Neutral Citation Number: [2022] EWHC 2961 (Fam)

Case No: FD22P00535

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/09/22

Before :

WILLIAMS J

- -

Between :

Q	**Applicant**
- and -	
R	**Respondent**

- -
- -

MR M GRATION KC and MISS A CAMERON-DOUGLAS (instructed International Law Group) for the **Applicant Mother**
DR C PROUDMAN (instructed by Nelsons Law) for the **Respondent Father**

Hearing dates: September 21st, 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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WILLIAMS J

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

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MR JUSTICE WILLIAMS:

1. I will give a brief *ex tempore* judgment. The time is now 3.37pm at the conclusion of this one-day hearing of an application made under the Hague Abduction Convention by the mother, Ms Q, for the return of the parties' son, E, who was born on [a date in] 2017 and who is just now five and a half years old. The father of E is Mr R. The mother is represented today by Mr Gration KC, leading counsel, and Miss Cameron-Douglas, junior. The father is represented by Miss Proudman, counsel.
2. The circumstances in which the application for the summary return of E come before the Court are these. E is a British and Ukrainian national; his mother is Ukrainian and Hungarian, and his father is British and South African. In [a date in] April 2022, E came to this country from Ukraine. He arrived with his mother on visas granted under the family visa scheme, one of I think two visa schemes which were put in place after the invasion of Ukraine by Russia in late February of this year. The parties were able to use that scheme because the father lives and works in the UK and has done, as far as I can tell, for some considerable time.
3. The mother arrived and went to live, with E, with a host family in [southern England]. E started in reception at a local school, and the mother obtained work at another local school, she by occupation being a 'Teaching English as a foreign language' teacher. The father continued to live in the Midlands, but travelling down to Watford to work, and E saw his father periodically.
4. However, that situation persisted until mid-June when the question of E returning to Ukraine arose; it looks from the evidence as if that was in the context at that point, of him returning for the summer, though, as I will turn to later, there is some lack of clarity from an evidential point of view as to precisely the agreement between the parties both when E arrived and thereafter.
5. However, as a result of the father's concerns that the mother was going to take E back to Ukraine, he commenced proceedings on 24 June 2022 by a C100 issued in the Reading Family Court. That resulted in an order being made by District Judge Harrison on that same day, which included a prohibited steps order preventing the mother from removing E from the jurisdiction. Thereafter, further orders made by Her Honour Judge O'Neill and His Honour Judge Moradifar lead to those proceedings being stayed as a consequence of the mother subsequently indicating her intention to

issue an application under the 1980 Hague Child Abduction Convention, which I think was eventually issued on 29 July.

6. On 5 August, that application came before Sir Jonathan Cohen KC sitting as a High Court judge. The mother was represented by Miss Cameron-Douglas and the father was represented by Miss Proudman, and directions were given identifying the issues in the case as being whether E was habitually resident in the Ukraine prior to the retention on the 24 June. Secondly, as to whether his return to the Ukraine exposed him to a grave risk of harm or other intolerable situation by reason of the war, the alleged suspension of civil law, and the possible termination or rupture of his relationship with his father.

7. Sir Jonathan Cohen timetabled the matter for a one-day final hearing making provision for the mother to file a schedule of protective measures, for the father to file his answer in a witness statement, and for the mother to file her witness statement in response. The matter was listed for a final hearing, time estimate one day, today, 21 September.

8. In preparation for today's hearing, I have been provided with a bundle of documents totalling 345 pages, and I have been provided with some further additional documents today via Miss Proudman in the form of maps, text message, and further newspaper articles dealing with developments overnight, effectively with President Putin announcing the call up of 300,000 reservists, and statements as to the possible resort to nuclear weapons if Russian territory integrity was threatened.

