where TH should ultimately live. As Mostyn J made clear in *B v B* [2014] EWHC 1804 (Fam):

> "2. The Hague Convention of 1980 is arguably the most successful ever international treaty and it has over 90 subscribers to it, over half the countries in the world. The underlying and central foundation of the Convention is that, where a child has been unilaterally removed from the land of her habitual residence in breach of someone's rights of custody, then she should be swiftly returned to that country for the courts of that country to decide on her long-term future.
>
> "3. There are very few exceptions to this and the exceptions that do exist have to be interpreted very narrowly in order that the central premise of the Convention is not fatally undermined. It is important to understand what the Convention does not do. The Convention does not order a child who has been removed in the circumstances I have described to live with anybody. The Convention does not provide that the parent who is left behind should, on the return of the child, have contact or access in any particular way. The Convention does not provide that, when an order for return

to the child's homeland is made, the child should stay there indefinitely. All the Convention provides is that the child should be returned for the specific purpose and limited period to enable the court of her homeland to decide on her long-term future. That is all it decides."

Habitual Residence

20. The concept of habitual residence is one that has been the subject of a number of decisions from the appellate courts in recent years (see *A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 60; [2014] AC 1; *In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 75; [2014] AC 1017; *In re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] UKSC 1; [2014] AC 1038; *In re R (Children) (Reunite International Child Abduction Centre intervening)* [2015] UKSC 35; [2016] AC 76; *In re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4; [2016] AC 606.) This jurisprudence was summarised by Hayden J in *Re B (A Child) (Custody Rights: Habitual Residence)* [2016] EWHC 2174 (Fam); [2016] 4 WLR 156 at [17] and that summary was subsequently approved, with one qualification, by the Court of Appeal in *Re M (Children)(Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105; [2020] 4 WLR 137. It consists of twelve points (the Court of Appeal in *Re M* having concluded that point (viii) of the thirteen points originally identified by Hayden J should be omitted). These are as follows:

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

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

(iii) In common with the other rules of jurisdiction in Council Regulation (EC) No 2201/2003 ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the practical connection between the child and the country concerned": *A v A*, para 80(ii); *In re B*, para 42, applying *Mercredi v Chaffe* (Case C-497/10PPU) EU:C:2010:829; [2012] Fam 22, para 46.

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

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

(vi) Parental intention is relevant to the assessment, but not determinative (*In re L*, *In re R* and *In re B*).

(vii) It will be highly unusual for a child to have no habitual residence. Usually a child lose a pre-existing habitual residence at the same time as gaining a new one (*In re B*).

(viii) [Omitted]

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

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

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

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

(xiii) The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the

term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (*In re B* supra)."

21. For the Mother, Miss Lennox relied upon this summary as a complete statement of the law which I need to apply in reaching my decision. Mr Devereux QC, for the Father, cautioned me against relying solely on this summary as a full statement of the relevant law. He emphasised that habitual residence required only "some" degree of integration drawing my attention to the dicta of Moylan LJ in *Re B (A Child) (International Centre for Family Law, Policy and Practice intervening)* [2020] EWCA Civ 1187; [2020] 4 WLR 149 at paragraphs [83] to [84]:

> "83. It has been emphasised in a number of cases that only "some" degree of integration is required. For example, in *In re B (A Child) (Reunite International Child Abduction Centre intervening)*, at [39], Lord Wilson made clear that there does not have to be "full integration in the environment of the new state … only a degree of it". In *In re LC (Children)* [2014] UKSC 1; [2014] AC 1038 , Lady Hale, at [60], referred to the "essential question" as being "whether the child has achieved a sufficient degree of integration into a social and family environment in the country in question for his or her residence there to be termed 'habitual'".
>
> 84. What degree of integration will be "sufficient" will obviously vary from case to case depending, for example, on the extent to which a child has connections with, say, two states and could, potentially, be habitually resident in either of them. This is why the court has to undertake a "global analysis" which … is a factual, child focused assessment, as made clear by the CJEU's decision of *Proceedings Brought by HR (With the Participation of KO)* (Case C-512/17) EU:C:2018:513; [2018] Fam 385… This will involve the court assessing the factors which connect the child with the state or states in which he or she is alleged to be habitually resident."

It is clear from these passages that whilst various judges have used different words to explain the degree of integration needed to establish habitual residence ("a degree…" per Lord Wilson JSC in *Re B (A Child)*; "a sufficient degree…" per Lady Hale in *In Re LC (Children)*; "some degree…" per Lord Reed JSC in *Re R (Children)*) they are all describing the same thing. Not every step that is taken towards integration, however minor, will suffice to found habitual residence. Equally though, something short of full integration may well be sufficient to do so. It is for the court, having regard to the factual position as a whole, to determine whether the qualitative nature of the child's residence in the new country demonstrates that habitual residence there has been acquired.

22. Mr Devereux also referred me to Moylan LJ's words of caution in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105 regarding Lord Wilson's well known "see-saw" analogy (see *In re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4; [2016] AC 606 at [45] to [46]) in relation to a child who moves internationally:

> "the analogy needs to be used with caution because if it is applied as though it is the test for habitual residence it can, as in my view is demonstrated by the present case, result in the court's focus being disproportionately on the extent of a child's continuing roots or connections with and/or on an historical analysis of their previous roots or connections rather than focusing, as is required, on the child's current situation (at the relevant date)."

and to those of Baker LJ in *Re B (A Child) (International Centre for Family Law, Policy and Practice intervening)* [2020] EWCA Civ 1187; [2020] 4 WLR 149 at [133].

