Neutral Citation Number: [2020] EWCA Civ 515

Case No: B4/2019/2794(B)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Her Honour Judge Hillier, sitting as a Deputy High Court Judge
FD18P00811

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/04/2020

Before:

LORD JUSTICE BEAN
LORD JUSTICE BAKER
and
MR JUSTICE COBB

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S (Children)

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Rachel Langdale QC and Anita Guha (instructed by **Dawson Cornwell**) for the Appellant (mother)
Christopher Hames QC and Michael Edwards (instructed by **Freemans**) for the Respondent (father)

Hearing dates: 24 March 2020 (Hearing conducted remotely using Skype)

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Approved Judgment

Mr Justice Cobb:

Introduction

1. This appeal relates to three children: D, a girl now aged 5, E, a boy now aged 4, and F, a boy now aged 2 ("the children"). The children are living with their father and members of his family in Libya; they have been there for over two years.

2. The appeal is brought by the children's mother ("the mother") against a decision of Her Honour Judge Hillier, sitting as a Deputy High Court Judge in the Family Division, of the 14 October 2019. For reasons set out in a judgment which I discuss in detail below, Judge Hillier ('the judge') dismissed the mother's application for the summary return of the children from Libya; the judge concluded that the English court had no jurisdiction to make such an order:

   i) rejecting the mother's claim that the children had been 'wrongfully retained' in Libya by the father on 9 January 2018 (per *Article 10* of *Council Regulation 2201/2003* (the '*Brussels II Revised Regulation*' or '*BIIR*')),

   and

   ii) finding that at the time the English court was seised of the mother's application (3 December 2018), the children were habitually resident in Libya (per *Article 8 BIIR*).

   The judgment at first instance is unreported. I have therefore, as appropriate, reproduced relevant sections of it into this judgment.

3. Permission to appeal was granted by Moylan LJ on 6 February 2020. In granting permission, Moylan LJ remarked that the "Grounds of Appeal and Skeleton raise sufficient issues to justify the grant of permission although the appeal appears to be very largely, and possibly solely, from findings of fact and will therefore have to surmount the high threshold for the Court of Appeal to interfere with findings of fact".

4. Miss Langdale QC and Miss Guha for the appellant mother seek to persuade us that the findings of fact on which the judge's conclusions were based are so flawed, inconsistent, and so contrary to the evidence, that they cannot stand. They submit that this court should allow the appeal, and should substitute a conclusion that the courts of England and Wales do indeed have jurisdiction; they propose that the mother's application should be re-listed before a Judge of the Family Division for directions to set up a judicial determination of whether there should now be a summary return of the three children.

5. Mr Hames QC and Mr Edwards for the respondent father contend that the factual findings are perfectly sound, in line with the evidence overall, and support the conclusions on jurisdiction; they contend that this appeal should be dismissed.

Factual background

6. The undisputed facts are these.

7. The mother is 41 and English by birth; her extended family lives in England. The father is 37 and was born in Libya; he is a lawyer with a Master's degree in law obtained in 2012 at an English University. His extended family lives in Libya; his father is said to be a lawyer there. The parties met in 2007, and were married under Islamic law in 2008. They have lived in England for most of their married life, save for a period of about five months in 2013-2014 when they lived in Libya. All three children were born in England. The father obtained indefinite leave to remain in the United Kingdom in 2014, and was granted British citizenship in 2016.

8. On 12 December 2017 the parties travelled, on one-way tickets booked by the mother, with their children, to Turkey where they met with members of the paternal family for a holiday, before all travelling on together, on 26 December 2017, to Libya. The circumstances in which they travelled to Libya were at the centre of the dispute before the judge, and I return to this in my review of her judgment.

9. On 9 January 2018 the mother returned alone to England, to attend an appointment with the Department for Work and Pensions ('DWP') in relation to a benefits' claim; she had been notified of this appointment after she had left England, and while she and the family were in Turkey. The mother had expected that her youngest child, F, would be travelling with her, but shortly before their scheduled departure the father advised her that he had not been able to secure an exit visa for F. During the early part of 2018, and while in England, the mother made contact with her current solicitors, Dawson Cornwell, a lawyer in Libya, the Libyan embassy, Reunite, and others, seeking advice about her situation. During the year, the mother travelled between Libya and England five times; she spent approximately four months in total in Libya during 2018, and the balance of the time in England. The children and the father remained in Libya throughout this period.

10. On 3 December 2018, the mother issued proceedings in the Family Division of the High Court seeking the summary return of the children to this jurisdiction. By her application, she asserted that the children had been "forcibly retained" in Libya "while we were there on holiday". She alleged that the father was "shortly… due to travel to England and Wales", hence (she maintained) the need for urgent protective orders. At a hearing on the day of the issue of proceedings, the children were made Wards of Court, and a Tipstaff passport order was made; the hearing had been conducted without notice to the father, justified according to the mother, by reason of the father's imminent arrival in this jurisdiction, and the risk that he would not travel here, or would take steps permanently to separate the mother from her children if he knew of the court process. The court further made provision for a return date at short notice; a long-stop date of 17 May 2019 was set for the next hearing. In fact, the father did not travel to England at that time, or indeed at any time since.

