



Neutral Citation Number: [2023] EWHC 1284 (Fam)

Case No: CV21C01255
(formerly CV21C500783)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/05/2023

Before :

MRS JUSTICE LIEVEN

Between :

COVENTRY CITY COUNCIL

Applicant

and

THE MOTHER (BB)

First Respondent

and

THE FATHER (AA)

Second Respondent

and

XX

(the Child, by his Children's Guardian)

Third Respondent

Mr Aidan Vine KC and Mr Nick Brown (instructed by Coventry City Council) for the Applicant

Ms Lorna Meyer KC and Ms Nicola McIntosh (instructed by the Official Solicitor through Bindmans LLP) for the First Respondent

Mr Justin Slater and Ms Helen Compton (instructed by Waldrons Solicitors) for the Second Respondent

Ms Ruth Kirby KC and Jennifer Steele (instructed by Jackson West Solicitors) for the Third Respondent

Hearing dates: **20-24 February 2023, 10 March 2023 and 17 & 19 May 2023**

Approved Judgment

This judgment was handed down remotely at 4pm on 26 May 2023 by circulation to the parties or their representatives by e-mail

.....
MRS JUSTICE LIEVEN

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.

Mrs Justice Lieven DBE :

1. This judgment concerns XX, a boy aged 3 ½ years. He and his parents are US citizens. I dealt with the Father's Hague Convention application in July 2022 and refused a summary return to the USA (AA v BB & Ors [2022] EWHC 2322 (Fam)).
2. The Local Authority ("LA") was represented by Aidan Vine KC and Nick Brown. The Mother was represented, through the Official Solicitor, by Lorna Meyer KC and Nicola McIntosh. The Father was represented by Justin Slater and Helen Compton, and the child was represented, through the Children's Guardian, by Ruth Kirby KC and Jennifer Steele. At the last hearing on 17 and 19 May neither Ms Kirby nor Mr Vine appeared. Representatives of the US Embassy attended the hearings.
3. The history of this case is quite extraordinarily long and convoluted, involving issues of international jurisdiction and placement of XX in the USA; the Mother's capacity; the Father's conduct, and numerous allegations between the parents. As I set out in my previous judgment, there is enormous animosity between the parents as to with whom XX should live and whether he should have any contact with the other parent. Each parent makes serious allegations of abusive and threatening behaviour about the other.
4. The LA's position, as set out in its threshold document, and in the evidence it relies upon, is that both parents pose a significant risk of harm to XX. It is alleged that the parental relationship is highly abusive and conflicted, and neither parent can protect XX from the consequences, or support XX having a relationship with the other parent. The LA further allege that XX experienced significant neglect in his Mother's care. The LA's case, supported by the Children's Guardian ("CG") is that XX should be placed with Maternal Aunt ("MA") and Uncle ("A&U") in Florida. The Father's case is that XX should be placed with him in California. The position of the Mother is complex and is explained below.
5. Having undertaken the Hague hearing in June 2022, I undertook a six day hearing, including both fact finding and welfare issues, on 20-24 February 2023 and 10 March 2023. It was not possible to conclude matters at that hearing because the LA proposal was to place XX with the A&U in Florida and all the relevant assessments had not been completed. I then heard the matter for two more days on 17 and 19 May. I note that proceedings commenced on 3 August 2021 and we are therefore now in Week 94. It has been exceptionally difficult to keep this case on track for reasons that will become clear below. I have faced numerous applications to adjourn the proceedings and to wait for further assessments and list with longer time estimates. The evidence suggests that XX is becoming significantly impacted by the lack of certainty as to placement, and there is an overwhelming need to achieve permanence for his emotional wellbeing. This is a case where it is incumbent on the Court, and the CG, to focus on XX's wellbeing and the need to conclude matters in as short a time as fairly possible.
6. At the time of the February hearing the Mother was detained in a psychiatric unit in Liverpool under s.3 Mental Health Act 1986 ("MHA"). On 2 December 2022 I determined that she did not have capacity to conduct litigation and she has been represented before me through the Official Solicitor ("OS"). At the start of the February hearing Ms Meyer applied for an adjournment of these proceedings on the

ground that the Mother had not been able to give instructions, or to challenge the capacity assessment.

7. I refused the adjournment and said I would give full reasons in the judgment. However, Ms Meyer reapplied for an adjournment on the third day of the hearing after hearing the Mother's treating psychiatrist. I then gave full reasons for refusing to adjourn which are set out in a separate judgment.
8. Matters then took an unexpected turn because the Mother was discharged from the s.3 detention and her treating psychiatrist gave evidence to the Court that he considered the Mother had capacity. However, the Mother then failed to attend a hearing on 27 March. I ordered a further psychiatric report on capacity to be carried out by Dr Bacon. Arrangements for Mother to meet with Dr Bacon as part of the assessment were thwarted when the mother was discharged from hospital very shortly before the date on which Dr Bacon was due to assess her there, no further appointment could be secured in the community, therefore her report had to be undertaken solely on the papers. She concluded that on that material the Mother did not have capacity, and was suffering from a delusional disorder which became exacerbated when she was subject to stress, but which seemed to respond to medication. I ruled on 17 May 2023 that the Mother did not, on the basis of Dr Bacon's report, have capacity.
9. However, by the time of the hearing on 17 May, the Mother, whose US passport was being held by the Home Office, with the Police appearing to hold a 2nd passport or travel document as she was on bail in relation to an assault on staff at the contact centre, obtained travel documents from the US Embassy and travelled to the USA on 21 March 2023. She was subsequently arrested in the USA on the basis of a complaint of child abduction and kidnapping made by the Father, and is currently incarcerated in a prison in Los Angeles, California.
10. The consequence of this unhappy sequence of events is that the Mother was not able to participate in the hearings either in February or May 2023. It is wholly unclear when the Mother may regain capacity and what will happen with criminal proceedings in the USA. In those circumstances, focusing on XX's welfare interests, I considered I had no choice but to proceed with the case. The Mother has been represented by Ms Meyer KC and Ms McIntosh in the February, March and May hearings. It is important that the Mother understands, when she comes to read this judgment, that her interests have been extremely well protected by Counsel and by the OS even though I appreciate she did not wish the OS to act, and whenever she has had the opportunity, has asserted that she has capacity.

The Background

11. I set out something of the background to the case in my first judgment. The parents started a relationship in 2017 and it always appears to have been highly acrimonious. Much of the LA's case (on this point supported by the Mother) rests on the Father's behaviour during the relationship and after XX was born. There are a very large number of electronic communications between (or allegedly between) the parents which the LA submits show the nature of the relationship and the Father's behaviour.
12. The background to this matter really falls into three but overlapping parts; the history of the English proceedings; the proceedings in the USA; and the history of the

parents' relationship, including the Father's prior conduct. I will set out the history of the various proceedings before reverting to the evidence about the relationship and the Father's prior conduct.

13. XX was born in November 2019 in Oklahoma.
14. The Mother brought XX to the UK on 18 March 2021 when there were proceedings concerning XX ongoing in Oklahoma. She claimed asylum in the UK. I found in my Hague judgment that XX was not unlawfully removed from the USA.
15. On 31 July 2021, the police took XX into police protection because they were concerned that he was at risk in his mother's care given her neglect of him, and her erratic and uncooperative behaviour. XX was placed in local authority foster care, where he has remained since.
16. On 2 August 2021, the LA applied for and was granted an emergency protection order in respect of XX. On the same day, the Father applied for an emergency custody order in the Oklahoma District Court and this was granted on 3 August 2021, together with a writ of assistance.
17. On 9 August 2021, the LA applied for a care order in respect of XX, and on 10 August 2021 an interim care order was made in favour of the LA. XX has remained the subject of an interim care order ever since.
18. On 11 August 2021, the Superior Court of California accepted emergency jurisdiction and made a location order and temporary custody order in favour of the Father. This is an important order and date because subsequently on 13 March 2023 the Court in California (Commissioner Aharanov) dissolved this order, see below.
19. On 8 September 2021, the Father applied for a return order in the UK under the 1980 Hague Convention ("the Hague Convention").
20. On 17 September 2021, the Los Angeles County District Attorney's office issued an arrest warrant against the Mother for the felony of deprivation of custody.
21. At two points in the proceedings, the Mother has lacked capacity to conduct the litigation and has been found to be a protected party for the purposes of the Family Procedure Rules 2010 ("FPR") r.15. She was first found to lack capacity to conduct the proceedings on 7 December 2021. That assessment, by Mr Justice Holman, was confirmed by Dr Raganathan on 3 March 2022, and the OS accepted an invitation to act as her litigation friend on 17 March 2022.
22. On 14 March 2022, the Secretary of State for the Home Department refused to grant asylum to the Mother and XX. Following this, the Mother made threats to have the Father killed and on 24 March 2022 she was detained under s.2 MHA. On 25 May 2022, the Mother was found to have regained litigation capacity and the OS withdrew as her litigation friend.
23. On 2 June 2022, the Father applied to the Superior Court of California for a temporary restraining order against the Mother and for a child custody order in respect of XX. The latter included a claim for a 'no visitation' order in respect of the Mother. The

LA's understanding is that while these applications triggered temporary orders, these have since lapsed or been discharged for lack of effecting service on the Mother.