> "There is a danger that the analogy may lead judges to think that, when a family moves from one country to another, there needs to be an equivalent degree of integration in the second country to that enjoyed in the first before habitual residence in the second country can be acquired."

23. I have also noted the observations of Black LJ in *Re J (A Child) (Finland) (Habitual Residence)* [2017] 2 FCR 542 at [62] as endorsed by Moylan LJ in *Re B (A Child) (International Centre for Family Law, Policy and Practice intervening)* [2020] EWCA Civ 1187; [2020] 4 WLR 149 at [88]:

> "[62] In endorsing certain of Mr Turner's criticisms of Judge Cushing's judgment, I do not wish to be taken as suggesting that there is only one way in which to approach the making of a finding of fact about habitual residence. Habitual residence is a question of fact and the scope of the enquiry depends entirely on the particular facts of the case. What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence. The court's review of all of the relevant evidence about habitual residence cannot be allowed to become an unworkable obstacle course, through which the judge must pick his or her way by a prescribed route or risk being said to have made an unsustainable finding. In some cases it will be necessary to carry out quite a detailed analysis of the situation that the child has left; in other cases, less detail of that will be required and the judge will be able to explain shortly why that is and focus more on the circumstances in the new country."

Wrongful retention

24. A further legal issue which arises in this case relates to the date upon which (if he was indeed habitually resident in the USA immediately prior to travelling in the UK in March 2021) TH can be said to have been wrongfully retained in the UK by the Father. Mr Devereux's case is that this only took place on 28 June 2021 when the Father signed his witness statement in support of his application for a Child Arrangement Order and a Prohibited Steps Order in the Family Court. In support of this contention, he relied upon the decision of the Supreme Court in *Re C (Children) (International Centre for Family Law, Policy and Practice intervening)* [2018] UKSC 8. In that case the Supreme Court confirmed that it is possible for a repudiatory retention to occur for the purposes of the Convention. At paragraph [51] Lord Hughes JSC held as follows:

> "As with any matter of proof or evidence, it would be unwise to attempt any exhaustive definition. The question is whether the travelling parent has manifested a denial, or repudiation, of the rights of the left-behind parent. Some markers can, however, be put in place.
> (i) It is difficult if not impossible to imagine a repudiatory retention which does not involve a subjective intention on the part of the travelling parent not to return the child (or not to honour some other fundamental part of the arrangement). The spectre advanced of a parent being found to have committed a repudiatory retention innocently, for example by making an application for temporary permission to reside in the destination state, is illusory.
> (ii) A purely internal unmanifested thought on the part of the travelling parent ought properly to be regarded as at most a plan to commit a repudiatory retention and not itself to constitute such. If it is purely internal, it will probably not come to light in any event, but even supposing that subsequently it were to do so, there must be an objectively identifiable act or acts of repudiation before the retention can be said to be wrongful. That is so in the case of ordinary retention, and must be so also in the case of repudiatory retention.
> (iii) That does not mean that the repudiation must be communicated to the left-behind parent. To require that would be to put too great a premium on concealment and deception. Plainly, some acts may amount to a repudiatory retention, even if concealed from the left-behind parent. A simple example might be arranging for permanent official permission to reside in the destination state and giving an undertaking that the intention was to remain permanently.
> (iv) There must accordingly be some objectively identifiable act or statement, or combination of such, which manifests the denial, or repudiation, of the rights of custody of the left-behind parent. A declaration of intent to a third party might suffice, but a privately formed decision would not, without more, do so.
> (v) There is no occasion to re-visit the decision of the House of Lords in *In re H* [1991] 2 AC 476 (para 28 above) that wrongful retention must be an identifiable event and cannot be regarded as a continuing process because of the need to count forward the 12-month period stipulated in article 12. That does not mean that the

exact date has to be identifiable. It may be possible to say no more than that wrongful retention had clearly occurred not later than (say) the end of a particular month. If there is such an identifiable point, it is not possible to adopt the submission made to the Court of Appeal, that the left-behind parent may elect to treat as the date of wrongful retention either the date of manifestation of repudiation or the due date for return. It may of course be permissible for the left-behind parent to plead his case in the alternative, but that is a different thing. When once the actual date of wrongful retention is ascertained, the article 12 period begins to run."

Evidence

25. I heard oral evidence from both parties. Both broadly gave evidence in line with their respective witness statements. This is a case where there is a significant amount of contemporaneous evidence; the parties exchanged a large number of text and other messages during many of the key periods that I have to consider and where the parties' recollections (either oral or in their witness statements) diverge from the contemporaneous messages, it is the latter which I have preferred.

26. For the purpose of the issues that I have to decide within this application TH's life to date can be divided into four broad periods:
    (1) The period from his birth until 9 July 2020 when he was living with the Mother in the USA;
    (2) The period from 9 July to 20 October 2020 when he lived with both parents in the UK;
    (3) The period from 20 October 2020 until 3 March 2021 when TH returned to the USA and lived with his Mother there; and
    (4) The period from 3 March this year until 28 June (the date upon which the Father signed his witness statement in the Family Court) when TH was living in the UK with his Father.

    I will look at the evidence relating to each of these periods in turn.

Period (1) - Birth to July 2020 – Approx 4.5 Months

27. TH was born in the USA and after his birth, lived with his Mother and was cared for by her in the home that she shared with her parents. The maternal grandparents have a three bedroom house. The room occupied by the Mother used to be the garage, but the Mother's evidence (which I accept) is that since before TH's birth this has been properly converted into a bedroom. The Mother's brother and his wife live in the same town a few minutes drive away. There are other maternal relatives living nearby and the Mother has a circle of friends. TH was registered with a local doctor after his birth.