11. On 28 June 2019, at a hearing at which both parties were represented, Ms Ruth Henke QC sitting as a Family Division Deputy High Court Judge, listed the mother's application for "a fact-finding hearing to determine the issue of the habitual residence of the children and thereafter whether or not the court has jurisdiction to proceed to make orders in respect of the children".

12. Two days were allocated to the hearing of the case. A sizeable bundle of documents was assembled (in excess of the authorised limit per *para.5* of *PD27A Family Procedure Rules 2010*); both parties gave oral evidence, and the judge heard the

submissions of counsel. The father had been given leave to participate in the hearing by video-link from Libya; the mother was in attendance in person in London. Both parties were represented by experienced junior counsel who appear before us, with leading counsel, on the appeal.

13. The parties agreed the parameters of the hearing, which the judge described in her judgment thus:

> "[17]… There were no Scott Schedules or prior identification of factual disputes requiring resolution. The advocates proposed that I should hear oral evidence on the issue of habitual residence and on the issue of wrongful retention, and confirmed a time estimate of 2 days".

Later in her judgment ([77]), the judge recorded that she had been provided (later on in the hearing) with a more extensive agreed list of "relevant factual matters" on which the advocates wished her to adjudicate. It is no part of the mother's case that the judge failed to deal with these factual matters.

14. The judge reserved her judgment. The draft judgment was circulated on 14 October, and formally handed down on 25 October.

The judgment

15. The judgment runs to 138 paragraphs, ranged over more than 40 pages. After a short introductory factual outline, the judge set out the parties' respective cases in summary. She then turned to the relevant legal architecture. She reproduced in full the provisions of *Article 8* and *Article 10* of *BIIR*, and then referred to a number of key authorities which had been cited to her by counsel. As invited by counsel during submissions, and understandably so given the very considerable issues over the reliability of the parties (see [17], [18], [19], [20], [21], and [81] below), the judge gave herself a direction in accordance with the guidance in *R v Lucas* [1981] QB 720; she expressed herself thus:

> "[29] … Proof that a party has lied about one thing is not proof that they have lied about everything, and it is wise to look at the reasons for a lie, since people may lie from shame, fear and other concerns rather than as attempt to conceal their guilt or responsibility".

16. The judge then reviewed the evidence of the parties, before going on to 'analyse' it, drawing heavily on the submissions of counsel.

17. The main interest in this appeal is focused on the 'assessment' section of the judge's judgment. It is convenient for present purposes to take, first, the judge's assessment of the parties' credibility; she observed that:

> "[84]… This case, like many others, has involved demonstrable elements of dishonesty by both parents. It has been my task to evaluate their evidence as a whole and to consider why they may have either lied, or not provided

> information within their knowledge which would have contradicted their case, and to piece together as best I can what happened".

18. She separately reviewed the mother's evidence and the father's evidence. She specifically alluded to various answers which the mother had given in oral evidence which demonstrated, in the judge's finding, material equivocation on important aspects of the case. The judge illustrated this as follows:

> "[43] Mr Edwards [counsel for the father] asked her why she had not asked the father to return the children to the UK in January/February 2018. She said that she could not ask him to return the children because he had taken her phone. Mr Edwards pointed out that she had her phone in the UK in January 2018 because there was evidence of her messaging the father and further that she did not say in those messages that she wanted the children to return to the UK. She said that she was living in "complete fear" and that she was terrified that if she went to the police or contacted other authorities she would never see the children again".

19. In a later, extended, section of the judgment ([85]-[89]) the judge set out why she found the mother to be an unsatisfactory and unreliable witness on key issues. She found the mother to be "deliberately vague" ([85]) on matters which contradicted her case and that:

> "[85]… [t]his deliberate vagueness sheds light on her true intentions which I find was to paint an inaccurate picture of the circumstances relevant to my decision".

The judge found that the mother told "obvious lies", and did so as "part of [her] attempt to portray the father as someone who sought to control her", adding that "it demonstrated to me that she was prepared to bolster her case by dishonesty" ([85]/[86]). The judge found that the mother had been able to "identify weaknesses in her case and to deny any memory of relevant facts when it suited her to do so" [89].

20. The judge recorded the father's lies to the court:

> "[59] The father accepted that he had misled the UK authorities during his application for asylum status. He said that he had falsely said that he was from Kuwait when in fact he is Libyan. He said that he was scared because he had been an illegal overstayer for 12 months and he was worried that he would be deported to Libya. He said the asylum claim was bogus but stated he later explained the situation to the Home Office who had taken his fingerprints and indicated that they would not take the matter any further. He said that this had happened in 2017. The father denied that he had been detained for a significant time in 2017, stating that it was for less than 24 hours and in August the Home

> Office had acknowledged his right to enter the country" [59].