24. I set out more of the jurisdictional history of the case in my judgment of 12 July 2022 in which I declined to make a return order under the Hague Convention and found that there was jurisdiction for the care proceedings.
25. On 22 August 2022, the Father sought to appeal against the dismissal of the application for a return order. The Court of Appeal refused permission to appeal.
26. On 7 September 2022, at the contact centre for supervised contact, the Mother assaulted two contact workers and attempted to abduct XX from contact. This was a very serious incident that was recorded on CCTV, which I have watched. There is no doubt it was very upsetting and frightening for XX.
27. On 8 September 2022, the Mother was again detained under s.2 MHA. The report of her treating psychiatrist described her as having flight of ideas, elated mood and that she had had a level of distress arising out of multiple psychosocial stressors, including immigration and children's services. The records for that admission reveal episodes during which she assaulted staff members, filmed staff and patients without consent and alleged that she had been trafficked into the United Kingdom. The Mother was discharged from hospital on 29 September 2022 as she was not felt to be suffering from any mental disorder, and she was made an informal patient.
28. On 18 October 2022, the Court vacated the final hearing because of the situation of the Mother and it was re-listed to be heard in the week of 20 February 2023.
29. On 21 November 2022, Dr Ajileye set out his opinion, on the limited engagement he had had with the Mother, that she again lacked litigation capacity.
30. On 2 December 2022, the Mother did not attend the hearing to determine whether she had litigation capacity. I found that she was aware of the hearing (on the basis largely of emails that had been sent by her) and went on to find that she lacked the capacity to conduct the litigation and was a protected party. Again, the OS accepted the invitation to act as her litigation friend. I set aside earlier directions for psychological and parenting assessments of the Mother because she was not willing to participate and there was no longer time to undertake them. The Court adjourned the Father's application for direct contact generally, with liberty to restore it.
31. I also accepted an undertaking from the Father not to publish information about the proceedings, save to agencies in the United States for the purposes of enforcing orders made there. I extended an injunction order restraining the Mother from publishing information about the proceedings to broadcast media, social media and to third parties.
32. On 5 December 2022, and unbeknownst to anyone else at the time, the Father published a video on YouTube which included a video recording of the hearing on 4 August 2022, the CCTV recording of the Mother's attempt to abduct XX on 7 September 2022 and a video-recording of his contact with XX the next day.

33. On 7 December 2022, the Mother was arrested at Heathrow Airport attempting to leave the jurisdiction, it is suggested without a passport. She was wanted by the police in the UK for the assault on the contact centre staff and attempt to abduct XX from contact, and in the United States on the warrant for arrest for deprivation of custody.
34. Following her arrest, the Mother was detained again under s.2 MHA.
35. On 8 December 2022, the Father made a fresh application for a return order under the Hague Convention asserting a change of circumstances and that there had been an error in the first Hague proceedings as to the law of Oklahoma. The Father has said that he seeks for that application to be stayed, pending the outcome of these proceedings.
36. On 31 December 2022, the Father sent an email to Virginia Henson (the Oklahoma law expert who had given evidence in July 2022) threatening to sue her for the opinions she had expressed as an expert witness in the case which had led to the Court dismissing his application for a return order. He included the link to the YouTube video which published his video recording of the earlier hearing, the CCTV recording of the attempt by the Mother to abduct XX and the recording of his contact with XX the next day.
37. On 5 January 2023, the Father made a fresh application to the Superior Court of California for a custody order.
38. On 19 January 2023, the LA effected personal service on the Mother of both the case management and the injunction orders made on 2 December 2022, the latter restraining publication of information relating to the proceedings. On 27 January 2023, the Father's solicitor in the second Hague proceedings served the fresh application on the Mother on the ward in hospital.
39. On 2 February 2023, I gave directions preserving the final hearing, including provision for the parties to obtain an expert legal opinion from a Florida family lawyer on the legal structures required to give effect to any placement with the A&U, as well as for judicial liaison with the Superior Court in California.
40. On 2 February 2023, the Court enjoined the Father not to communicate with any employee of the LA other than for the purposes of making practical arrangements to facilitate interim contact. This was because of what I considered to be abusive and intimidatory emails from the Father to LA employees.
41. On 7 February 2023, the Mother's treating psychiatrist certified that she continued to lack the capacity to conduct the proceedings, and further that she had a psychotic disorder, fulfilling the criteria for delusional disorder. The treating psychiatrist reported that the Mother was unlikely to speak to the OS as she was very paranoid and delusional about the legal system and has stated that she does not wish to be involved in the proceedings.
42. Over the weekend of 11/12 February 2023, the Mother published further material relating to the proceedings on Tik Tok.

43. On 16 February 2023, the LA applied for injunctive relief against the Father to prohibit the recording of hearing sessions, and to prohibit any future publication of material, save as permitted under the FPR 2010 r.12.73 and Practice Direction 12G.
44. Throughout the proceedings, the Mother has sought to publish information about the proceedings to broadcast media, social media and to third parties.
45. There was a five day hearing from 20 February 2023 during which I heard evidence from Ms Daddral, Mr Hore, Ms Keane (all three LA social workers), Ms Berchie (independent social worker who assessed A&U), Ms Gillett (Florida law expert), Dr Hyland, Dr Farhy, the Father and Ms Lynex (the CG). All parties agreed I could not make any final decision at that stage because there were further assessment reports required in respect of the A&U, and further legal issues relevant to a placement in Florida. At the time of that hearing the Mother was detained under s.3 MHA in a hospital in Liverpool.
46. On 15 March 2023 the Mother was discharged from hospital and her treating psychiatrist (Dr Hyland) stated that she did not have a delusional disorder. He produced a certificate setting out his view that she had capacity on 23 March. On 3 April I held a short hearing at which Dr Hyland gave evidence as to his reasons for concluding that the Mother had capacity. I ordered a further capacity report from Dr Bacon, an independent psychiatrist.
47. On 23 February there was a hearing in California in respect of the Father's custody proceedings in respect of XX. On 13 March the Honorable Amir Aharanov, Commissioner Superior Court of California issued a written judgment. He denied the Father's request for final child custody orders; he dissolved the temporary orders made on 11 August 2021; and he stayed the further proceedings pending judgment in the English proceedings. It is plain from his judgment that he considered the Father had not properly informed the Californian Court as to the proceedings in England. I include only very limited extracts from that judgment:

“... The Petitioner declares “I do not understand why the UK has been giving me such a hard time, but my UK solicitors confirmed that a final custody order would rapidly clear up any confusion.” Petitioner goes on to further: “International complications ongoing in the United Kingdom for transferring my son back to my custody here in CA (currently in interim foster care in Coventry, UK). I have been encouraged by my UK solicitors to secure a Full Custody Order ASAP in order to expedite the process and instructed that the U.S. can move forward on a Full Custody Order concurrent and irrespective of UK proceedings. Apparently the UK is ‘confused’ with the temporary status of the current custody order and it must be cemented as a full order as quickly as possible. Process has been dragging on for over a year.”