28. It is plain that when TH was born, the Mother was habitually resident in the USA (she had never lived anywhere else) and that for this first period of his life TH must have been habitually resident in the USA. Neither party seeks to argue otherwise.

29. The Father was also present in the USA for the first few weeks of TH's life and he and the Mother married during this period. The Father returned to the UK on 1 April 2020.

Period (2) - 9 July to 20 October 2020 – Approx 15 weeks

30. The first area of dispute between the parties relates to the question of whether TH became habitually resident in England and Wales during the period that he and the Mother spent in England and Wales between July and October 2020. For this and the other remaining periods of TH's life that I have found it helpful for the purposes of this judgment to identify the evidence concerning the relevant parental intentions before describing the other factors said to point towards or against integration in the relevant country. However, I make clear that I have kept in mind throughout that parental intention is merely one factor to be taken into account and is not determinative of the position.

(a) Parental Intention

31. The Father's evidence is that even prior to TH's birth, he and the Mother had had a number of conversations about the Mother and child moving to the UK with a view to TH being raised in this country. This was tied to a possible plan for the family as a whole to then relocate to the US when the Father's current job came to an end in a few years' time. His evidence is that they had agreed that the Mother would stay on for a time in the USA after TH's birth so that TH could spend some time with his maternal grandparents, but that she and TH would move to Father's house in the UK later that year. The Mother broadly agreed that this was the plan, although she described her agreement to the plan as reluctant and that she was:

> "getting carried away by [the Father] in relation to our move and felt that I had no plan to go along with the plans that he was making."

In fact the text messages exchanged between the parties demonstrate that following their marriage, the Mother too became enthusiastic about the family being together. On 1 April 2020 (shortly after the Father had left the USA to return to the UK) she texted him:

> "I know it's going to be long and tiring but I am so excited for us all to be together soon".

32. TH's birth and the parents' marriage coincided with the global spread of the Covid-19 pandemic. The parties are agreed that one of the consequences of the pandemic meant that it became impossible for them to obtain at this time a spousal visa permitting the Mother to move to the UK on a permanent basis. Accordingly, they agreed that she and TH would come to the UK for an initial period (the Father suggests "3-4 months") without a visa and then fly back to the USA to make further visa arrangements. This agreement can be seen in further text messages dated 3 April 2020 culminating in a statement from the Mother:

> "I want us to be together again already, and if the easiest thing right now to make that happen is for me to come back and get [the visa application] done here after a few

> months I think we should do that. I miss you so much and hate being apart from you."

Over the coming weeks further text messages were exchanged regarding the practicalities of the trip.

33. The parents continued to speak via the internet and exchange text messages regularly, and a few days before the Mother and TH travelled, in response to a text from the Father suggesting that the maternal grandmother must be upset by the Mother leaving, the Mother replied:

> "She's been really supportive of it actually, I know she's just being strong for me. But its kind of breaking [my heart] . I'm so excited for us to be together and to start our lives together the proper way, but I've never been this far from my mom for this long and its going to take some time for me to adjust to her not being next door or down the street from me. I'm just so glad I have you and your support in all of this."

A couple of days later, the Father texted:

"I'm looking forward to doing things in the house with you, making our home more the way we both want it."

To which the Mother replied:

> "Me too, its going to be amazing!"

34. The Mother and TH arrived in the UK on 9 July 2020. Because the Mother was entering the UK without a visa, return flights for her and TH to travel back to the USA on 20 October had already been booked. Nonetheless other arrangements were made that were consistent with the parties' hope and intention the Mother and TH's eventual stay would be of a longer duration. The Mother brought her winter clothes with her. A little later, in September 2020, the Mother's dog was flown from the USA to England. Both parties agreed that this was difficult to organise and stressful for the animal concerned.

(b) TH's life in England

35. On arrival in England, the Mother and TH moved into the Father's home. The Father was working, and the Mother remained TH's primary carer. The Father provided evidence of steps that had been taken and which he argued showed integration by the Mother and TH into their new life in England. The parents ordered additional furniture for their home including a cot and bath chair for TH and new garden furniture. On 20 September 2020 TH was registered with a doctor in the UK. The Father gave evidence that his parents (TH's paternal grandparents) would come round about once a week and that his elder daughter (aged about 5) would spend every other weekend with them. His evidence also described outings to the local town or attractions In a number of messages posted on social media after arriving in England the Mother referred to the property that she shared with the Father as "home". On one occasion the Mother posted pictures of a trip to a well-known UK tourist site. One of her friends in the USA replied, "Enjoy your trip", to which the Mother responded "live here now".

36. Other steps taken, and said by the Father to demonstrate the integration of the Mother and TH into life in the UK included:
(i) the Father setting up a UK mobile phone for the Mother;
(ii) the Mother setting up an online UK bank account;
(iii) the Mother being provided with a discount card which she was eligible for as a result of the Father's employment;
(iv) the parents taking out membership of a local gym and swimming pool which they used to take TH and the Father's daughter swimming;
(v) the Father purchasing an annual pass to a nearby well-known tourist site in the joint names of him and the Mother.
In addition to support his contention that the move was intended to be a long term one, the Father provided evidence showing that in August 2020 he purchased tickets for him and the Mother to attend a concert to be held in London in June 2021 and in September he purchased a kitchen mixer which he intended to give to the mother for Christmas.