9. At the beginning of the day, I have had the opportunity to read for about an hour which enabled me to digest the parties' position statements, or skeletons, and their witness statements, and over the course of the last three hours I have heard submissions from Mr Gration and from Miss Proudman in support of their contentions. Although, the burden of proof lay on the mother in respect of the habitual residence, and on the father in respect of the Article 13(b) exception, we adopted a process by agreement in which Mr Gration outlined his case on both issues, and Miss Proudman then set out her stall on behalf of the father and Mr Gration responded briefly, following which I have moved into the delivery of this judgment.

10. Self-evidently, given the limitations on time and the very extensive documentation which have been put before the Court, I have not been able to read every page of the bundle and absorb every fact set out in the documents. The High Court has said on many occasions that the evidence in these cases given their summary nature should be

limited. However, in this case as in many others, the parties have put very extensive evidence before the Court; the father's statement running to 150-odd pages, and the mother's evidence running to 100-odd pages. Having said that I have not been able to read all of that material, I think that the issues ultimately which are engaged are not complex, either legally or evidentially.

11. I shall not set out a lengthy exposition of the law at this point in the afternoon. If the case goes any further, then I will consider inserting into the transcript of the judgment a summary of the relevant provisions of the Hague Convention, and a summary of my understanding of the law in terms of how it applies. Having now read this transcript I do not consider that it is necessary for me to further expand on the legal framework. Although the issues of habitual residence and grave risk of harm have generated a considerable body of case-law it seems to me that the principles that apply in a case such as this and bearing in mind these are intended to be summary proceedings, that what follows in terms of the law needs not be further burdened by extensive citation of the authorities.

12. The Convention, of course, applies in respect of a child who was habitually resident in a Contracting State immediately before their wrongful retention; Article 3 identifies that a retention is wrongful if it is in breach of rights of custody. As it happens in this case, there is no issue raised by the father as to whether the mother had rights of custody, nor whether there was a retention in breach of those. It is accepted that the actions of the father in seising the court on 24 June and applying for a prohibited steps order would amount to a wrongful retention if, I conclude E remained habitually resident in the Ukraine at that time. Of course, if he was not habitually resident in Ukraine at that time, the wrongful retention issue would be redundant.

13. Article 12 of the Convention provides that a child who has been wrongfully retained where less than a year has elapsed since the date of wrongful retention, that the authority concerned shall order the return of the child forthwith. Article 13 identifies a number of exceptions, one of which is that the Court is not obliged to return the child if doing so would expose the child to a grave risk of harm or other intolerable situation.

14. The law in relation to habitual residence has been considered on several occasions in recent years by the Court of Justice of the European Union and the Supreme Court, as well as the Court of Appeal and the High Court. The essential factual determination

for the Court to make is whether that there has been demonstrated a sufficient degree of integration into a social and family environment.

15. It is a question of fact, though the habitual residence see-saw endorsed by Lord Wilson in *Re B* [2016] UKSC 4 is a helpful indicator, bringing with it as it does the need for a comparative evaluation where there are two competing habitual residences concerned for the Court to weigh the objective and subjective markers which support the integration of the child into, in this case, Ukraine, or alternatively England as of 24 June 2022. *Re B* identifies that where possible the Court should seek to identify a habitual residence rather than reaching a conclusion that the child has no habitual residence.

16. Thus, the ultimate test that this Court has to undertake is a comparative evaluation of the extent to which E had roots still in Ukraine despite not being present there, and the extent to which he had roots in England, he having been here for about eight weeks by 24 June. The intentions of the parents of the child are relevant but not determinative in that evaluation of habitual residence. The age of the child and the extent to which he is reliant on his parents is a relevant consideration: the younger the child, the more closely aligned, the more it is likely that their habitual residence would be with that of their primary carer; the older the child, the more possible it is that their habitual residence may diverge from that of their primary carer. However, it is ultimately about the child not the adults.

