IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2021] EWHC 3626 (Fam)

No. FD19P00343

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 17 November 2021

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

Before:

MR JUSTICE HOLMAN

(**In Public**)

B E T W E E N :

NP — Applicant

- and -

DP — Respondent

(Hague Convention; abducting parent refusing to return)

REPORTING RESTRICTIONS UNDER s.97(2) CA 1989 APPLY

MR C. HAMES QC and MS C. BAKER (instructed by The International Family Law Group LLP) appeared on behalf of the applicant.

MR J. TURNER QC and MISS M. HOLMES (instructed by Miles & Partners) appeared on behalf of the respondent.

J U D G M E N T

(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1 This is an application made pursuant to the Hague Convention for the return of a boy, now aged nearly 4½, to the United States of America. The circumstances of the abduction were grave. The mother removed the child from Illinois to England on 20 April 2019. She initially retained some contact and communication with the father until early July 2019, but then deliberately and effectively went underground and into hiding for two years. She only revealed the whereabouts of herself and the child, or engaged in these proceedings, on 14 July 2021. The mother says that, when she first travelled here with the child in April 2019, she had return flight tickets and that her initial intention was only to stay here for a week or so. She says that it was only later, she says during July 2019, that she formed an intention not to return; but whether this is technically a case of wrongful removal or of wrongful retention makes no difference to outcome.

2 Regrettably, the relationship between the parents is very conflicted indeed. I was told on the first day of the hearing last week, when both parents were present in the courtroom, that that was the first time that they had been in the presence of each other since before April 2019. Although these are summary proceedings, there are over 1,000 pages in the three so-called core bundles, a further almost 500 pages of documents from proceedings in America in a supplemental bundle, and about 500 pages of authorities. The primary statement of the mother, dated 17 September 2021, itself extends to 72 pages and 305 paragraphs. It is immensely detailed, and I described it as reading more like an autobiography than a statement, a description with which her leading counsel, Mr James Turner QC, did not demur and which, indeed, he adopted. In short, as a summary application under the Hague Convention, this litigation has spiralled out of control and culminated in a three-day hearing.

3 The essential legal framework is straightforward. It is not in issue that immediately before the removal or retention the child was habitually resident in the United States of America, in

the state of Illinois, where he had always lived. The father had rights of custody and was actually exercising them at the time of the removal or retention. This is a clear and straightforward case in which I must order the return of the child under Article 12 unless the defence under Article 13(b) is established by the mother, who opposes his return. That is, that there is a grave risk that his return would expose the child to psychological harm or otherwise place him in an intolerable situation. A risk of physical harm is not alleged in this case.

4 Despite the length of time that the child has been here, the so-called defence of settlement under the second sentence or paragraph of Article 12 is not in point in the present case, since the father commenced his proceedings very promptly on 28 June 2019, a little over two months from the earliest date (20 April) of wrongful removal or retention.

5 The essential facts and chronology can also be quite shortly stated. Both parents are of Asian descent. The father is now aged 46. He was born and brought up in the United States of America and is a US citizen. The mother is aged 43. She was born and brought up in England and is a British citizen. In 1996, when she was about 18, the mother, together with her parents, emigrated to the USA. She became also a US citizen and she lived there until April 2019.

6 Both parents were university educated. I have not heard any oral evidence from the father, but I have from the mother, and there is no doubt that she has high intelligence. Until she married, she had a successful career as an analyst and commanded a high income. The father works in the successful hotel business founded by his own parents.

7 The father was first married to a wife, K, by whom he has a daughter, also K, who is now aged 11, but that marriage was dissolved, and in July 2015 the father and the mother married. Their only child, M, was born in June 2017. He is a dual British and US citizen. It is a very sad fact that the parents had already separated even before M was born. Apart

from two brief occasions at the hospital of birth, the father did not, in fact, see M until 2018. However, on 8 August 2017, just two months after the birth, the father commenced proceedings in the local McLean County Circuit Court for a divorce and for "majority parenting time" with the child and "majority parental decision making".