37. The Mother does not dispute that these events occurred. However, she disputes that she or TH were ever sufficiently integrated into life in England to have become habitually resident here. On her behalf Ms Lennox pointed to the Mother's isolation during the 15 weeks that she spent in England with TH. On her arrival she knew few people other than some of the Father's work colleagues. She was unable to work herself, because she was in the UK as a tourist and without any visa permitting her to live here permanently. She was unable to drive; it is common ground that the Mother did not gain a driving licence until May 2021. The impact of the coronavirus pandemic, reduced the opportunities that would have been available for social interaction. The Father's own evidence (which is supported by text messages that were subsequently exchanged between the parties in November 2020) acknowledges that the Mother was very concerned about the pandemic and the risk of contracting Covid-19 and that this led to her being reluctant to leave the house, and not taking steps to meet new people, for example by joining a mother and baby group. Although Mr Devereux, in the course of his cross-examination of the Mother sought to sought to challenge the extent of the Mother' loneliness during this period, the Father's own evidence accepts that "the lockdown in England exacerbated [the] Mother's feelings of being homesick".

38. Ms Lennox also argued that the fact that the Mother's visa meant that she could not stay in the UK for more than three months meant that this could never have been anything more than a temporary stay, and that under the plan proposed by the Father (that the Mother would return to the USA for a month) the Mother would not have been permitted to re-enter the UK and would have had to have remained outside the UK whilst applying for a spousal visa. The Father has filed documents which demonstrate that on 29 October 2020 the Father contacted a legal firm specialising in visa advice to seek advice on obtaining a spousal visa. The Father's evidence was that he was told that because of changes to UK immigration practice arising from the impact of the pandemic it might be

possible to obtain a spousal visa whilst the Mother was in England. However this advice was not received until after the Mother and TH had already left the UK.

Period (3) – 21 October 2020 to 3 March 2021 – Approx 19 weeks

39. I turn now to consider the third period during which TH lived in the USA with his Mother.

(a) Parental Intention

40. As I have already indicated the Mother and TH had pre-booked flights to return to the USA on 20 October. On 17 October, before they left for America, the Father booked their next set of flights; the plan was for the Mother and TH to fly back to the UK on 27 November and then return again to the USA on 21 February 2021.

41. On 20 October, the Mother and TH flew back to the USA, arriving the following day. They returned to live at the Mother's parents' house which had been their home before their departure to the UK.

42. Initially, the parents continued to exchange friendly text messages, suggesting that the Mother and TH would be returning to the UK at the end of November as planned. Thus, on 24 October 2020 the Mother messaged the Father:

> "It does feel very incomplete without you. Today [X] asked me how I felt about being back and the only way I could explain was I'm happy because I love getting to see my family and my mom is just so happy to have us here, but it just doesn't feel like home anymore. Home is when I'm with you. I'm just missing you like crazy but I know we will get through it quickly."

43. However, at a certain point in November 2020, not long before she was due to return to the UK, the Mother began to become evasive about whether she would be returning to the UK. On 25 November the Mother described having second thoughts about coming back, texting the Father:

> "the thought of leaving has me feeling so torn and sad. I hadn't realised how much I missed them until I came back".

The following day, following a number of lengthy texts from the Father she replied:

> "I'm going to stay another week and then I'll go back. I never once said anything about staying. You always go to the extreme. Just because I struggle with leaving my family and going back doesn't mean I'm just going to just up and leave you. I just miss my family and the company and I am sad about having to go back".

In her oral evidence the Mother confirmed that at this point, her intention was indeed still to return to the UK, but that she wanted her and TH to spend more time with her family before doing so.

44. The Father clearly became frustrated by what he perceived as the Mother shutting down and refusing to speak to him about their relationship or their future. For her part the

Mother clearly felt that the Father was placing her under pressure to return. A degree of pressure for her to engage with him is certainly apparent in his texts. On 27 November the Mother sent a text message trying to explain the dilemma that she felt:

> "This is where I grew up. I moved half way across the world to be with you and have our family together while missing my family and friends. Yes I can make new friends but it will not come close to what I have here. I'm not being selfish for feeling the way that I do."

The Mother's evidence is that also on this date she first told the Father that she wanted a divorce. The Father's evidence is that divorce was mentioned a little later, but I do not consider that this is significant. What is clear though is that the Mother became increasingly withdrawn in refusing to discuss their relationship, although the Father continued to have regular video contact with TH.

45. I have seen a further round of text messages from early December. On 8 December 2020 the Mother texted the Father:

> "I will bring [TH] back to you I just need to speak to both my parents about dates. I understand that but when I get questioned my only instinct is to automatically shut down. My mind just goes blank and it makes it hard for me to answer."

In further texts the following day, the Mother indicated that she was planning to undertake therapy in the USA. On 10 December 2020 the Father sent the Mother the following text:

> "Do you know how it feels to have your son intentional [sic.] withheld from you? No you don't and I would never do that to you. You said you were only staying for an extra week (although never gave me an option) and now you are 2 weeks late and won't give me a date for bringing [TH] home. You won't even give me a date for when you're leaving again…"

46. Around this time the Father also contacted *Reunite* for advice and on 12 December 2020 he completed an ICACU application with a view to bringing proceedings seeking TH's return from the USA under the Convention. Also, on 12 December the Father flew to the USA. His evidence was that he had discussed this with the Mother's father a couple of days earlier, although the Mother only became aware of the plan when the Father texted her shortly before his fight left the UK. Whilst the Father was in the USA he stayed with her parents and with TH, and the Mother moved out to stay with her brother, although she saw the Father during this period. There is a dispute between the parties as to precisely what took place, although it is clear that there was a significant argument between them. At some point in the course of the argument the Father brought up the fact that he was planning to bring proceedings to seek TH's return to the UK under the Convention. The Mother accuses the Father of threatening to initiate "kidnapping proceedings" and saying that she would go to jail. The Father denies having done so. It is clear that the argument was a significant one; the Father records that afterwards he apologised to the maternal

grandmother for having argued in her home. It also appears to have led to the Mother ceasing to use her UK phone to communicate with the Father. I am satisfied that in the course of this argument the Father certainly made plain to the Mother that he was prepared to use legal process to secure TH's return to the UK, although I am not satisfied on the balance of probabilities that he directly threatened her with imprisonment.