17. In relation to Article 13(b), that also has been subject to extensive consideration in the Supreme Court and the Court of Appeal, and this court, and has relatively recently been subject to Good Practice Guidance issued by the Hague Convention on Private International law. Ultimately, however, the task that the Court has to evaluate, and in contrast to habitual residence, where the burden lies on the mother to establish habitual residence in Ukraine, the burden relies on the father to establish that there is a grave risk that E's return would expose him to physical or psychological harm, or otherwise place him in an intolerable situation. In this context, "grave" connotes such a level of seriousness as to warrant the term "grave" either in the magnitude of risk or in the consequences, and colour is added to that by the alternative "intolerable", which is a situation in which this particular child in these particular circumstances should not be expected to tolerate.

18. The source of harm can be from any source. In this case, the particular risks are linked to exposure to the risks of armed conflict, risk of being in a legal limbo as a result of

the alleged closing down of the legal system in Ukraine; also, the risk to E of his relationship with his father being at best attenuated, at worse brought to an end, as a result of the mother's alleged hostility, and obstructiveness to the father in maintaining that relationship.

19. The authorities indicate a need to focus upon the circumstances of **this** child returning to **that** country, and the risks which arise on their return and thereafter. Protective measures are a relevant consideration; they can take many forms. Essentially, however, the question the Court should ask is whether any protective measures ameliorate or negate a risk identified, in a concrete or effective way, such as to bring the case below the grave risk threshold identified in Article 13(b). Article 11 of the 1996 Hague Child Protection Convention provides a jurisdictional route whereby protective measures made could become enforceable in the Country of Origin.

20. In practical terms, the Court can approach these issues by asking whether the allegations made by the respondent are of such a nature and of sufficient detail and substance, in terms of evidence, that they could constitute a grave risk. The Court should then consider whether the applicant's evidence, including any protective measures, lead to an evaluation of whether the grave risk remains present or not.

21. In most cases of this nature, the Court cannot undertake a detailed factual enquiry with hearing of oral evidence, and so some care has to be exercised in evaluating documentary and written evidence. However, the Court can still evaluate it to see if a conclusion on the evidence can be reached. In this case, nobody has suggested that oral evidence is necessary for the Court to undertake that process, and I agree that oral evidence would not ultimately have assisted in this process.

22. Thus, it has not proved necessary in this case to hear from the parties. In *Re C (Children) (Abduction Article 13(b))* [2018] EWCA Civ 2834, Lord Justice Moylan emphasised that the Court has to be careful when conducting a paper evaluation, but equally affirmed that that does not mean that no assessment at all about the credibility or substance of the allegations can be made.

23. In the event that an exception is established, the approach to the exercise of the resulting discretion is set out in *Re M (Abduction: Zimbabwe)* [2007] UKHL 55, where the House of Lords confirmed that the discretion is at large; where policy considerations which accompany the Hague Convention will be weighed in the balance, along with any factors relating to the exception which has been established, and any welfare considerations which go to support either a non-return or a return. It

has been recognised that in cases where the grave risk of harm exception has been established, it is quite difficult to envisage a situation where the Court would in the exercise of its discretion order a return, nonetheless.

24. Turning then to the evidence and the parties' submissions on it, as I have already said I cannot hope to set out in detail the evidence which is contained within the bundles, or the detailed submissions made upon it by Mr Gration and Miss Proudman. In relation to habitual residence, the burden is on the mother to establish on the balance of probabilities that E was habitually resident in the Ukraine as of 24 June 2022. Her case, in essence, is that since she returned to the Ukraine in 2017 when E was three months old, she then clearly had made their lives in the Ukraine living in the maternal grandmother's home; the mother working, E attending nursery school, and then building their lives within that community in [town B] in Transcarpathia in the west of Ukraine.

25. The mother says that when Russia invaded Ukraine in February/March 2022, that she and the father were in contact with each other in relation to what, if anything, she and E should do. In the period since 2017, when the mother had returned to the Ukraine with E, his relationship with his father had endured and been sustained through visits by the father to the Ukraine, and by a number, I am not quite sure how many, holidays which the three of them took together in other European destinations.