Court's Orders

The United Kingdom is not “confused” as Petitioner alleges. In fact, the UK Court unequivocally found that the United Kingdom is the country of habitual residence for the minor child. Approved Judgment at paragraph 81. In addition, the UK Court specifically denied Petitioner's

motion to stay those proceedings and for a finding that the United Kingdom is an inconvenient forum to allow California to undertake jurisdiction. Id. at paragraphs 88-91.

Had Petitioner been forthright and in compliance with Family Code §3429(c), the Court would have stayed these proceedings pursuant to Marriage of Forrest & Eaddy as of September 8, 2021 when Petitioner filed his Hague Convention application in the United Kingdom. This Court's UCCJEA [Uniform Child Custody Jurisdiction and Enforcement Act] conference subsequently held on November 3, 2021 with the Oklahoma Court would have been stayed pending resolution of the Hague Convention application. In addition, this Court would have likely dissolved its emergency temporary orders issued August 11, 2021. This Court would not have issued any temporary restraining orders under the Domestic Violence Prevention Act that would have included the minor child or provided any further custody or visitation orders while the Hague Convention proceedings were ongoing."

48. The Father has made a complaint against Commissioner Aharanov. That complaint alleges that the Commissioner was biased, has abused his authority and has acted maliciously. In respect of the Father's complaint, I make clear that all communications between the English Court and the Californian Court have been in email communication seen by all parties. There have been no hearings between the two jurisdictions.
49. Although this was not known at the time, it now appears that the Mother left the UK on 21 March and flew to New York. She then travelled to Oklahoma where she reported being stalked, the Father turning the government against her and that her child had been stolen from her in the UK. As a result of her coming to the attention of the police in Oklahoma she was arrested on the basis of the warrant in California and extradited to California where she has been held in prison since.
50. At the hearing before me in May, efforts were made to allow the Mother to join the hearing by video link. However, that proved to be impossible to facilitate, despite every effort by the Californian authorities.
51. The Father has attended all hearings remotely. This has at times been difficult for him because of the time difference between Los Angeles and England. However, the Father has managed to fully engage with the proceedings throughout.

The parties' positions in brief outline

52. The LA submits that XX should be placed with the A&U in Florida under a special guardianship order. They say that XX would be at significant risk if placed with the Mother given her mental illness and history of extremely erratic and dangerous conduct. They say that the Father has been emotionally abusive to the Mother; that he would ensure that XX had no relationship with the Mother, and XX would be at very significant emotional and psychological risk if placed with the Father.
53. The OS's position on behalf of the Mother is that XX should not be placed with the Father. The Mother has made very serious allegations of psychological abuse against

the Father. The Mother's position in respect of placement with the A&U is unclear. She would wish for XX to be returned to her care although this is impossible at the present time. The solicitor instructed by the OS did manage to speak to the Mother from the prison on 18 May but she could not get full instructions.

54. The Father submits that XX should be placed with him. He is strongly opposed to placement with the A&U. He says that in practice they will not support any contact with him and they are not a suitable placement.
55. The Guardian supports the LA's position.

The documentary evidence relevant to the parent's relationship

56. There is before the Court a very large number of electronic communications, both between the parents and involving third parties, including the Father's previous partners. This material has in large part been produced in somewhat unusual ways, much being produced by the Mother, via the US proceedings. The Mother has not been able to produce evidence through witness statements for large parts of the proceedings because of her loss of capacity, and therefore cannot verify the exchanges or speak to their content. Equally, it would not be proportionate to try to seek evidence from the various third parties whose communications are included, particularly as all these individuals are in the USA.
57. The Father disputes that he sent a number of the texts, but for reasons I explain in my conclusions, I reject that assertion. The texts show a highly conflictual relationship, with both sides sending at times unpleasant and abusive messages. However, the messages from the Father go well beyond the fall out from a failed relationship and show a level of psychological abuse, coercive control and manipulation which is deeply worrying. The communications need to be read in the context of the Father knowing the Mother had a history of mental illness. I set out here only a brief snapshot of a very large amount of material.
58. The parents' relationship commenced in 2017. Some of the material before the Court, which the LA, Mother and Guardian rely upon, relates to the Father's history before the relationship with the Mother. The Father had been in a relationship with C when they were in college in 2007 and she had gained some form of restraining order against him when she moved to Colorado. On 9 March 2016 the Father was arrested in respect of this order. When the Mother was 33 weeks pregnant she contacted C and C sent the following message:

“C to Mother: “he was extremely verbally abusive then too and it took me until March 2008 to finally break free from him. I ended up getting a protection order from him after I moved to Colorado because he started calling me out of the blue and wouldn't stop. I never answered the calls and he left threatening messages on my voicemail. I turned these over to the police and told them I feared for my life, which I actually did at that point as we hadn't spoken in 2-3 years and I didn't know what he would do next. I thought he might just show up one day.”

59. On 1 September 2016 the Father was sentenced in California for a driving offence. He was charged with driving under the influence of drugs and causing bodily harm. It

seems that he pleaded to a charge of reckless driving and was sentenced to 90 days imprisonment.

60. On 20 February 2017 he was arrested and a mandatory protection order was issued in California on the Mother's complaint. He sent her a message as follows:

“Father to Mother: “I am going to destroy you completely until you have nothing left but your shotgun and an open field. And no one to call for help.” “In 20 minutes I can make your life so terrible you might end it.”

61. The Father had had a previous relationship with a woman called D. The Father sent the following email to the Mother:

“[E] will put her behind bars for a minimum of 6 months. [D] can either fix what she has done or BE fixed. Her choice. I hope she picks the wrong one. It would be more pleasurable.”

62. In March 2018 the Father sent a message to the Mother saying “when you least expect it I will devastate your life in the deepest way possible”.

63. The following was sent at an unknown date, but before XX's birth:

“Father to Mother: “Enjoy the miscarriage. I won't be there after it happens so don't fucking cry to me you sick cunt.”

“I hope you die during childbirth you fucking worthless fuck” “if you don't listen I will MAKE you listen”

“...the sooner you act the easier it is. Stop delaying, stop destroying and get it over with. [Q] was anti-abortion too but she acknowledged the medical science and knew it was fine in the first few weeks. It went fine, I took her to dinner after and we made love. That is what a healthy couple does. Stop destroying our chances of being together, stop preventing us from going to bed and waking up together forever, stop destroying our future with multiple children running around. We could have it all if you weren't so focused on the short term and started prioritizing the long term.”

64. The last message was particularly cruel as the Father plainly had no intention of continuing a relationship with the Mother but wanted to manipulate her into having a termination by promising a future relationship.

65. There are also the following:

“3.12.19 - Email from D to Father and Mother: “You threatened to kill me and talked so much shit over the phone”. “It would take me a long time to go down the list of shit you've said to me that were degrading and abusive, again over the phone.”

“23.09.20 - Text from Father to Mother: “I will put you in prison and then kill myself”. “I will do everything in my power to put you in a

prison cell where you belong, to remove that child from your arms permanently to ensure it is safe from your sociopathy, then remove myself from the equation” “welcome to your nightmare” “If the law fails, I won’t” “If I see you I will assault you”.

“27.7.22 - Messages from D to Father and Maternal Grandmother accusing Father of having used her and driven the Mother crazy. She says she believes that Mother was psychologically, emotionally and physically abused by the Father, because “I’ve experienced that first hand”.

66. I again emphasise that these are only a selection of 100s of texts, with many from the Father in a similar vein to what is set out above.
67. During the February hearing the MA produced a lengthy statement which was extremely antagonistic to the Father. She made a large number of allegations against him, the vast majority of which I am not in any position to judge. It is clear from this statement that the MA blames the Father for the misfortunes which have befallen the Mother (her half-sister).
68. Mr Slater applied to cross examine the MA on the contents of this statement, and he renewed that application at the May hearing. I gave rulings at the time, but in brief I took the view that cross examination of the MA would not assist me given the assessments I already had, and the evidence of Ms Berchie and Ms Keane in respect of the MA.
69. In the period between the February and May hearings the maternal grandmother (“MGM”) sent the Father a series of highly abusive text messages. These included threats to the Father and very serious allegations about him. The MGM is a complicating factor in this case. She has aligned herself very strongly with the Mother. She was with the Mother for much of the time she was in the UK and has in the past being involved in abusive exchanges with the Father.
70. In early 2023 the MGM was very unwell, and there is a suggestion that she has a terminal illness. The MGM lives in Florida. The Father alleges that she lives with the MA, although this has been consistently denied by the MA and the only evidence is a voter registration document which is dated 2020. The Father submits that it will be impossible for the MA, even if she wanted to, to prevent the MGM from having contact with XX, and in practice the Mother (if and when released) will also live in Florida, either with the MGM or close to the MA. The Father says that it is inevitable, given this nexus, that the MA will not be able to protect XX from the Mother (and the MGM).