47. On 16 December the Father returned to the UK without TH. On 4 January 2021 he informed the ICACU that he wished to proceed with his Convention application and on the following day this was transmitted to the US Central Authority. During this period discussions were taking place between the parents via e-mail and social media although I have not seen the full breadth of the messages that were sent. However, it is common ground that an agreement was reached that the parents should share the care of TH with him spending alternate four-month periods in the UK with the Father and in the USA with the Mother. The agreed plan was for this arrangement to continue until TH started school. No legal advice was taken by either parent in relation to this arrangement which was confirmed in an e-mail sent by the Mother to the Father on 27 January 2021.

48. It is quite plain that, viewed objectively, the agreement that had been reached between the parents was that TH would be returning to the UK for a limited period of 4 months and this was the basis upon which the Mother agreed to TH travelling. However, the Father's intentions were more nuanced. It is clear from his evidence (and his contemporaneous text messages) that his overwhelming preference was that there should be a reconciliation with the Mother and that she should return to the UK with TH permanently. His witness statement describes his intentions thus:

> "When I suggested to the Respondent that TH spend four months with each of us, I was hopeful that it could work, at least in the short term until TH started school. I was also hopeful that we would be able to reconcile our relationship, and that she would ultimately move back home to England. The Respondent was failing to engage with me or commit to any plans in relation to returning TH or allowing me to collect him, and I felt I needed to think of a reasonable suggestion that at least had a prospect of being workable. I never wanted TH to spend four months with me and four months with the Respondent; I am his Father and I want to be involved in his life and upbringing everyday. However, I suggested it as it was clear that the Respondent was not going to allow me to care for him otherwise, and in the hope it would work I proposed a four month on four month off trial. I also hoped that we would be able to resolve the problems in our relationship and reconcile. At that stage I had not fully committed to anything, but I did what was necessary to get TH back home, and I was hopeful we could work things out between us. I believed that we would be able to reconcile, and I had not formulated intention of retaining TH in my care at the end of the four months."

and

> "It was discussed between myself and the Respondent that TH would spend four months here, I never wanted the Respondent to take TH back to the USA. The longer that TH was in my care, the more I realised that a four months on four months off arrangement was not in his best interest, and what TH needs is stability in one place."

(b) TH's life in the USA

49. TH's life in the USA during this time was in many ways very similar to that which had pertained during the first period of his life. He and the Mother returned to live with the maternal grandparents, just as they had done previously. Initially, on their return to the USA the Mother and TH shared a room and a bed at the grandparents house, but at some point – I believe by January 2021 - TH had a room of his own with his own cot. The Mother's evidence was that TH remained enrolled with the doctor with whom he had his first few vaccinations and his first check ups, although it does not appear that he saw this doctor during this period in the USA. The Mother has indicated that this was because the GP practice in the USA was not undertaking vaccinations because of the pandemic.

50. Throughout this time in the USA, TH was in the primary care of the Mother. She was not working, so she would have been spending much of her time with him. He was able to enjoy contact with members of his wider family, including his maternal grandparents (with whom he was living) and his uncle who lived a few minutes drive away. He was also able to spend time with other friends of the Mother some of whom also had children of a similar age to TH. The Mother describes both her parents spending time with TH most days, and her brother and sister-in-law visiting a couple of days throughout the week. The Mother also refers to cousins, great aunts, great uncles and great grandparents visiting when they could. Of course, during this period the pandemic was still ongoing, and I have no doubt that as a result the Mother's (and TH's) social interactions were thus more curtailed than they might otherwise have been. The fact that the Mother was herself unable to drive, may also have limited their activities.

Period (4) – 3 March to 28 June 2021 approx 17 weeks

51. In accordance with the agreed arrangements the Father flew to the USA on 28 February to collect TH. He and TH arrived back in the UK on 3 March 2021. On 5 March, the Father notified the ICACU that he and TH had returned to the UK.

52. The final period therefore relates to the time between TH's return to the UK with the Father on 3 March and 28 June when the Father signed his witness statement in support of his application in the Family Court for a Child Arrangements Order and a Prohibited Steps order and which Mr Devereux argues is the relevant date of retention for the purposes of the Convention.