26. The circumstances in which the mother had returned to the Ukraine, and the circumstances in which E came to live there, and the circumstances in which their relationship ended, and in which the arrangements were made for E to continue to have a relationship with his father, are in some dispute between the parties: the mother saying that she moved back with the agreement of the father; the father saying that she, in effect, retained E in Ukraine at the a conclusion of a visit there.

27. I am unable to resolve the dispute such as it is between the parties, and I think that what is important for the purposes of this element of the case is that the reality is that E, ever since he was not quite a tiny baby but three months old, had lived in the Ukraine. Thus, it is undoubtedly the case that he had a well-established habitual residence in the Ukraine, and prior to him coming to this country in April was about as integrated in a social and family environment in the Ukraine as a five-year-old boy could be. He had the benefit of having a father who had a different nationality and language and was able to maintain a relationship with him, and to pick up and

communicate with his father in English. He was fortunate that his mother taught English as a foreign language and so could support that communication also.

28. However, the most important day-to-day components of his life were undoubtedly in the Ukraine, whether it was his mother most importantly, his physical home, his grandmother, his school, his environment, his friends identified by the mother in her statement, or his cat; all of the elements of a secure habitual residence were present there. Those are relevant when one comes to consider how easily those roots might have been lifted by his move to England.

29. The circumstances in which E came to England, as I say, are also unclear as a result of the differing accounts of the parties given as to the circumstances in which it was agreed he should travel here, and the basis on which that would be. In the mother's case, the invasion of the Ukraine by Russia clearly caused alarm across the country in the early days of that conflict. It was clear that a very considerable number of Ukrainians considered leaving, and indeed, the documents provided suggest that up to 5.7million Ukrainians left the Ukraine as a result of the conflict, with several million more being displaced internally.

30. The mother and father, as I say, give rather attenuated accounts and accounts which are not supported by any contemporaneous documentary evidence which shed light on, really, the nature of the discussions or the nature of any agreement. The mother seems to say that her understanding of it was that they were coming to England temporarily; that seems to carry with it the acceptance that it was for an indeterminate period of time. However, she says that her understanding was that it was agreed that she would be able to return to the Ukraine at such time that she considered it appropriate to do so.

31. The father's written evidence also lacked clarity, although in submissions on his behalf it was said that his understanding was that the mother would come, and it was agreed that she would remain until such time as the war in Ukraine ended. I am not sure that I have seen that in his written evidence but it is not possible for me to resolve that dispute, but nor is it necessary for me to do so because the intentions of the parties in relocating their child from the Ukraine to England is not determinative of the question of habitual residence; it is one of many factors to be considered.

32. The mother's evidence suggests that the risks, certainly by the time she came to England, in Town B were in her mind limited. Indeed, she says that whilst she got her visa in late March or early April, she did not come until [late] April because she chose

to remain to celebrate Easter and her birthday there, which if she is right to suggest, a significant lack of impetus created by a risk that something terrible would happen, but in any event, she came in due course. The father's recollection is that in fact a visa was granted in late April and that she then travelled within a few days, which would suggest a greater urgency in terms of the mother feeling at risk and needing to get out as many others did.

33. No documents have been provided to me by either side which shed further light on that, but the end result is that the mother and E travelled to England in April, having identified a host family who were willing to take them under the family visa scheme. The email from that family indicates that they were aware that the mother and father were not an item, and that it was never intended that the mother and father would live together, but rather that the mother would live with E with a host family when she was here.

34. After their arrival, they had been housed it would seem by the host family in a room. The host family have said that the room's availability would come to an end in October, that whilst the mother has been here, E was enrolled in a local school, I think, on 16 May. I was told the mother obtained work at another school, and E began a relationship in England with his father, although I am not sure that I have been given the details of quite how many visits took place. I think it is accepted that the visits have taken the form of what we would have called visiting time or visiting contact, rather than E going to stay for extended periods of time overnight or prolonged holidays with Father.