The Evidence

71. The LA’s position is that XX should be placed with his maternal aunt and her partner, who live in Florida. There have been three social workers directly involved in the case – Ms Daddral, Mr Hore and Ms Keane. They all gave evidence at the February hearing, and Ms Keane again at the May hearing.

72. Ms Daddral was the allocated social worker between 22 September 2021 and 6 April 2022. She carried out a parenting assessment of the Father, had observed contact and produced an addendum assessment. Her assessment was generally positive, although there were a number of areas where she said that further information or investigations needed to be undertaken. She said there had been positive changes, such as less tantrums and going to strangers more easily, possibly associated with contact with the Father.
73. She accepted that the Father had always acted through the courts and the police, although she did say she felt he had not always acted appropriately. She also accepted that he had provided evidence of stability in his own life through his qualifications, work and finances. He had engaged in therapy in the past when he had mental health issues and she felt he would be prepared to do so in the future if needed.
74. The Father told her that he did not consider that it was safe for XX to have contact with the Mother but she thought he was open to maintaining a relationship between XX and the Mother if the Mother became mentally well.
75. Ms Daddral did not undertake a parenting assessment of the Mother and only met the Mother once. She also spoke to the MGM.
76. I thought that Ms Daddral was a fair witness, however she had a very limited knowledge of many of the communications that had passed between the parents and did not appear to have delved very deeply into the dynamics of their relationship or the way that the Father had behaved towards the Mother.
77. Mr Hore was the allocated social worker between 8 September 2022 and 27 January 2023. He had carried out a further parenting assessment of the Father. It is right to record that the Father has been highly abusive to Mr Hore in his emails and other communications, including calling Mr Hore a paedophile and saying that he was dishonest. This had plainly deeply upset Mr Hore and impacted on his wellbeing. He said that it came to the point that he would dread reading the Father's emails because they were so aggressive, hostile and intimidating. I take into account that in these circumstances he may have struggled to view the Father in a wholly objective way.
78. Mr Slater suggested that Mr Hore was determined to be negative about the Father and that the Father considered Mr Hore had been "dishonest" in his assessment. In my view this was an unfair criticism. In my view, Mr Hore was an appropriate professional who was trying to do his job, however, I think he did struggle to acknowledge some of the positives about the Father.
79. Mr Hore said he had read some of the email communications between the Mother and Father. He highlighted the set of communications when the Mother was asking the Father to attend the birth to support her, and he had refused her in the most unpleasant terms. When asked by Ms Kirby he agreed that the Father had been unnecessarily cruel and uncaring to the Mother before and after XX's birth Mr Hore felt that the Father was being abusive to the Mother at a time when she was most vulnerable, and he was motivated by a desire for power and control over her. He thought the Father was trying to exclude members of the maternal family, including the MGM.

80. Mr Hore had had no direct contact with the Mother. He had tried to speak to her, but she had not engaged with him.
81. Mr Hore had spoken to the MA on a number of occasions. He was convinced that she was committed to the long-term care of XX. She had a good understanding of the Mother and was clear that she would not return XX to the Mother's care.
82. Mr Hore was the author of the proposed care plan. That proposes contact with the parents and the MGM supervised 6 times per annum. This was to maintain those relationships for XX, but to allow him to establish firm bonds with the A&U. The supervision was necessary in order to avoid either parent trying to abduct XX and to prevent further emotional harm to XX. He agreed that this type of contact seemed more appropriate under a special guardianship order than an adoption order.
83. He felt that Ms Daddral had not fully considered the emotional harm on XX of being placed with either parent. He said that he was considering the parents similarly, and because of the acrimonious relationship he felt it would be best for XX to be cared for by the A&U. He felt that XX could not be kept safe from the emotional harm of the parents' relationship if he lived with either parent.
84. He noted that, so far as he was aware, before the Mother came to the UK there was no evidence of her suffering from psychosis, or having any suicidal intent.
85. Although the Father had said to Mr Hore that he would only speak to XX about the Mother when appropriate, he noted that the Father then reverted to the language that he normally used for the Mother. It was perfectly obvious that Mr Hore did not believe that the Father was being honest with him when he said that he would speak appropriately about the Mother.
86. Ms Keane became the allocated social worker after Mr Hore. She has not spoken to either parent. She explained that the assessment work in respect of the Father had been completed by the time she was allocated and therefore it was not necessary for her to do any further assessment of the Father. She had also received an email from the Father which was, in my view, abusive, and that, combined with Mr Hore's experience, must have made her wary of engaging with the Father unless it was necessary to do so. The following is an extract from the Father's email that gives a flavour of his way of communicating with professionals who do not agree with him:

"I struggle only with those "professionals" who verifiably lied to the Court, as you have just done, and for the sole purpose of keeping a father and son separated. Such rampant dishonesty has been disappointing, unprofessional, and inexcusable.

Respectfully, it appears you either didn't thoroughly review the case bundle and are guilty of gross negligence or you did and have consciously committed perjury. Either way, expect to be personally served a lawsuit in the very near future for your perjurious submissions and blatant misstatement of basic facts."

87. Ms Keane had spoken on a number of occasions to the A&U. She was clear that she thought they were completely committed to looking after XX and putting his interests

first. She said the MA had said that she would act to protect XX from both parents, and that she had no intention of supporting XX to move to live with his mother. She would be able to resist any attempts at manipulation by the Mother. The MA had said in terms that the MGM did not live with her as the Father had suggested. The MA had also said that she would, if necessary, get protective orders to ensure that neither parent could remove XX from her care or destabilise the placement.

88. She felt that the A&U would support contact between XX and both parents so long as XX was allowed to settle into his new home first, and any contact was supervised at a contact centre. Although the MA had written a long statement with many serious allegations about the Father, Ms Keane felt the MA was sincere in saying she would support contact with the Father, subject to these conditions.
89. She also accepted the MA's assurance that if necessary she would break links with the MGM if that was in XX's best interests. She thought the MA was very child focused.
90. Ms Keane produced the care plan and the special guardian support plan. The intention is that the A&U will be given support both through agencies in Florida, but also financial support by the LA. The details of this are still being assessed given differences between the USA and the UK, such as paying for medical care.
91. She accepted that there were positives about the Father, particularly around the fact he had had good quality contact with XX and very much wanted to parent his son.
92. Ms Berchie is the independent social worker who has carried out the connected persons assessment of the A&U. After the February hearing she produced a special guardianship assessment. She gave evidence at both hearings.
93. Ms Berchie has done an extremely thorough job having undertaken some 15 sessions with the A&U, each one lasting at least an hour. She said that although the couple had spoken of adoption, their primary goal was to give XX a permanent placement. She thought they would do whatever it takes to meet XX's needs. She appeared to have no doubts about the level or sincerity of their commitment to caring for XX.
94. Ms Berchie had discussed with them the risk that if XX was placed with them he would be returned to the Mother's care. They were very concerned about XX's safety and the MA had said she would take appropriate measures, including a restraining order, to prevent the Mother removing XX. The MA acknowledged that she would need support when XX first arrived to provide a safety net around the child.
95. She said that the MA had said that the Mother could be erratic and manipulative. Initially the MA had read little of the bundle and her understanding of the relationship was quite limited. She had been given information by the MGM about the Father being abusive. However, the MA had become aware of the LA involvement with XX and the reasons for that, and she reached the view that the MGM's position was wrong. She understood the Mother had mental health problems and Ms Berchie noted that the MA considered the Mother to be highly manipulative.
96. Ms Berchie had not met the Mother or discussed her recommendations with her because of the Mother not having capacity during most of the period of her engagement in the case.