(a) Parental Intentions

53. As I have already indicated, it is clear that, objectively viewed, the parties' joint intention was that this was to be a limited four month trip with TH returning to the Mother in the USA in early July 2021. I accept the Mother's evidence that this was the basis upon which she consented to TH travelling. I also find that the Father shared this intention that the visit was to be for a limited period only. The Father's witness evidence makes clear that although he "never wanted" (emphasis added) for TH to travel between the two countries on a four monthly basis, at the time that he agreed to the arrangement (and indeed when TH arrived in England in March 2021) he had not formulated an intention of retaining TH in his care at the end of the four month period. Ms Lennox sought to argue that the Father's evidence that he had never wanted TH to return to the USA amounted to an admission that he has always intended to retain TH in England at the end of his four-month visit. I disagree. The fact that the Father did not want TH to travel on a four monthly basis between the two countries does not necessarily mean that at the outset he did not intend to give effect to the agreement that he had reached with the Mother. It is not uncommon for a person to agree to an arrangement which does not accord with their true wishes. I thus accept the Father's evidence that at the time that he brought TH to England in March he had not yet formulated an intention to retain TH in this jurisdiction and I find that at this stage he too envisaged that TH would be returning to the USA in early July.

54. Ms Lennox also argues (correctly in my view) that the arrangement that had been agreed between the parents that TH should spend four months with each in turn was not one that a court would have been likely to order. This arrangement appears to have been focussed on the parents' own wishes rather than the welfare of TH and in my view was inimical to the provision of stability in this young child's life.

(b) TH's life in England

55. Whilst the Mother and TH were in the USA, the Father moved house into accommodation provided by his employers that is closer to his work. He continues to own the property where he had previously lived (and which he had shared with TH and the Mother during their earlier stay in the UK). During this period of TH's life the Father has provided TH's primary care, although his work commitments have meant that TH needed to be enrolled in nursery. The Mother participated in a video-call in March 2021 relating to his registration there. I understand that TH attends nursery at least 2.5 days a week. The Father's evidence exhibited reports of TH's progress at nursery which describe his as a "happy confident, settled little boy" who has "made good relationships with all grown ups … and will share his emotions openly and seek comfort when needed".

56. TH also has contact with other members of the Father's family. The Father's parents (TH's paternal grandparents) live about 90 minutes drive away and the Father's evidence is that TH sees them every other weekend. Likewise, his elder sister spends every other weekend with him and Father as well as time during school holidays. TH remains

registered with a doctor in England and since his return in March has had the usual childhood vaccinations. During this period the Mother has kept in touch with TH through video-calls; for a while she also had access via the internet to a camera in TH's bedroom.

The Date of Retention

57. Mr Devereux's contention is that for the purpose of the application, the relevant date for determining TH's habitual residence is 28 June 2021, that is to say the date upon which the Father signed his witness statement in the Family Court. This, Mr Devereux argues, amounts to the date of wrongful retention for the purposes of the Convention as (having regard to the passage from *Re C (Children)* set out above) this was the earliest date upon which it can be said that there was an objectively identifiable act or statement by the Father manifesting a denial or repudiation of the Mother's rights of custody.

58. Miss Lennox has sought to argue for an earlier date in March 2021 on the basis that the Mother had not truly agreed to TH travelling to England and that her consent to this arrangement had only been procured by the Father's threat that if she did not return TH to England she could face kidnapping charges (effectively making the removal itself wrongful). Alternatively, Ms Lennox sought to argue that the Father's admission in his witness statement that he had never wanted TH to return to the USA and / or his e-mail to ICACU on 5 March confirming that TH was back in England was sufficient to amount to an objective demonstration of his intention to retain TH in England for the purposes of the test identified by Lord Hughes JSC in *Re C (Children)*.

59. I do not accept Ms Lennox's argument that the agreement between the parents that TH should spend alternating four month periods with each parent was procured by threats, so as to make TH's removal from the USA wrongful. Whilst I have accepted that in the course of the argument that the parents had in December 2020 the Father made clear that he was willing to resort to legal process to secure TH's return to the UK, the agreement that led to his return was only reached in late January 2021 following further discussions between the parents and not was implemented until early March. Throughout this period the Father was in the UK and the Mother had ample opportunity, away from the Father's direct influence, to discuss the agreement and take advice from whoever she chose. Whilst the Mother may have felt under some pressure to reach an agreement as a result of the Father's pending application under the Convention, I do not accept that this undermines the substance of the agreement. I therefore find that the removal of TH from the USA to the UK in March 2021 *for the agreed four month period* took place with the Mother's consent and was not wrongful.

60. Nor do I accept Ms Lennox's argument that the Father never intended to be bound by the agreement. As I have already described, I consider there to be a distinction between what the Father may have wanted and what he actually intended to do, and I accept his evidence that as at March 2021 he had not formulated an intention to retain TH in the UK

and which I take as an acceptance that he (at this stage) intended to abide by the agreement.

61. Nor do I consider that the e-mail sent by the Father to the ICACU on 5 March 2021 can be seen as objectively manifesting an intention on his part to retain TH in the UK in breach of the Mother's rights of custody. The effect of the agreement which the parties had reached was that the Father was to have TH in his care for a four-month period before returning him to the Mother for a similar period. The Father's e-mail to the ICACU does no more than acknowledge that he and TH had returned to the UK as a result of he and the Mother having reached a mutual agreement. I do not see that it can properly be read as manifesting an intention by the Father not to abide by the terms of that agreement.

62. I therefore accept Mr Devereux's argument that the first act by the Father which is objectively identifiable as evincing an intention on his part not to return TH to the USA was the Father's witness statement of 28 June 2021 in support of his Family Court application, and I treat that as the relevant date for the purpose of establishing TH's habitual residence.

Habitual Residence - Discussion

63. I then turn to my conclusions regarding TH's habitual residence as at 28 June 2021 in the light of the matters that I have set out above. In reaching my conclusions on habitual residence I have carefully borne in mind the guidance from the various authorities to which I have been referred and in particular, the injunction contained in those authorities that my investigation should be centred on TH and the stability of his residence and his integration in the relevant countries. I have read the parties' witness statements and the accompanying exhibits carefully and have also had full regard to their oral evidence and the written and oral submissions of both counsel.