35. Thus, by 24 June, E had been in school for about five or six weeks, including the half-term holiday. His school report indicates that his communication is beginning to improve, he seems to be well-regarded in terms of his sociability and his interaction with his peers. The report, hardly surprisingly, identifies that in many areas subject to their reporting he is identified as having emerging competence, in others as having the expected level of ability.

36. The mother herself in a text on 30 June described E as being settled in his school, which is somewhat different to how she now describes him. Her description of E is that in that period after their arrival, and since he has been significantly unsettled by the dislocation from life in Ukraine to life in England, as he has wanted to sleep with her, has been distressed, has missed his grandmother, and has not settled well at school. Now, that obviously is in contrast to what she said to the father on 30 June.

37. Her general description of E, though, finds some support in the emails sent by the host family, who described E in terms as being unsettled and in particular missing his grandmother, who appears to have been a significant component of his environment in the Ukraine. She herself (the grandmother) in the document submitted by the mother makes clear that she is not leaving her home come what may, her family having been through two world wars and four different countries whilst they have resided there, and she remains firmly rooted in the Ukraine.

38. The father says that by 24 June, E's English was coming along well. He had left the Ukraine for an indeterminate period, as had the mother, that the mother had given up her job in the Ukraine and had taken up employment in England, that E was settling into school and was settling into a more concrete relationship with his father. Also, that these along with the host family all constitute roots which demonstrated that by 24 June he was habitually resident in England and Wales, and had lost the habitual residence that he had formerly had in the Ukraine.

39. However, the comparative evaluation of his integration in a social and family environment in England as against that in Ukraine seems to me to lead ultimately to the conclusion that as of 24 June, E remained more rooted in the Ukraine than rooted in England. That is not to say that he had not begun to put down some roots in England; he clearly had. However, he also maintained very significant roots in the Ukraine which had been put down over the previous four years and nine months, and which were integral to the vast majority of his life up until the 24 June.

40. Ukrainian was his language, culture, and familiar environment, and the important figure of his grandmother was there. Additionally, his mother, insofar as she is relevant to his habitual residence, was also clearly more rooted in the Ukraine than in England, and the tentative roots that he had put down in England, had not in my view led to the significant uprooting from the Ukraine. The fact that he and his mother were living in a host family where they did not have their own home, and were unable to put down the roots which one associates with having your own home, is one component.

41. Another component, it seems to me, is that doing the best I can to define actually what was in the parties' minds in what must have been an incredibly difficult and stressful situation in February, March, and April 2022 when, really, the course of the conflict in the Ukraine was highly unpredictable was that the mother and father had taken the view that it was better for the family that E and the mother came to England for a

period of time, it may well be that each had different things in mind as to what that period of time was to be.

42. In fact, no agreement ultimately was reached as to what it should be, but it was not a decision that there should be a permanent and irrevocable relocation from the Ukraine; that would be inconsistent with the mother's behaviour over previous years, or indeed the father's behaviours over previous years, when the mother had returned to the Ukraine in 2017; perhaps the parties agreed or considered applying for pre-settled status in 2019, but the mother did not pursue that, and where it is obvious that the spur for the mother to consider travelling to England with E was the conflict in the Ukraine.

43. Thus, it seems to me that the uncertainty over the parties' intentions at the time E came to England and remained here does not lend weight to his having put down sufficient roots here as opposed to having retained roots in Ukraine. The text message sent by the mother on 30 June suggests that even then she was intending to return to the Ukraine for the summer. Also, she said to the father certainly that the intention was to return to England in September, that she thought E was settled, that she had a job. That, as I say, sits uncomfortably with how she puts her case some two months later in the course of these proceedings, where she paints a much more detailed picture of a sense of dislocation both for her and for E.