8 The mother applied for those proceedings to be transferred to another court more local to where she lived with her parents, about 100 miles from the McLean Court, but still within the state of Illinois. However, her application was refused. Then, if not before, the mother developed a perception, which has subsequently intensified to the point of an obsession, that the family judges at McLean County Court, and in particular Judge Sarah Duffy, to whom the case is assigned, are biased against her.

9 The mother's perception has been bolstered, she says, by a number of facts or events. The same judge refused an application by K, the mother of K, for permission to relocate internally within America to another state. That resulted in K moving from living with her mother to living with her father, an outcome which this mother considers the father engineered by many years of relentless and oppressive litigation in the McClean County Circuit Court. The judge in that court is privy to evidence and material in the case concerning K which has not been shared with the mother in this case, which the mother considers to be unfair.

10 The mother perceives that there is a cosy relationship between the judge and the father's local attorney, whereas her previous attorneys were not, she feels, accorded the same respect. She was disturbed when, at one hearing, the judge heard the attorneys in chambers from which she was excluded, and her attorney later reported to her that negative allegations had been made against her in that private setting. She was concerned when the judge selected a particular evaluator (corresponding to a Cafcass reporter), whom the judge

allegedly referred to as “my friend”. She increasingly felt that the father would litigate against her relentlessly just as he had, she says, against K.

11 All these concerns have been hugely intensified when, in June 2021 (at a time when, of course, the mother was not participating in the proceedings in America), Judge Duffy made an order granting sole custody of M to the father, and made what she considers to be a swingeing financial order against her. She says that it stripped her of all, or most, of her substantial premarital assets (about US$500,000) conserved from her years of work before the marriage, which, she says, should not have been available for distribution at all. Further, she was ordered to pay to the father arrears of child-support backdated to April 2019 since when, patently, the father had not been supporting the child at all as he did not even know where the mother and the child were.

12 I should make crystal clear that I neither express, nor have, the slightest view of my own about any of the matters upon which the mother’s complaint and perception of bias are founded. The critical point is that the mother does genuinely and undoubtedly now have this consuming belief that she could never obtain any fair hearing before the McLean County Circuit Court, whether from Judge Duffy or from any other judge of that court. This has very recently culminated last week in the mother filing a complaint against Judge Duffy with the Judiciary Board of Illinois. I have seen the formal complaint form. I have not read the attached documents which describe the substance of the complaint which, the mother said, is another very substantial document on the scale of her autobiography statement.

13 After the mother went underground in England, she lived at a number of different addresses with friends or relatives in different parts of the country, but she is now living, together with her own recently widowed mother (who is only aged about 64 and is fit), at the home of an aunt in Essex.

14 The mother became increasingly aware that the development of M appeared to be delayed and not completely normal. Even before she left the United States, she was arranging for him to have therapy for speech and language delay. He has now been assessed within these proceedings by a jointly instructed child and adolescent psychiatrist, Dr Joanna Sales FRC Psych.

15 There is a report from Dr Sales dated 29 September 2021 and she also gave oral evidence. She observed M at some length and performed various standard tests which she describes. Her conclusion and opinion is that M appears to have a profile of difficulties in keeping with autistic spectrum disorder (ASD). Dr Sales says that there are also concerns about his speech and language development which may be part of ASD or may not. He is also a very active and fidgety child. It is too early to state whether he meets the criteria for a diagnosis of attention deficit hyperactivity disorder, but ADHD and ASD are often co-morbid. Dr Sales considers that M's principal attachment will be with his mother with whom he has always lived, and that:

> "Separating him from his mother would cause profound damage to [M's] emotional development. As a child with autistic traits/autistic spectrum disorders, [M] would be more affected by changes to his routine and living arrangements than a child without such difficulties. It would appear that [M] is a child of habit, with rigid thinking, a desire for routines, and high levels of anxiety."