64. Having regard to all those matters I have concluded that TH has remained habitually resident in the USA throughout his entire life. In the alternative, if I am wrong in that conclusion and TH became habitually resident in England and Wales during his time here between July and October 2020, I consider that he would have regained habitual residence in the USA once he returned there with the Mother in October 2020 and that he did not subsequently reacquire habitual residence in England and Wales prior to 28 June 2021.

65. I begin by observing that this is a case where a very young child has been subjected to a number of international moves over a relatively short period, staying in no jurisdiction for more than a few months at a time. During this time TH has known very little stability, and given his age he has had little opportunity to integrate or to put down roots in either the USA or the UK independently of his parents.

66. As I have already observed, I have no doubt that for the first period of his life TH was habitually resident in the USA and neither party has sought to argue to the contrary. He was born in that country; his birth was registered there. He lived there in a house which he shared with the Mother and his maternal grandparents. His primary carer was the Mother who herself had lived in the USA for her entire life and was plainly also habitually resident there. It is in my view quite clear that in July 2020, immediately before he and the Mother flew to the UK, TH was habitually resident in the USA.

67. Thus, the first question that I have to determine is whether TH became habitually resident in England and Wales during the 15 weeks that he spent here between July and October 2020. During this period it is clear that both parents viewed the Mother as TH's primary carer, and in my view, and given his very young age, TH's habitual residence at this time cannot realistically be separated from that of the Mother.

68. The various factors that I have to consider on this issue do not all point in the same direction. Of those which point towards the Mother and TH having acquired a habitual residence in England at this time, the foremost is perhaps that of the parties' joint intention. It is in my judgment clear from the evidence that in July 2020 both the Mother and Father shared a desire and intention to make a new life together with TH in England and Wales. This can be seen from their exchanges of text messages; from the Mother's decision to pack and bring much of her wardrobe; from the decision to fly the Mother's dog to the UK and from the Father's plans in buying Christmas presents and tickets for a concert in 2021. However, parental intention, whilst relevant to my assessment, cannot be determinative and there are other factors affecting the qualitative nature of the Mother's and TH's residence during this period that point in the other direction.

69. The first of these is the Mother's entitlement to be in the UK. As Ms Lennox pointed out, the Mother's trip to the UK in July 2020 was undertaken without a visa and this meant that she was not permitted to remain in the country for more than six months. The Mother and TH therefore arrived in the UK on 9 July with their return flights to the USA already booked. It was thus clear that this initial trip, whatever the parents' long-term aspirations may have been, was only ever intended to have been for a finite stay. Both parents understood that the Mother would not be able to stay in the UK on a permanent basis unless and until she had been granted a visa entitling her to do so, and that in the absence of such a visa, there would be periods of time when she would need to leave the UK and return to the USA. As I have already indicated, the Mother was TH's primary carer and it was envisaged by both parents that he would travel with the Mother when she left the country as required by her visa (as indeed happened in October 2020), even though as a dual US and UK national TH himself would not have been required to leave for immigration reasons.

70. I note also that throughout the period that the Mother and TH spent in the UK between July and October 2020, both parents believed that the Mother would only be able to apply

for a permanent spousal visa from outside the UK. In any event, it was not until after the Mother had already returned to the USA in October 2020 that the Father received advice that it might be possible for the Mother to make such an application whilst within the UK.

71. A further matter that needs to be considered are the circumstances of TH's life during this period and the light that they shed upon the stability of his residence in the UK. My assessment here needs to be qualitative, rather than quantitative; that is to say my focus should be on the extent to which TH became integrated into life in the UK during this period rather than simply looking at the length of time that he spent here and, as I have already indicated, in assessing TH's integration I have had particular regard to the integration of the Mother. The 15 weeks that the pair of them spent in England were doubtless unusual. They arrived shortly after the first period of the national lockdown that had been imposed as a consequence of the Covid-19 pandemic had ended. Whilst some restrictions had been lifted, life had by no means returned to normal and I accept the Mother's evidence about the isolation that she experienced during her time here. It is a matter of fact that she was unable to work and unable to drive, and thus reliant upon the Father for trips out. It is also clear that the Mother took few steps to integrate herself and TH into life in the UK. She does not appear to have made any friends during her time here; it is common ground that she did not join a mother and baby group and there is no suggestion that she herself took other steps to lay down roots in the local community. This appears in part to have been prompted by her concerns at social mixing in a time of pandemic. Text messages sent by the Mother shortly after her return to the USA in October 2020, demonstrate that whilst she was clearly at that point missing the Father, there is little reference to any other aspect of her life in the UK. I note also that a number of the steps that the Father seeks to rely upon as demonstrating the Mother's (and TH's) integration into life in the UK relate to actions taken by the Father rather than the Mother herself (eg the purchase by the Father of the Christmas presents and concert tickets, and the Father's actions in setting up a UK mobile phone for the Mother).

72. There was, I accept, an element of integration by the Mother and TH into life in the UK. TH was registered with a doctor and there was contact and visits with the Father's daughter and the paternal grandparents. The family went swimming in the local pool and went on some day trips and the Mother's dog was brought to the UK. However, the evidence of their life together during this period gives the impression of the Mother doing very little on her own to integrate in the UK, and of the parents focussing inwards on their immediate family life and on living together as a couple for the first time, rather than looking outwards and on starting to establish the ties and links that would provide the necessary stability to the Mother's and TH's residence in the UK. Taking matters as a whole and having regard to the qualitative nature of the Mother's and TH's life in the UK during this period and the very limited extent of their integration, I do not consider that either of them became habitually resident here. I therefore find that TH remained habitually resident in the USA throughout this stay in the UK.