44. I would say that if I were forced to choose between the evidence that she has put before the Court in considerable detail, supported as it is by her host family and by the evidence from her mother and the evidence from the June text suggests to me that she may have been painting either a misleading or at least an unduly optimistic picture to the father, in order perhaps to get his agreement to her returning to the Ukraine at that point. That question over her honesty does not significantly impact on other aspects of her case as they are in the main supported by other evidence.

45. Therefore, for those reasons, I am satisfied that the mother has established that as of 24 June, E retained more roots in the Ukraine than he had put down in England, and must remain habitually resident in Ukraine.

46. Turning then to the father's defence to the application. As I have already identified, the father relies essentially on, I think, three broad components in terms of the Article 13(b) defence. The most obvious and significant is the war in Ukraine and the risks that that exposes E to if he were to return to Town B. The second is the submission that the implementation of martial law in the Ukraine has led to the suspension of the civil and family court system, such that the father would be unable to access the

Ukrainian courts in order to secure a relationship with E. That is built on the third limb of the grave risk section, which is the father's submission that the mother's obstructiveness in relation to his relationship with E is such that were she would be permitted to take E back to Ukraine, that he would be unable to maintain any or certainly any adequate relationship with E and that that would be a grave risk of psychological harm to E.

47. The mother's case is that whilst there is a '*special military operation*' in the Ukraine, where she intends to return to is so far from the active conflict zone, that there is either no or minimal risk of she or E being exposed to the consequences of armed conflict. In relation to the court system, the mother does not accept that martial law brings with it the consequences of suspension of the court system. Additionally, although it has not been put in evidence before me, it is said on behalf of the mother that a perusal of the internet reveals that the Town B court is open today, with lists of all three Judges including family cases (in submissions Ms Proudman appeared to accept that is so). Thus, if there were a need for litigation, the Ukrainian court system would be available.

48. I should say that the father's evidence contains material in which he suggests that in any event the Ukrainian court system is potentially corrupt, and that the Transparency Project of the Transparency International identified Ukraine as being high on the index of corruption.

49. The fact that the Ukraine is a signatory state to the 1980 Convention and to the 1996 Hague Convention, which carry with them a due process evaluation by the Hague of the court systems would suggest that if corruption is an issue, it is not something which is seen as affecting the court systems sufficiently to prevent the Ukraine becoming signatories to those conventions. In the absence of any significant evidence to the contrary, I set that issue to one side.

50. The biggest point is the possible risk of exposure of E to the risk of armed conflict. It is right, as the father and Miss Proudman point out, that war is unpredictable, particularly war waged by a country led by President Putin. It is undoubtedly right that even overnight the announcements that Russia is calling out 300,000 reservists suggests a possible escalation of the conflict. The banging of the nuclear drum by President Putin is not to be taken lightly, and the possibility of the nuclear power stations in the Ukraine becoming damaged as a result of military action, and

contaminating the Ukraine and beyond as occurred with Chernobyl, are again risks which any sensible person would subject to careful evaluation.

51. The fact that, as the map produced by the father shows, Lviv and Ivano-Frankivsk, which are more than 100 miles away from Town B, have been subject to missile attacks on civilian or military facilities brings home quite how close aspects of the conflict have got to Town B, notwithstanding that the action between land forces has been, even since the beginning, many hundreds of kilometres away, and now is even further away in the east and south suggests that that risk has lessened.

52. The information from the Foreign, Commonwealth and Development Office advises against all travel to the Ukraine, and heavy reliance is put on that by the father. Indeed, it is suggested by Ms Proudman that for the Court to go against it, it would be somehow incompatible with it. My enquiry about the contents of The Home Office country guidance, which has I think been issued as recently as July, not surprisingly identifies risks to be considered in the immigration context; that document was not put before me but I was told that it identifies military and political violence in many regions across the country, but also it identifies some specific regions as carrying with them a risk to life and limb, which would suggest that return to those areas would certainly expose any individual to an unacceptable risk for immigration purposes. What it also seems to carry with it is a differentiation of risk across the country depending on the area where one is considering. Town B is not in a zone identified as carrying those risks. The advice from the Hungarian Embassy in Ukraine also identifies Town B as being in a low-risk area.