97. She said at the February hearing that there was various further work that was required before XX could be placed in Florida, including enhanced police checks; medical information about the MA; and that the Uncle, who does not have children, should have some parenting work. Also, that the MA should have independent legal advice.
98. By the time of the May hearing, Ms Berchie had carried out the special guardianship assessment and was content to recommend a move to the A&U. She had asked the MA about an incident some years ago when the MA's daughter had made an allegation of physical chastisement and there had been social services involvement. The MA had openly discussed this and explained the daughter had made up the allegation, which had been accepted by the children's services.
99. She agreed with Ms Keane that although the MA has negative feelings about the Father, she is keen to promote a relationship with both parents as long as contact is supervised.
100. Ms Carmen Gillett is the expert appointed in respect of Florida law. The issues she was asked to address turned on what would be appropriate orders in England if XX was to be placed in Florida with the A&U; how those orders could be made enforceable in Florida; and what legal protections could be put in place to ensure that neither the Mother nor Father could disrupt such a placement. I thought Ms Gillett was an excellent witness, plainly extremely knowledgeable about childcare law in Florida and the resolution of jurisdictional issues, both within the USA and between the USA and England.
101. The LA had assumed that XX would have to be placed in Florida pursuant to a placement order in order for that order to ensure that neither parent could assert parental rights over XX. However, it became apparent during Ms Gillett's evidence that in fact a special guardianship order could be registered in Florida and then be capable of enforcement. The test was whether such an order would violate "fundamental rights". However, Ms Gillett was confident that if the special guardianship order was validly made in the English Court, and the reasons for excluding the parents was set out clearly in the reasoning of the Court, then such an order would be accepted by the Florida Court and would be enforceable in Florida. A mirror order could be sought and made before XX moved to Florida.
102. If there is a dispute between a court in another US state, for example California, then there is a process under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") for the judges in the different jurisdiction to determine such a dispute. Mr Slater referred to the order in California giving the Father custody. Ms Gillett said that if the English Court set out clearly its findings, then the Florida court would not revisit those findings.
103. Ms Meyer raised that the Mother had been found to lack capacity and had opposed the appointment of the OS. Ms Gillett said that as long as the LA could show that the Mother had had fair trial rights in England, the Florida court would register the orders as mirror orders.
104. Ms Gillett said that it was possible for registration and enforcement to take place before XX left the UK, so all these issues could be sorted out before there was any risk of either parent trying to remove XX from the A&U's care.

105. Dr Farhy is an experienced psychologist who was appointed to carry out a psychological assessment of the Father. He is currently an Honorary Consultant Psychologist in private practice having previously worked in the NHS. His CV says he has been instructed in some 600 cases.
106. He produced a report and two brief addendum statements. His assessment was based on a one hour remote interview, and the Father completing a two hour questionnaire for the purposes of an assessment tool called Minnesota Multiphasic Personality Index – 2 (MMPI2). This involves some 567 elements to be completed by the individual. Dr Farhy said he used this tool because there was a strong evidence base as to its reliability. Dr Farhy had understandably, given its length, not read the whole bundle that was sent to him.
107. The Father scores were all within normal profile, indicating a positive adjustment.
108. Dr Farhy's evidence changed quite dramatically during the course of his oral evidence, particularly after Ms Kirby's cross examination. In evidence in chief, largely following his report, he said that the Father showed some "social naivety", was somewhat maladroit and not very "clued up". His conclusion was that the Father showed no major psychopathology. He was basically a normal person with some minor problems.
109. Ms Kirby took Dr Farhy to a number of the records, including of the Father having been convicted in the USA of a stalking offence; that he had been incarcerated (for a period of at least 10 months); that he had threatened his US attorney, and the texts/emails which appear to establish that the Father had a track record of manipulating his female partners and using them against each other (see below). It appeared that there were a number of relevant matters that the Father had not told Dr Farhy, but also Dr Farhy had not investigated. By the end of this exercise Dr Farhy had altered his position to say that although he did not think the Father was mentally ill, he was fixated on his beliefs and his behaviour goes beyond what is acceptable. Dr Farhy said this was very concerning if he were to have the care of a child because of the impressions such behaviour would have on a child.
110. I was extremely concerned about Dr Farhy's evidence. Ms Meyer took him to a series of texts which the Father allegedly sent to the Mother. I note that the Father denies sending some of these texts, but for the purposes of Dr Farhy's answers, that is not the point. Some of those texts are cruel in the extreme, and they occurred at a time the Father knew the Mother had a history of mental illness and was vulnerable. Ms Meyer asked him if these raised concerns, and Dr Farhy replied that they did not show the Father was dangerous, it was only evidence of him being unpleasant. Throughout his evidence Dr Farhy drew a clear bright line distinction between physical violence and the Father simply being "unpleasant". In relation to the stalking offence, he again questioned whether the Father had ever been physically violent.
111. In my view, this showed a striking lack of awareness of the issue of psychological abuse and controlling and coercive behaviour being central to domestic abuse. Dr Farhy's understanding of, and sensitivity to, the issues around domestic abuse appeared to me to be significantly lacking. In a case such as this, I find that a matter of concern.

112. He also sought to excuse many, if not all, of the Father's communications with the Mother as being the result of a toxic relationship where the Father was angry, and Dr Farhy referred to the concept of a "crime passionnal". Again, I found the lack of understanding of coercive control, and the excusing of emails to a mentally vulnerable woman as simply being part of a toxic relationship, surprising.
113. I give limited weight to Dr Farhy's assessment given that there were a number of matters such as the stalking offence that the Father had not told him about, but also Dr Farhy's limited understanding of issues of coercive control and psychological manipulation.
114. The Father gave extensive evidence at the February hearing and shorter evidence at the May hearing. I set out my evaluation of his evidence in my conclusions. I only summarise it briefly here.
115. The Father said that he had known the Mother had had mental health issues, and had been on medication for bipolar and schizophrenia. He said she had seemed relatively stable when he met her. He said he never done anything intentionally to upset her or to trigger her mental health problems.
116. He was clear both in February and May that he would take every legal step open to him to protect XX from the Mother.
117. In the February hearing he accepted in evidence in chief that he had sometimes been overly aggressive in tone to professionals but he put this down to being a very direct and blunt person from New York. In the May hearing his tone was less guarded and he was less restrained about expressing his anger, aggression about, and lack of empathy for the Mother.
118. He said his own mental health was good, save for anxiety about the case.
119. He said that he and the Mother had a toxic relationships and the hostile communications which he admitted sending had to be seen in that context. There were a number of communications which he denied sending and said the Mother must have forged. I deal with this matter in my conclusions. He said that the toxic relationship between him and the Mother had not impacted on XX.
120. He said at the February hearing that in the current circumstances the Mother should have no contact with XX, but if she was mentally stable he would be prepared to reconsider that position. He would do so in consultation with therapists.
121. The Mother did not give evidence for the reasons set out above.
122. The Guardian supported the LA's position. She acknowledged that the Father had been strongly committed to XX being placed with him, and that the quality of contact had been very good. However, she was of the view that the Father would not support XX having any contact with Mother or the maternal family. At the end of the first hearing she was very clear that she thought a placement of XX with this Father would be significantly harmful to him. She was clear that the level of animosity and aggression to professionals was beyond what was normal in such proceedings and that his responses were wholly disproportionate.

123. She relied upon the Father's inability to work with professionals who disagreed with him, and his extreme response, amounting to abuse and bullying of such professionals.
124. She said she had spoken to the MA and was confident that she was focused on XX's best interests. She said, as had Ms Berchie and Ms Keane, that the MA was clear that she would place XX's interests first. The MA had been highly critical of the Mother's behaviour once this had become clear to her, and had also said that she would have no contact with the MGM if that was necessary for XX.
125. The CG's position was that the placement with the MA was viable and in XX's best interests. It needed robust orders around it to make the risks manageable.