73. If I am correct and this first trip to the UK did not effect a change in TH's habitual residence then, as at 3 March 2021 when the Father collected TH to bring him to the UK for a four month stay pursuant to the agreement that he and the Mother had reached in late January, TH was habitually resident in the USA.

74. However, even if I am wrong in my conclusion that TH's first trip to the UK did not alter his habitual residence, I am satisfied that he would have reacquired a habitual residence in USA during the 19 weeks that he spent there between October 2020 and March 2021. During this period the Father remained committed to the parties' original joint intention of making a home for their family in the UK. In contrast, by late November, the Mother was having second thoughts and wishing to stay in the USA, if not forever, then certainly for an indefinite period.

75. For the Father, Mr Devereux QC sought to argue that the life of the Mother and TH during this period was too unsettled and chaotic for TH to have acquired habitual residence in the USA. However, I accept Ms Lennox's submission that this was effectively a resumption by the Mother of her previous life in the USA. She already had deep roots and network of family and friends in the USA, having lived there for her entire life, and upon her return she re-inserted herself back into this life. She moved back into the same house that she had previously occupied with her parents and reconnected with her friends and wider family. Even if the Mother had become habitually resident in England during her short stay there, I consider that she would have become habitually resident in the USA again within a few weeks of her return; certainly before the date of the agreement with the Father in late January or the date in March when the Father collected TH and brought him back to the UK pursuant to that agreement. Throughout this period the Mother remained TH's primary carer and I am satisfied that TH's habitual residence would have followed that of his Mother during this period. Thus, even if he had acquired habitual residence in the UK during his earlier stay here, I am satisfied that he would have reacquired a habitual residence in the USA at the same time that his Mother reacquired hers.

76. The final question that I then have to consider is whether the circumstances of TH's return to the UK led to him acquiring (or if I am wrong in my earlier conclusions – reacquiring) habitual residence in England and Wales at some point between 3 March and 28 June 2021. The parental intention behind this visit is quite clear. Both parents were agreed that this visit should last for four months only and that thereafter TH should spend four months with each parent on an alternating basis.

77. I accept that, again, there was an element of integration by TH during the period from his return to the UK until the date of wrongful retention on 28 June. During this period the Father (who is himself plainly habitually resident in England and Wales) had day to day charge of his care; TH remained registered with a GP here; and he has attended nursery.

He has also had contact with his paternal grandparents and with his sister much as he did during his previous visit. However, he was not simply stepping back into the life that he had experienced during his previous trip to the UK. His Father had moved house and his Mother had not accompanied him. There is also limited evidence of wider integration into the community (something which may again have been difficult as the UK was emerging at this time from a further set of lockdown restrictions). Although TH has been attending nursery in England, given his age, I do not accept that this carries the same weight in establishing integration as attendance at school might do with an older child. Likewise, the peripatetic nature of his life has meant that since September 2020 he has been registered with doctors on both sides of the Atlantic, so this is not a factor which carries significant weight.

78. Moreover, throughout this period the Mother (who was TH's primary carer throughout the first year of his life, and to whom he was supposed to have returned at the start of July) has remained in the USA, living in the same home with the maternal grandparents in which TH spent the majority of the first year of his life.

79. I recognise that matters are relatively finely balanced and that it is the stability rather than the permanence of the child's residence that grounds the concept of habitual residence. However, conducting the child-centred global analysis that I am required to undertake and having regard to all the circumstances of this case, including in particular the parties' mutual intention that TH's stay in the UK should be for a limited period of 4 months, the Mother's established role as his primary carer and the relatively limited nature of the factors relied upon by the Father as founding integration in the UK during this period, I do not consider that as 28 June this year there had been a sufficient degree of integration by TH into a social and family environment in England such that his residence here had become habitual.

80. I will test this conclusion by considering the alternative. If (contrary to my decision above) the degree of integration experienced by TH between 3 March and 28 June this year was sufficient for him to have acquired habitual residence in England and Wales, then it seems likely that if the agreement between the parents had been implemented and TH had shuttled back and forth between his parents every four months then this would have led to him acquiring (and reacquiring) habitual residence in the UK and the USA with every move. Such a conclusion would be contrary to the notion that that habitual residence is linked to the stability of the child's residence and reinforces my view that the particular circumstances of TH's life in England between 3 March and 28 June were not sufficient to lead to a change in his habitual residence.

Conclusion

81. Stepping back from the detail of the trees to look at the overall shape of the woodland in this case I am satisfied that throughout the first year of his life TH's habitual residence will have followed that of his primary carer, the Mother and that as at 3 March 2021

when he was brought to the UK by the Father he was habitually resident in the USA. Given the particular role of the Mother in his life, the specific and limited basis upon which the parents jointly agreed that TH should travel to the UK on 3 March and the relatively limited factors relied upon by the Father as establishing habitual residence since 3 March, I am satisfied that TH remained habitually resident in the USA when he was wrongfully retained by the Father in the UK on 28 June of this year.

82. In the circumstances I will make the order sought by the Mother for TH to be returned to the USA. The Father does not seek any protective measures, and I am satisfied that none are required to safeguard TH in the USA pending an on-notice hearing of proceedings before the courts of the US State in which the Mother resides. I will invite counsel to agree a minute of order for my approval.