53. It is suggested and also submitted by Miss Proudman that the fact that the Ukraine is a warzone of itself should lead the Court to conclude that a grave risk of harm is established, and she relies on the US authority of *Friedrich* in support of that. The other authority from this jurisdiction which dealt with the risk of terrorist attacks in Israel is of a different order of magnitude, submits Miss Proudman, and cannot be compared with Ukraine being a warzone.

54. It seems to me one has to avoid generalities, and in so far as is possible evaluate the particular risk to this particular child in a return to this particular area, rather than to apply a general or a broad brush; one must apply a rather more detailed and finer brush to this. Of course, if it were suggested that E were to return to Izyum or one of the other areas which has just been liberated, or which may soon be more directly in

an area of active war, would plainly bring with it a grave risk of harm. However, when a return is to somewhere quite different, that requires a different consideration.

55. The evidence in this regard put forward by the father is broadly speaking of a general nature relating to the risk accompanying war, and I am not surprised that he is concerned by the risk to E of being caught up in conflict. Miss Proudman and the father are entitled to say war is unpredictable; leaders such as President Putin are unpredictable, the war itself was perhaps unpredictable, and where they will strike next is unpredictable.

56. All of those are legitimate points to make, but one must still look at the situation on the ground. However, on the basis of the evidence which is before the Court and the evidence put before the Court by Mother is, broadly speaking, detailed and directly relevant to Town B and the surrounding region. It seems clear that Town B itself has not being involved in any sort of hostilities; the nearest that hostilities have come is Ivano-Frankivsk, more than 100 miles away. That is not to say that it has not been impacted by the conflict because it seems the region has received hundreds of thousands of displaced people from other parts of the Ukraine.

57. The mother's evidence, and I see no reason to disbelieve it supported as it is by other evidence, is that schools are open, and that children are enjoying themselves at school and in activities, that shops are open and well stocked. Work is carrying on; indeed economically, perhaps it is busier than it has been as a result of the relocation of businesses from other parts of the Ukraine which have been more heavily impacted.

58. Life it seems in Town B goes on not quite as normal, but with minimal or limited disruption. Thus, E's return to that environment would seem not to expose him to any immediate or direct risk of exposure to armed conflict; the risk of exposure would come with a significant escalation in the extent of the war. Town B, it should be noted, is in the far west of the Ukraine: to the north lies Poland; to the south lies Hungary; to the southeast lies Romania; to the west lies Slovakia. Thus, it is in a well-protected part of the country geographically.

59. Barring some remarkable turn of events, it is difficult to foresee how Town B would become subject to active conflict, save by a prolonged incursion into the rest of Ukraine, ultimately reaching the far west of the country close to those borders with European Union and NATO members. It seems to me, therefore, that that risk is very low indeed, although cannot be entirely discounted. If that were to happen though, there would be a period of time preceding it which would give warning to those in that

part of the country the opportunity to leave, given that the Hungarian border is close by, and the mother is a Hungarian citizen who is entitled to enter that country.

60. Were combat to extend across the country and threaten Town B, the mother and E would have, it seems to me, an opportunity to absent themselves in the way they did in April/March by making plans to leave. It does not seem to me that the transport system would be disrupted to such an extent, even in the event of missile attacks, that it would prevent them leaving.

61. In terms of missile attacks, of course, in an unpredictable situation one cannot identify a clear absence of risk. However, Town B has, I am told, no military installations, it is not a central transport hub, and that is supported by the absence of any attempt to target it since the invasion began some six months-odd ago. Thus, that risk, it seems to me, is at a low level, although cannot be ruled out, but sufficiently low that the risk of exposure in Town B to any of the consequences of the hostilities are capable of being addressed by the mother taking protective steps.