The placement with Maternal Aunt and Uncle

126. The A&U have been subject to two assessments by Ms Berchie - the Connected Persons Assessment and a special guardianship assessment. The February hearing was adjourned so that the special guardianship assessment could be completed, and various ancillary reports, including as to any risk from the family's dogs. As I have set out above, Ms Berchie has spoken to the A&U on a large number of occasions. The MA has also spoken to Ms Keane and to the CG.
127. All those people have given a very consistent assessment of the MA; that she is very focused around XX and his best interests, both now and in the longer term; that she is fully committed to placing his interests before that of either the Mother or the MGM, and that she intends to keep him safe from them. All three professionals who have spoken to her support the placement and believe that the MA both intends and is capable of keeping XX safe (from both parents).
128. The MA is the Mother's half-sister. She is close to the MGM and the MGM's home is quite close by. The Father alleges that the MGM lives with the MA but the MA has consistently denied that. It is impossible to be certain given that unannounced visits by the LA are impossible but given the professionals' assessments of the MA I accept what she has said.
129. The MA has a close relationship with the MGM and was very involved when she was seriously unwell earlier this year. It seems that when the MA was first involved in this case, she did not appreciate the risk that the Mother posed to XX and the actions of the MGM. However, in Ms Berchie's view, as more of the background has been explained, the MA is now fully aware and accepting of those risks. She has indicated that if necessary she will break contact with the MGM in order to protect XX. She was critical of the emails that the MGM had sent to the Father earlier in 2023.
130. The family live in a relatively modest property, and the Father has argued strongly that it is inappropriate in terms of size and lifestyle, and that he can offer XX a larger home and a more well off childhood. He also points to the fact the MA receives some form of disability benefit in the US. Again, Ms Berchie has assessed these matters and believes the A&U offer a suitable home.
131. The Father is concerned that the A&U hold a gun licence and that guns may pose a risk to XX. Such licences are common in the US and there is no evidence of any

specific risk. The dogs in the home have been subject to a risk assessment.

132. Mr Slater submits that the lack of a finalised financial support package is material given the MA's reference to needing financial support with looking after XX. The LA have this matter in hand, and I accept that given differences between the UK and the US, such as the cost of healthcare, this matter is taking longer to finalise than would normally be the case. I see no reason why this should delay the making of final orders.

The Law

133. The law on fact finding hearings is well established and the key principles can be succinctly stated:

- a. The standard of proof is on the balance of probabilities: Re B [2008] UKHL 35.
- b. The burden of proof is on the local authority: Re M (Fact-Finding Hearing: Burden of Proof) [2012] EWCA Civ 1580.
- c. Findings must be based on evidence not speculation: Re A (A Child) (Fact-finding Hearing: Speculation) [2011] EWCA Civ 12.
- d. The Court must have regard to the 'Wide canvas' of evidence: Re U; Re B [2004] EWCA Civ 567; Re T [2004] EWCA Civ 558 (Butler-Sloss P).

134. Regarding the consideration of evidence from a witness who has told lies, the 'Lucas' direction as Baker J put it in Devon County Council v EB & Ors (Minors) [2013] EWHC 968 (Fam):

"60. ... [I]t is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The Court must be careful to bear in mind that the witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that the witness has lied about some matters does not mean that he or she has lied about everything. See R v Lucas [1981] QB 720."

135. The fallibility of human memory was considered by Leggatt J in Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor [2013] EWHC 3560 (Comm) at [15] to [21].

136. Hearsay evidence is admissible in the Family Court, but appropriate care needs to be applied as was explained by Munby P in Re A (Application for Care and Placement Orders: Local Authority Failings) (2016) 1 FLR 1:

"9. ... the local authority, if their case is challenged on some factual point, must adduce proper evidence to establish what they seek to prove. Much material to be found in local authority case records or social work chronologies is hearsay, often second or third-hand hearsay. Hearsay evidence is, of course, admissible in family proceedings. But, and as the present case so vividly demonstrates, a local authority which are

unwilling or unable to produce the witnesses who can speak of such matters first-hand, may find themselves in great, or even insuperable, difficulties if a parent not merely puts the matter in issue but does into the witness box to deny it. As I remarked in my second View from the Presidents Chambers [2013] Fam Law 680:

‘Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is much more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority’s files.’

It is a common feature of care cases that a local authority assert that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority’s concern about something. If the ‘thing’ is put in issue, the local authority must prove the ‘thing’ and establish that it has the significance attributed to it by the local authority.”

137. In the same case, Munby P considered the need to link the facts asserted by the LA with the alleged harm or risk:

“12. The second fundamentally important point is the need to link the facts relied upon by the local authority with their case on threshold, the need to demonstrate why, as the local authority assert, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y, or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority’s case was that the father ‘lacks honesty with professionals’, ‘minimises matters of importance’ and ‘is immature and lacks insight into issues of importance’. Maybe. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority’s evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts.”

138. The Courts have frequently emphasized the need to accept diverse parenting, including poor behaviour by parents. In *Re B (A Child) (Care Proceedings: Appeal)* [2013] UKSC 33 it was said:

“143. ... We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit

crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs.”

139. In Re-A (2016) 1 FLR 1, see above, Munby P said:

“96. I can accept that the father may not be the best of parents, he may be a less than suitable role model, but that is not enough to justify a care order let alone adoption. We must guard against the risk of social engineering, and that, in my judgment is what, in truth, I would be doing if I was to remove A permanently from his father’s care.”

140. The benefits of a child being brought up by their parents, or birth family were considered in Re B-S (Adoption: Application of s 47(5)) [2014] 1 FLR 1035:

“26. ... [A]lthough the child's interests in an adoption case are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.

27. ... [T]he court “must” consider all the options before coming to a decision.

...

28. ... [T]he court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. ...”

141. In terms of how to approach a decision, the Court of Appeal in Re G (A Child) [2013] EWCA Civ 965 said:

“49. In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.

50. The linear approach, in my view, is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.”

The parties’ submissions

142. The LA submit that XX should be placed with A&U. They can provide him with the stability and consistency he needs. They will be able to protect him from the full force

of the parental animosity whilst being able to promote contact with both parents in a safe environment at a contact centre in Florida.

143. All relevant checks of the A&U have been undertaken and are positive.
144. The LA consider that the Father will be unable to promote any relationship between XX and his mother, or any part of the maternal family. Further they submit that if XX is placed in his father's care he is likely to suffer significant harm.
145. Mr Slater submits that the LA's threshold has changed since the start of the case from being a concern about the Mother's neglect of XX and about her mental health, to one focused on the parental relationship with the purpose of preventing XX being placed in his Father's care.
146. Mr Slater focuses on the fact that the Father has shown himself throughout to be a capable and committed parent with the contact sessions being entirely positive. He has been utterly committed to having XX in his care, and all his actions should be seen in this light.
147. Mr Slater says that the Father had engaged well with professionals other than Mr Hore, who he did not view to be fair or competent. The Father has maintained a career as a teacher and no concerns have been raised on his professional relationships. This is relevant because of the concern, particularly of the CG, as to the Father's ability to work with professionals.
148. He said that the Father had engaged "fully and appropriately" with the proceedings in Oklahoma and California.
149. Mr Slater's response to the evidence as to the Father's angry and abusive responses to some professionals is that this is borne out of the Father's frustrations with the litigation process in the UK, and what the Father perceives to be the failure to protect XX from harm by the Mother. This fear was proven by the Mother's attempt to abduct XX from the contact centre. From the Father's perspective the authorities in the UK (and at points in the US, e.g. Commissioner Aharonov) have acted to block his right to have care of his son. That has led the Father to sometimes act inappropriately (my word not Mr Slater's) but that has always been as a product of his love and commitment to XX.
150. He refers to the Mother's medication history as showing that she was in no position to parent XX, and this was an explanation for those texts the Father accepts sending before X was born. Any placement with maternal family members will be harmful and would "commit the family to further extensive and potentially harmful litigation." The Father makes a very large number of criticisms of the A&U including that they will inevitably allow XX to return to his mother's care and/or to that of the MGM and they will be unable to protect him from the Mother. He suggests that their living conditions are inadequate; the MA's health issues will prevent her from properly parenting XX; that the Uncle's work hours will prevent him from supporting XX; that there is some history of social service involvement with the MA in Hawaii.
151. He points to the fact that the MA submitted a lengthy witness statement with numerous allegations against the Father, and that they will never be able to promote

contact with the Father because of the level of animosity.