16 At paragraph 6(ii) of her report, now at bundle page D26, Dr Sales says that:

> "...the change of living circumstances, should he return to the USA, may prove exceptionally difficult for him, increasing his levels of already high anxiety, even if he lives with his mother once there. Separating [M] from his mother, with whom he has lived since birth,

would be extremely harmful for him. Any child would suffer significant emotional damage under such a circumstance, but for a child with [M's] range of problems it would be even more damaging and this would undoubtedly lead to an exacerbation of emotional and behavioural problems that would be very difficult to address.

In terms of what can be done to mitigate harm, in short, the answer is 'nothing'. Removal from his mother's care would be disastrous, and nothing can be put in place to make it easier for [M]. Therapeutic intervention would not put right the loss and trauma [M] would experience if he left his mother's care. Additionally, for an anxious child exhibiting difficulties in keeping with ASD, he is likely to be significantly affected by his parents having different approaches to childcare, and by experiencing different styles of parenting. [M] needs structure and stability in everyday life, and frequent toing and froing between parents would generate even more anxiety for him."

17 Dr Sales gave oral evidence. She said that she is absolutely convinced that M has neurodevelopmental difficulties. Speech and language difficulties are a core part of ASD. They are probably not environmental and probably result from inherited genetic pre-disposition. She said that she is confidently saying that M has a range of difficulties that are indicative of ASD. She said that the diagnosis of ASD does mean that M is much more likely to have difficulties associated with change and lack of routine. She said that ASD is also a risk factor for a range of emotional problems. She said that if M returns, it is absolutely imperative that his mother goes with him. If he goes without his mother, the impact on his emotional development would be catastrophic. She said that the impact would be far greater than the impact of leaving the United States two and a half years ago with his primary attachment figure. She said that even if he is not ASD, the impact of removing him

from his mother would be catastrophic. She said that his relationship with his father is not equal.

18 In her written report, Dr Sales used the word "disastrous". In her oral evidence, she used the word "catastrophic" more than once. Whichever word is used, if indeed there is any perceptible difference between the two words, the expert evidence in this case is clear. M cannot, without very grave harm, be separated from living with his mother, whether here or in the USA. In my view, on the basis of that evidence, which is the informed and observationally-based expert evidence in this case, if M were now to be separated from daily living with his mother, there is a grave risk, if not a certainty, that he would be exposed to very grave psychological harm and placed in an intolerable situation

19 On behalf of the father, Mr Christopher Hames QC could not, and did not, submit otherwise; but the mother has categorically stated, and now repeated on two separate occasions in sworn oral evidence, both on the afternoon of Tuesday 9 November and again during Thursday 11 November, that even if M is ordered to be returned to the USA, she will not go with him. So this case raises, in very sharp focus, the dilemma if an abducting parent, usually a mother, asserts that she will not, and, she says, cannot, return.

20 This is a topic which was recently addressed on very different facts by the Court of Appeal in *Re C (A child) (Child Abduction: Parents' Refusal to Return with Child)* [2021] EWCA Civ 1216 in which judgment was handed down on 10 August 2021. In that case, the abducting mother had said in writing that she would not return to France with the child, but the judge, although he did not hear any oral evidence from her, concluded and held that, in fact, she would.

21 So far as is material to the present case, the focus of the appeal in that case was upon the judge concluding that, in fact, the mother would return to France despite not hearing oral evidence from her. In the present case, however, I have heard targeted oral evidence from

the mother, not once but twice. On the first day of the hearing, Mr James Turner QC, on behalf of the mother, asked me to hear short oral evidence from her on the issue of her intentions. For reasons which I gave in a short ruling that day, I agreed to do so. Although the welfare of the child is not the paramount consideration in proceedings under the Hague Convention, it is still the focus of such proceedings. When Dr Sales had predicted so "disastrous" a consequence for the child if he was separated from his mother, it seemed to me that I should permit the mother to give her evidence and that it should be tested on the anvil of cross-examination by Mr Hames. Further, notwithstanding the observations of the Court of Appeal in paragraphs [59] - [61] of the judgment in *Re C*, I personally consider that it is potentially unfair and unjust to make a finding against a parent on an issue such as this without, if she wishes, permitting her orally to explain her state of mind and intentions in her own way and for herself.