62. The mother's track record, most immediately in relation to leaving the country, is that she has acted to promote the welfare of E by removing him from an uncertain situation. Over the years since she made her base in the Ukraine, she has promoted the father's relationship with E despite the end of their relationship and despite the distance separating them. Without the need for court proceedings, E has maintained a relationship with his father. That all goes to support the suggestion that the mother, in most circumstances, will promote E's welfare. That is not to say that what occurred this summer does not indicate that there is perhaps a potential for the mother to lose that focus on E, and to allow hostility to intervene. However, by and large, she seems to have a good track record in promoting E's relationship and safeguarding his welfare.

63. Therefore, I am satisfied that the undertakings she has given in terms of protecting him would be adhered to by her, and that she has the means by which to make good those undertakings in terms of being able to remove him to a place of safety were the worst to come to pass. I also accept that she will adhere to promotion of E's relationship with his father, as she has done. Historically, the track record from 2017 to now, leaving aside those issues which I am unable to determine in relation to the dispute between the parties as to how E came to be in the Ukraine, shows that from 2017 to 2022 the mother has supported in broad terms the relationship, and the parties have been able to communicate in a way which has allowed them to go on holiday with

each other with E. Which suggests, in both actually, an ability to suppress any hostile feelings they might have to the other, or any antipathy that they might have to the other, in order to ensure that E is able to benefit from time with his father and indeed time in the presence of both his mother and father, which is less frequently encountered and might be desirable in other cases.

64. The evidence overall by the mother in terms of the functioning of society in Town B also supports a conclusion that her evidence that the courts are functioning in Town B is reliable as well, and that is supported by what is said to be the evidence on the internet that the court being open today. The bald submission by Ms Proudman that martial law automatically brings with it the suspension of the civil courts was not supported by any evidence and was contradicted by the evidence of the mother; indeed in submissions Ms Proudman seemed to concede that the courts may be open.

65. Bringing all of those components together, then, I conclude that the father has not established the Article 13(b) exception, because the risks that E would face by return are below the threshold at which one could say they are grave in terms of exposure to active hostilities on the ground, because the court system is functioning, and because the mother will in broad terms promote the relationship. In terms of the risk of escalation that would potentially amount to a grave risk of harm, but I am satisfied that the undertakings the mother gives to remove E were the conflict to extent towards Town B reduced the risk below the Article 13(b) threshold, and the undertakings are sufficiently concrete for the Court to take them into account.

66. On that basis, then, the Article 13(b) exception is not established, and thus the discretion does not come into play, and I will order the return of E to the Ukraine by a date to be determined, but around half-term. I am told in the meantime, contact arrangements continue. Given the time, I do not think it is going to be possible now to delve further into those, although I would have hoped that given what has happened and the frequency of contact that contact could extend further, so that the father is able to spend days, at least, with E.

67. Also, I would have thought that given he is, I believe, a carer I assume for either a disabled or elderly person that he ought to be capable of caring for his five-year-old son overnight without undue difficulty. The issue is not to do with his capability, it seems, but to do with ensuring that E is ready emotionally to take that next step to an overnight stay.

68. Thereafter, the parties can discuss what the terms of any undertakings might be. The mother has offered an undertaking including any further undertaking the Court might require, I think, an undertaking dealing more explicitly with the arrangements or contact with E upon his return to Ukraine ought to be given. It seems likely that that would incorporate some form of indirect contact, but also then direct contact during school holidays. Ultimately, that can only go so far because the Ukraine courts will have the primary jurisdiction to deal with these issues. As E was habitually resident there, their jurisdiction has been preserved and maintained by Article 7 of the 1996 Hague Convention, and will be reinvigorated upon his return, in any event, in October.

69. That is my judgment.

End of Judgment.

Transcript of a recording by Ubiqus
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