152. The Father in his final statement makes clear that he will use every legal route in the US to gain custody of XX. He says that it is inevitable that he will ultimately succeed and, as such, by placing XX with the A&U the Court would simply be delaying the inevitable, further destabilising XX and leading to much greater costs and difficulties (including for the A&U). Future legal proceedings in the US are not a matter for this Court. However, I have had the benefit of expert legal evidence from Ms Gillett in respect of Florida law. I have no reason to believe that the orders I make will not be legally robust and supported by the US Courts.
153. Mr Slater submits that the Father is at a disadvantage, as against the Mother, because he has participated in the proceedings and been cross-examined. Therefore, much of his conduct has been placed under the spotlight in a way that the Mother's conduct has not.
154. The Mother's legal team are undoubtedly in a very difficult position because for large parts of the proceedings the Mother has not had capacity; when she has not had capacity she has refused to engage with the lawyers appointed by the OS; and during the final hearing she was incarcerated in California and they had very limited communication.
155. All the evidence suggests that the Mother would be very strongly opposed to XX being placed with his father, for reasons similar to those of the LA and the CG, but doubtless much more strongly held.
156. It can also be assumed that the Mother would want for XX to be placed with her. It is not clear what position she would take on the proposal to place XX with the A&U, although it seems probable that she would favour that over placement with the Father.
157. The case put by Ms Kirby in cross examination on behalf of the CG was in some ways more forceful than that on behalf of the LA. She pointed to the communications which indicated the Father had been deliberately cruel to the Mother knowing that she was mentally vulnerable. She put that the Father had very deliberately manipulated women he was sleeping with to make false allegations about other women.
158. The CG's position at the final hearing was that all the assessments had been undertaken and XX should be placed with the A&U. She considered that the Father would inflict significant harm on XX, both by not promoting any relationship with his mother and because of the Father's inability to work with professionals who disagreed with him, and his practice of becoming highly aggressive and abusive.

Conclusions

159. I need to consider both whether threshold is crossed and the welfare outcomes for XX. The material on the two stages is closely intertwined and I will deal with them together before reaching my ultimate conclusions. Threshold covers both the Mother's neglect of XX and the risk to him from the consequences of her mental illness; and the risk to him from the level of parental conflict. At the welfare stage, the key question is whether XX could safely be placed with either parent at the present

time, or in the immediately foreseeable future. Alternatively, whether XX's best interests lie with being placed with A&U.

160. The evidence of risk from the neglect of the Mother in August 2021, and that she continues to put XX at significant risk if in her care, is manifest. There is clear evidence within the bundle, which I accept, that he was at risk in August 2021 and continues to be so because of the consequences of her mental illness.
161. Since the interim care order was granted the Mother has had three periods of detention under the MHA. It is very unclear when the Mother will be recovered enough to safely look after XX. Certainly, there is no evidence that will take place within a timescale appropriate for meeting XX's need for a permanent long term placement. In any event, at the present time the Mother is incarcerated in the USA. It is not possible for me to know, or even speculate, how long this incarceration may last. The Father says the offences she is charged with could result in a jail term of over 10 years. However, given the uncertainty over the basis of those offences, in the light of Commissioner Aharanov's judgment and order, it may be the case that the Mother will be swiftly released. In determining whether XX should be placed with A&U I have to take into consideration that possibility.
162. There can be no doubt as to the risk the Mother poses to XX if she is not well. Her behaviour is erratic, angry and at times she completely loses control. Most obviously that happened in September 2022 when she tried to abduct XX from contact, assaulted a social worker, and caused XX great distress.
163. For these reasons I find that threshold is crossed, and that XX cannot be placed with his mother. It is not possible to tell when, and if, she will recover sufficiently to be able to care for XX. It is also not possible to know what will happen in terms of her current incarceration. I also accept, that even if these two difficulties were overcome, it is unlikely on the evidence that she will be able or willing to support any relationship between XX and his father.
164. The position in respect of the Father is more complicated. There are undoubtedly positives about the Father's interactions with XX and his position to care. Contact has been good, indeed very good. Having watched the video compilation, although I note that it should not have been made, it is clear that the Father engages very well with XX and is both focused and imaginative in the way he interacts. As the caselaw makes clear, in most cases it is beneficial to a child to be placed with one or both of their birth parents.
165. The Father says, and I have no reason to doubt, that he can provide appropriate accommodation for XX and that he has a good standard of living.
166. I also accept that the Father is highly protective of XX. I am confident he could and would protect XX from any attempt by the Mother to abduct him or otherwise interfere in his life. I do not doubt that the Father would engage the courts and the police, gain restraining orders and if necessary move States in order to ensure the Mother did not pose any threat to XX.
167. It is important to give those positive aspects of the Father's case full weight.

168. I do not accept that the LA has wrongly changed its threshold with the purpose of ruling out the Father. It is perfectly understandable, and quite normal, that the threshold changed as the LA found out more about the case and the parents' relationship. The Mother came to the UK, thus leaving her support network, because, at least in her perception, she was fleeing the Father. Therefore, it is not possible to disaggregate the parental conflict from the reasons XX has ended up in care.
169. However, I do not think the Father would promote any relationship with the Mother or her family even if the Mother was well, and certainly on nothing other than his terms and his conditions. The level of animosity in this case is too entrenched for me to give the Father's references to allowing contact if the Mother was well much, if any, credence. I note the illuminating answer to whether he would act to assist in withdrawing current charges against the Mother in California. At the February hearing, the Father said the Mother would be arrested if she arrived in California and suggested she would be imprisoned for 2 years. He says this is a matter entirely for the authorities and he can do nothing to assist. But when asked whether he would write a letter to the police urging them not to enforce, he said he would not do so. That is extremely unusual in this type of case.
170. The position became even clearer at the May hearing. The Father has strongly supported the Los Angeles police and District Attorney action against the Mother. He says that he had no choice but to do so and was subpoenaed to attend. However, he showed absolutely no insight, empathy or concern about the mother of his child being incarcerated, even though he knows that she is mentally unwell. He said this is because of the threats that she had made against him and the fact that she had allegedly entered into a contract to have him harmed. However, my clear view was that he was pleased the Mother had been imprisoned and would do everything he could to ensure this continued to be the case. I rely on Commissioner Aharonov's judgment that the Father had not drawn relevant material to the attention of the Californian courts.
171. At the heart of the case in respect of the Father lies the allegations of his psychological abuse of the Mother and other women, and how he has responded to professionals who he perceives as acting against his interests.
172. In the two massive bundles of materials there are a large number of texts (and emails) between the Father and the Mother and other women. There are also many documents pertaining to the Father's involvement with the police and law enforcement in the US. I have to be proportionate in my fact finding, focusing on what is necessary to determine the relevant orders in respect of XX. It is not proportionate to go through every text or delve into the factual and legal detail of various events in various US states over many years.
173. I am also highly cognisant that the Mother is not well enough to give evidence and that makes establishing the context of some of the communications very difficult.
174. However, one way through these difficulties is to focus on the abusive texts which the Mother (in her written evidence both here and in the US) says the Father has sent to her. There are a large proportion of those texts which the Father says he did not send and the Mother has forged to make him look bad. In my view, that factual dispute lies at the heart of this case. If I find that the Father did send those texts then it follows

that he has very deliberately lied on a key issue in this case, and that he did indeed send highly abusive and psychologically damaging texts to the Mother and sought to manipulate other women to harm the Mother.