22 So I heard the oral evidence of the mother on the first day of the hearing. I then heard sustained oral submissions from Mr Hames, and then from Mr Turner, throughout the second day. There was then an exceptionally late development. By an email sent to the mother's team at 16.09 on 10 November 2021, in what I had thought were the dying last few moments of the hearing prior to judgment, the father proposed a raft of proposals and "protective measures" going far beyond anything he had previously offered. I inevitably had to give to the mother an opportunity to consider them overnight and to discuss them with her legal team. The following morning, I was told by Mr Turner that there was a range of objections or problems with them, including that they still did not give to the mother the overriding protection that she sought, that this case would not and could not ever again be heard in the McLean Circuit County Court. Mr Turner said that his instructions were that the mother would still refuse to return even if I ordered the return of M.

23 It seemed to me that fairness to both parents, as well as the welfare of the child, required that in this situation the mother should have a further opportunity personally to explain her

position, and that Mr Hames should have a further opportunity to cross-examine her on the basis of the protective measures which the father had so recently proposed, including some yet further ones first communicated by an email at 09.46 on Thursday 11 November. So I heard from the mother again.

24 Since there was some criticism of the first instance judge in *Re C* that he had not expressly referred to the relevant parts of the "Guide to Good Practice" under the Convention, I make plain that I have been referred to, and have expressly read, the whole of paragraphs 63 – 66, and the passage at paragraph 72 of the Guide which states:

> "**Unequivocal refusal to return**
>
> 72. In some situations, the taking parent unequivocally asserts that they will not go back to the State of the habitual residence, and that the child's separation from the taking parent, if returned, is inevitable. In such cases, even though the taking parent's return with the child would in most cases protect the child from the grave risk, any efforts to introduce measures of protection or arrangements to facilitate the return of the parent may prove to be ineffectual since the court cannot, in general, force the parent to go back. It needs to be emphasised that, as a rule, the parent should not - through the wrongful removal or retention of the child - be allowed to create a situation that is potentially harmful to the child, and then rely on it to establish the existence of a grave risk to the child."

25 It is a truism in all family law cases of this general type that they concern *this* particular mother or wife, *this* particular father or husband, and *this* particular child or children.

Indeed, in the case of *Re C* itself, the judge at first instance had said in paragraph [34] of his judgment (cited by the Court of Appeal at paragraph [22] of their judgment) that:

> "I must assess the mother's evidence and seek to determine the reality of what she will do. Will she return to France or not? The test is not what it is reasonable for her to do."

26 There is no criticism of those words by the Court of Appeal. The objective rationality of an asserted decision not to return is relevant in assessing the reality of what she will do; but, in the end, the court has to assess what the particular parent in question will or will not do, whether rational or not.

27 I am very alive to the point made in the last sentence of paragraph 72 of the Guide to Good Practice quoted above, noting the words "as a rule". I am also very alive to footnote 108 to paragraph 72 which states that:

> "...allowing for the return mechanism to deactivate automatically on the sole account of the refusal of the taking parent to return would subject the system designed by the international community to the unilateral will of the defendant."

28 However, it is necessary to emphasise the words "deactivate automatically" in that footnote. In the last analysis, this child has the parents whom he has; and if, on the facts and in the circumstances of the case, there would be a grave risk of psychological harm, I cannot expose him to that just to vindicate the will of the international community.

29 During her oral evidence on the first day of the hearing on Tuesday 9 November, the mother presented as a very cowed, oppressed, and supremely anxious personality, shaking uncontrollably throughout all her time in the witness box. She said adamantly that she is not prepared personally to return to the USA. She said that she had now read all the American

court documents and that she is convinced that the father will take M from her. She said that his actions have continued to show that. He sought and has obtained sole custody. He has obtained an order which risks her being arrested in America. Judge Duffy is the judge. There is much social media coverage in America, engineered by the father or his lawyers, which describes her as a "kidnapper". She said that Bloomington and the area in which the father lives in Illinois is a small town and everyone would know that she is a kidnapper. It would be difficult or impossible for her to obtain any employment, and difficult even to make any friends. Additionally, she said that she has found it impossible to obtain any attorney who is willing to act for her in the McLean County Court, as no attorney from outside that area is willing to travel there. She said that she has contacted everyone she can, even President Biden, and has been completely unable to obtain any legal representation.

30 Further, the mother said that as the father has now seized most of her funds, she cannot afford to pay for a lawyer. She fears that upon arrival in the United States, she is at grave risk of M being taken from her, and of she herself being arrested and jailed. She said that the FBI has an active case in relation to her and despite making many efforts on her part, she has been unable to obtain any information from the FBI, still less any assurance, that she will not be arrested. She said despairingly:

> "I don't see any point in going back. I will be sitting in jail. M will be taken from me."

She said that the father will continue to get full custody before the same judge.

31 When cross-examined by Mr Hames, the mother did concede that if there could be a guaranteed change of court venue to either the state of Massachusetts, in which she formerly lived, or the state of Georgia, in which her brother does live, she would consider returning to one of those states, provided sufficient funds were returned to her, or provided, for accommodation and support. The impact of that concession was, however, effectively

negatived or blunted by the later concession of Mr Hames himself, during his submissions, that if the mother returned to any part of the USA, she would, under federal law, inevitably be hauled back to Illinois and the jurisdiction of the McLean County Court where the proceedings in relation to the child are currently progressing.

32 Mr Hames said that the father would very strongly oppose any internal relocation to any other American state. As Mr Hames himself accepted, when the mother had applied in September 2017 at the outset of the American proceedings for a transfer, even within the state of Illinois to La Salle County (where the mother was living), that was opposed by the father and not allowed by the McLean court.

33 Mr Hames submitted that, on the balance of probabilities, the mother would, in fact, return to the USA and to Illinois if an order for return of the child is made. He submitted that the mother is deliberately adopting a tactical position and saying that she would not return, just as (as she has admitted) she deliberately went underground for a prolonged period in the mistaken belief that she would thereby create a defence of settlement for the purposes of Article 12 of the Convention. Mr Hames submitted that her biggest fear of all, which he described as her "primaeval fear", is that of being separated from her son, and that, therefore, whatever she now says, she would, in fact, return with him if he is ordered to be returned.

34 As I have described, in the dying moments of last Wednesday afternoon, the father emailed outline or bullet point proposals which included that he would withdraw all his applications from the McLean County Court and obtain the discharge, or setting aside, of all custody and financial orders. He proposed that both parties should undertake not to issue any further applications in the McLean County Court for twelve months, although he would agree to the mother applying in some other court (but within Illinois) for permission internally to relocate. These proposals have since been fleshed out into a fully drafted draft order

circulated by the father's counsel since the hearing ended last week, but the essence is the same.

35 The following morning, last Thursday, 11 November, the mother gave further sworn oral evidence as I have described. I should record that she presented as a very different personality. She was not shaking but was controlled and forthright. Her intelligence was very apparent, as well as her total grasp of the facts of the case. In keeping with her career as an analyst, she described herself as a very data analytical person. She remained adamant that she would not return to Illinois even on the revised proposals and terms. She said that her perception and understanding is that the post-judgment venue cannot be changed. She still has no money with which to litigate and cannot obtain any lawyers. She said that she would not be able to work in Illinois because of the online kidnapping publicity. She would be in constant litigation with the father, which would be emotionally draining for her.