175. There are a number of reasons why I find the Father did send all those texts.
176. Firstly, the disputed texts appear in screenshots of a number of different formats (WhatsApp, SMS), all with the normal features of times, connectivity etc. The screenshots are of varying quality, precisely as one would expect if they were genuine. The content also reads as entirely genuine, one example being that the Father in the texts refers to XX as “K”, the name he chooses to use for the child. The communications all read entirely true in their context. There is nothing on their face which would lead a viewer to suspect they were a forgery and the level of detail, and their differing appearance, makes it inherently unlikely they are a forgery.
177. The Father says the Mother is highly intelligent and worked for the US military, which may both be true. But it remains the case that these would be a complex and very sophisticated forgery if that is what they are.
178. Secondly, there is nothing in the Mother’s presentation, behaviour or history, either before this Court or in any US proceedings, which would support a view that she was capable of this type of conduct. She has been angry, aggressive, upset and out of control. She has not been subtle and complex in her attempts to persuade either this court or the US courts. From my knowledge of this case and of the Mother, I do not think she is capable of this type of forgery.
179. Thirdly, the texts do fit into the facts as established. The Father himself at times has described the relationship as being, from his viewpoint, a casual one, or as sex with benefits. He had a relationship with D, and he accepts that she filed evidence against the Mother, albeit he says she did that to impress him and not at his instigation. He accepted that there was an issue with a previous woman, C, who on his version of events he simply phoned too often and who then got some form of order against him.
180. Fourthly, and importantly, the Father’s assertion that a significant number of the texts are forgeries was only raised after the Hague proceedings, and thus very late in the day. If many of the texts were forgeries I would expect the Father to have raised this very early on. The Father said that he had told his solicitors they were not written by him during the Hague proceedings, but I find this extremely difficult to believe. There are a number of instances where the Father says he told lawyers or judges things but they have failed to record them or the records are wrong. In the one instance that has been fully considered, that before Commissioner Aharanov, the judge was clear that the Father had not given the court the full information.
181. Fifthly, the veracity of the texts was in my view entirely borne out by the Father’s oral evidence. He consistently sought to manipulate evidence, to shift responsibility and to seek to portray himself in the best possible light. He has also sought to manipulate the court process in the US by not revealing information to various authorities. In my judgement the Father is an intelligent and highly manipulative person, and the conduct set out in the texts fits my assessment of him.

182. For all these reasons, I have no doubt that the Father sent all the texts which are produced in the bundles as being from him.
183. It follows from that finding that the Father has lied on a key issue to this court. Of course, the fact that he lied on whether he sent the texts does not mean that the rest of his evidence carries no weight. However, in this case it does indicate both a complete lack of respect for the legal process, but also a willingness to do whatever he wishes in pursuit of his end. Most importantly, the texts show extreme cruelty to the Mother, who he knew to have a history of mental illness, and certainly by the time she was pregnant, to be vulnerable.
184. Further, the texts show a history of manipulating women and playing them off against each other for his own ends. Two particular (but by no means the only) examples are his attempt to persuade the Mother to have a termination by suggesting that they could have a long term relationship and other children when all the evidence suggests that was not his intention; and the evidence that he persuaded D to take legal action against the Mother to support his case against her.
185. I do not accept that these texts are explicable in the context of a toxic relationship, with fault on both sides as Dr Farhy seemed to suggest. Many of the texts are psychological abuse, pure and simple. The Family Courts in the UK do not consider that psychological abuse is justified or explicable on the basis that the parties have an unhappy relationship. Further, in many of these texts, it is clear that the Father is the one wielding power, and using that power to manipulate and intimidate the Mother.
186. I reject Dr Farhy's suggestion that the texts and the Father's behaviour do not support a finding that he is "dangerous" because he did not act on any threats. Many of the texts amount to psychological abuse of the Mother, and probably of other women. Psychological abuse, certainly of a vulnerable person with a history of mental illness, can be just as dangerous as physical abuse. As I have said above, I find it surprising that Dr Farhy was slow to accept this.
187. The other aspect of the Father's conduct which is relevant to XX's future is his response to professionals who do not support him, or who he views as thwarting his intentions. The examples of his threats of action, and at times abuse, include against Mr Kane (the lawyer in Oklahoma), Ms Henson (the Oklahoma law expert); Mr Hore; the LA and indeed the Court. He has directed a torrent of criticism in extreme terms (for example allegations of lying and dishonesty) both against Commissioner Aharanov and myself, the two judges who have not supported his case.
188. Mr Slater suggested that these were simply the results of the Father's frustration with the various processes, particularly those in the UK; a desire to protect his son, and to some degree cultural differences.
189. I do not accept this. The scale and inappropriateness of the Father's communications are shown by the fact that Mr Kane said that in his long professional career in Oklahoma the Father's conduct was unique; the fact that I have had to make an order that the Father does not communicate with the LA save about contact; and the impact upon Mr Hore. The very experienced CG said that she thought that the Father's conduct was well beyond any normal scale.

190. These are not the outpourings of a frustrated parent who is a frank speaking New Yorker rather than the more restrained English. The Court, and doubtless the CG, is very used to dealing with parents who are angry and frustrated by the court system. The Father's communications are abusive, threatening and in my view designed to intimidate. They are also made without any thought or care about the impact they have on the recipients. That much was clear by the Father's complete disregard to the effect of accusing Mr Hore of being a "paedophile" had upon him.
191. This is conduct that no professional should be exposed to. Much more importantly in this case, it is behaviour that no child should be exposed to. I agree with the CG there is a very high probability that the Father will engage in such conduct going forward in respect of any professional who thwarts his wishes, particularly in regard to care of XX. This might be a professional who wishes to promote contact with the Mother or it might be a school teacher or healthcare professional. The Father's recourse to psychological abuse as a method of getting his way poses a severe risk to XX. I have closely in mind the strictures that the court should be tolerant of a wide range of parenting. However, the Father's conduct in this case goes well outside any spectrum of even vaguely acceptable conduct.
192. I also conclude that the Father is highly manipulative, both of the courts and of professionals, when they allow him to be. He was extremely selective of the information he gave Dr Farhy, which had some role in Dr Farhy's sympathetic conclusions in his written report. He has also been very selective and, as far as I can tell, positively misleading of the Courts in the USA. This follows from Commissioner Aharanov's judgment, but also at least one court form where he failed to point out that XX had been found to be habitually resident in the UK. It may be the case that he has misled other authorities in the US, but I am not in a position to make positive findings in that regard.
193. I make these conclusions in the clearest possible form because I have no doubt, and indeed the Father has made clear, that he will take every possible step to persuade the US courts to place XX in his care and to remove him from the care of the A&U. For the avoidance of doubt, on this basis, I find the threshold is satisfied also in respect of the Father.
194. Against the very significant risk of harm if XX is placed with his Father, I have to balance the risks and benefits to XX of being placed with the A&U. They have been assessed very thoroughly by Ms Berchie and that assessment is positive. Both she, Ms Keane and the CG all speak of the MA's commitment to XX and focus on keeping him safe and his long term wellbeing. I have no reason to doubt their assessments.
195. I accept that it may not be easy for the MA to foster the relationship between the Father and XX. Whatever the truth behind the Father's behaviour to the Mother, the written statement from the MA shows a very high level of animosity to him. However, there will be a contact order in place, so the Florida authorities can take appropriate legal steps to ensure contact as appropriate, and all three professionals are confident that the MA will support contact with the Father as long as it is safe to do so.
196. The fact that contact is to be in a contact centre, professionally supervised, provides a significant level of comfort to the MA and the Court that it will take place.

197. It would be naïve to think that maintaining relations for XX with both sides of his family is going to be easy in this case. However, in my view the best chance of achieving this, is by placing him with the A&U.
198. Given the risk that the Mother poses to XX, it is of great importance that the A&U can protect XX from his Mother and stop her taking him back into her care. Again, there will be court orders in place and the Florida authorities will be able to take enforcement action. Further, this has been thoroughly assessed by Ms Berchie, who is confident that the MA will protect XX from his mother and take all appropriate steps to stop her removing him from the A&U's care.
199. I am conscious that XX has only had very limited remote contact with the A&U and thus will need to develop a relationship with them. However, I have no doubt about their commitment to him and that they will be able to look after him well. Whether he goes to the Father in California or to the A&U in Florida it will be a huge change for him, and take a major adjustment. That is the reality of XX's life and is not a reason against placing him with them.

Orders

200. For these reasons I will make the orders sought – a special guardianship order in favour of the A&U; contact orders in the form requested and a request that the orders be registered in Florida. The intention is that the MA will be asked to give consent to XX being accommodated by the LA under s.20 Children Act 1989 once the special guardianship order is made. There is a transition plan of some 14 days during which the A&U will stay in the UK. This is shorter than would normally be the case if there was a special guardianship order in the UK. However, in international placements, particularly where a parent has died or is in prison, it is not unusual to have arrangements such as this.