36 The mother said that the father still has not even comprehended what Dr Sales has reported with regard to ASD and the impact of separation of M from her. She said that everything remains contentious. She simply could not envisage living in the same country as him. She has no money and would not have any freedom. She said that the mental and emotional strain on her would be too great. Apart from her brother who lives in Georgia, her whole extended family are now here.

37 The mother said that she does not make the decision not to return lightly, but that she cannot be there for M if she is mentally and emotionally drained. She said that she has lost so much weight and cannot sleep. She said that if she were in Illinois, there would be considerable litigation about parenting time, schooling, child support, and any topic under the sun. She said that the father will litigate to the nth degree. She said that she has tried to mediate with him ever since M was born. He told her that he was too busy. Then he served the divorce papers. She said that she and her parents have tried to mediate out of court but

that was denied. She said that when she came out of hiding on 14 July 2021, she wrote through her solicitors that she was open to negotiations, but that he had replied that he would negotiate there in the United States but not here.

38 The mother said during cross-examination that if there is a court order for his return, she would let him go back without her. She said that if this court makes the order for return, she has done everything in her power. She said that she had done everything she possibly could, but if the court makes the decision for him to return, she will not go. She said:

> "You are talking about going back to McLean County."

39 The mother referred to the fact, as I have already mentioned, that she has now filed a complaint against Judge Duffy. She said that it is a complaint about her conduct overall and that:

> "I don't want other women to go through what I've gone through."

40 Under Article 13(b), the onus is upon the mother, who opposes the return of the child, to establish that there is "a grave risk" that his return would expose the child to psychological harm or otherwise place him in an intolerable position. In the present case, Dr Sales predicts, and I accept, that if the mother and the child are separated, the consequences for the child would be very grave. The gravity of the psychological harm cannot be disputed, and has not been disputed by Mr Hames. The question is, therefore, the gravity of the risk of that harm occurring because the mother did not, in fact, return with him. In my view, this is not simply an issue on the balance of probability. Before the defence under Article 13(b) is established, there must be a grave risk or high degree of likelihood that the mother would do as she says and would not, in fact, return even if the child is required to return.

41 This is not an easy decision for me, but having now seen and heard the mother give sworn evidence, not once but twice, I have concluded, and I so find, that there is, indeed, a high

likelihood that the mother would do as she has said and not return, even if the child is ordered to be returned.

42 It may be said, as Mr Hames did say, that surely this mother, whose "primaeval fear" of separation is so strong and who has fought so tenaciously for her child, would not now hand him over to return to the USA without her. However, that is an argument which cuts both ways. In my very long experience of cases under the Convention, both at the Bar and now for twenty-six years on the Bench, it is, in fact, rare that a parent (usually a mother) will go to the lengths of saying, on oath, that even if the child is ordered to return, she will not do so. The only usual exceptions to that are cases where there is some very compelling reason which now shackles the parent personally to this country (the most obvious example being where a mother has since given birth to another child whose father lives here and will not agree to his child being removed).

43 This mother is not saying that she is shackled here. She is saying that she will not personally return to America and, in particular, to the state of Illinois. She gives reasons for her decision which are intelligible, have some basis in primary facts, and are not capricious. For example, she is not saying that she will not return because she does not like the colour of Judge Duffy's hair. She is saying that she will not return because of the content of orders which Judge Duffy has, indeed, made.

44 In my judgment, this mother, who is intelligent and fiercely analytical, has fully assessed the situation as she sees it, and has made up her mind. Although she did not say as much in terms, and these are my words not hers, she has convinced herself that if this child leaves England and enters the United States of America at all, the father has already won and she has lost, and she would rather hand him over now than face a torrent of prolonged litigation with, she believes, only one inevitable outcome. It would exhaust her and do yet more damage to the child. Further, she continues acutely to fear that she is at a significant risk of

arrest and detention on, or soon after, arrival in the United States. No assurances such as those proposed in the emails last week or in the more fleshed out draft order, which has since been circulated by the father's counsel, will reassure her otherwise. As Mr Turner put it during his oral submissions, if I order a return of the child:

> "She sees handover as inevitable and it is better to do it in a managed way here than in an unmanaged and possibly very abrupt way there."

45 For these reasons, I am satisfied, on the unusual and very specific facts of this case, and having heard oral evidence from the mother as I have described, that the defence under Article 13(b) is, indeed, established by the mother. There is a grave risk that the return of the child (viz forthwith in these summary proceedings under the Convention) would expose him to the grave psychological harm of separation from his mother. Although that conclusion only opens the door to the exercise of a discretion and Article 13(b) employs the words "not bound to order return", it is a discretion which, realistically, can only be exercised one way once that conclusion has been reached. The Hague Convention is not an instrument for exposing children to a grave risk of harm or otherwise placing them in intolerable situations.

46 By her "Amended answer on behalf of the respondent mother" dated 20 October 2021, which I understand to have been drafted by, although not signed by, counsel, the mother set out what are described as:

> "...the component bases of the mother's defence, individually and cumulatively..."

Mr Turner adopted these by his written position statement dated 8 November 2021 and by his oral submissions.

47 I do not reject them, but I do not base my decision upon them. In the forefront, the answer relies upon "delay", albeit that it was induced by the mother, and a period of two and a half years during which, as a matter of fact, the child has been in England (see also paragraph 291 of the mother's long statement). If the child was older and/or had been living in a more stable and settled situation here throughout that period, then the argument might be more persuasive. However, even now, M is only aged not quite 4½. He has never been at any school here. He has lived at a considerable number of addresses in a range of different areas and situations, and he has only lived at his present address since last July.

48 The mother additionally relies as objective matters upon financial and accommodation problems and the problem of obtaining and funding legal representation. If she herself was expressing a personal willingness to return, then these are matters which are capable of resolution, and routinely are resolved, by terms and undertakings.

49 The mother puts forward also an objectively based allegation of bias on the part of the McLean County Court, but it must be very rare indeed (I avoid saying "never") that a court in the requested state can, in proceedings under the Hague Convention, make any objective assessment or judgment as to bias on the part of a court in the requested state. As I have already stated, I cannot and do not do so in the present case.

50 Accordingly, the reason why I do not order a summary return in the present case is squarely that I accept the evidence of the mother that she herself would not return, and that that would be "disastrous" or "catastrophic" for this child. That is a conclusion reached on very limited and partial evidence in summary proceedings. If the father wishes to do so, it is open to him to apply in English private law proceedings under the Children Act 1989 for the return of the child to the United States and, if he wishes, for an order that the child resides with him there. In such proceedings, there would, of course, be much more intense and protracted oral and other evidence, and a much fuller assessment of the personality of each

parent and of their mutual interaction than I have been able to make. It is, however, my fervent hope that both these parents will learn from this destructive and painful experience and engage in the mediation which the mother has already proposed and offered, but the father has currently declined, in order to resolve their differences.

51 By an order dated 14 July 2021, as a condition of staying an earlier collection order, the mother submitted herself to a severe curfew and other restraints backed by electronic tagging and daily reporting to the local police station. Those conditions persist. They are no longer justifiable and must now all be set aside and replaced by an order, in relatively standard form, which prohibits the removal of the child from England and Wales, requires the mother to notify any change of address, and requires the passports of the mother and child to continue to be lodged with the Tipstaff so as to maintain stability if the father wishes to commence freestanding proceedings under the Children Act 1989.

52 I am sure Ms Baker and Mr Hames will rapidly and easily be able to draft an order which gives effect to all of that.

CERTIFICATE

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