21. Unsurprisingly, in the circumstances, the judge found him too to be an unsatisfactory witness:

> "[90] … He is a man who has deliberately lied to the UK authorities when he was applying for asylum, telling them he was from Kuwait and even giving a false name. I am satisfied that this deception, by a man who wished to practice as a lawyer, was sophisticated, planned and totally dishonest… This past behaviour might indicate that when faced with desperate circumstances the father would be prepared to lie again and perpetrate elaborate deception".

22. On the evidence relevant to the couple's relationship, the judge found that, while the parties had argued, and been unpleasant to each other, during the period under scrutiny, the mother's complaints of domestic abuse were not made out as alleged. She found that certain comments made by the mother at times will have "enraged" ([117]) the father, and found that the mother was not "subjugated" by the father as she alleged. In this latter respect, she explained her conclusions thus:

> "[87]… This was amply demonstrated by the fact that on occasion during their relationship she chose to live separately from him and returned either to her own home or to the maternal grandparents. It is also demonstrated by the fact that she left Libya in January 2018 despite the fact that the father did not want her to leave and that she returned twice that year. I am satisfied that on each occasion she was free to leave and I do not find that the father did anything to restrict her freedom".

In the same vein, the judge later added, significantly in relation to the allegation of wrongful retention:

> "[119] Throughout 2018 the father facilitated the mother's wish to return to the UK and then to return to Libya. I am not satisfied that he interfered with the mother's parental rights."

23. Significant questions over the credibility of the parties, coupled with the increasingly developing conflict between them, presented obvious impediments to the judge in reaching clear and unambiguous factual findings. She nonetheless examined the evidence in her endeavour to reach conclusions on the key issues. I focus on her main findings as revealed by the judgment.

24. First, and importantly, she found that in 2017 the parties had agreed to move with the children to live permanently in Libya. She referred to the "move" (by which, in context, she can only have meant permanent move) to Libya as "mutually consensual" ([125]). In her judgment, she drew on, and found as facts, a range of circumstantial factors which had influenced the parties' decision to make a permanent move:

i) That the mother had agreed in 2013 that the couple would move to and live in Tripoli, and that the intention was to settle there "for a significant period of time" ([96]);

ii) During this earlier (2013) period in which the couple had lived in Tripoli, in the judge's finding, the mother "had started to put down roots in Libya and referred to it as her second home" ([96]);

iii) "The accommodation in the father's family home was separate and of a good standard" ([97]);

iv) That "it was clear that [the father] would have a better opportunity to work as a lawyer in his home country than in the UK where, despite his Master's degree in law, the height of his professional attainment was work as a paralegal document reviewer" ([97]);

v) By contrast, the couple were (in the judge's finding) subject to a number of material and "considerable" stresses living in England in the summer and autumn of 2017; they were forced to live apart for periods because of the father's work ([98]); the home conditions were cramped, and there were complaints from neighbours ([98]); there was "a significant degree of conflict" with the maternal grandfather (who lived locally) arising from the fact of the mother's "relationship with a Libyan Muslim man" and this conflict "considerable anxiety to both the mother and the father ([99]);

and that

vi) There were "financial strains" on the household ([99]) in England.

25. Specifically, so far as the mother's position was concerned, she concluded at [87] that:

> "I am satisfied on the evidence, including her written evidence, that the mother knew all along that the plan was to go to Tripoli via Turkey, partly due to travel restrictions and partly to see the paternal sister who lives in Istanbul. I am satisfied that she was aware that the father was obtaining travel documents from the Libyan Embassy before [F] was born (her evidence was that it was while she was pregnant) and that she signed documentation to enable him to do so in respect of the children and probably for herself. I reject her assertion that all she understood was that she was signing a document to confirm that she was the children's mother".

26. She found that the mother had "participated fully in the process of making plans" for the permanent move to Libya [103], contrary to the mother's assertion in her application form that they were only visiting Libya on "a holiday" (see [10] above), and went on:

> "[102] I find that the primary discussion between them was of a move to Libya because they were living in cramped

> conditions and the mother did not have the support of her family at the time. I'm satisfied that the prospect of living in better quality accommodation, with paternal family support and better job prospects for the father were the reasons why they decided to move to Libya. It was not possible for them to buy direct flight tickets to Libya so it was inevitable that there would be a stop off point. I find that it was agreed that they would have a holiday at the "stop off" point in Istanbul but that that was always on the basis that they were on their way *to live in Libya*". (Emphasis by italics added).

27. In a crucial passage in the judgment, the judge found that the mother:

> "[104] … was instrumental in purchasing the tickets to Turkey and that she was fully aware of the purchase of the tickets to go to Libya as they were part of the couple's plan. I am also satisfied that she completed the documentation required by the Libyan Embassy in order for travel documentation to be obtained for the whole family… I find that she was fully aware of and participated in the process of obtaining the relevant documents".

And went on at [105] to conclude:

> "I find that the mother agreed *to a permanent move*, with a holiday stop off on the way. I am satisfied on the evidence on a balance of probabilities that in November and December 2017 the mother agreed with the father that *their future lay in living in Libya, and that she intended to live there with the children and her husband for the foreseeable future*". (Emphasis by italics added).

28. This key finding was buttressed by further conclusions which the judge reached in relation to the parties' conflicting accounts about the transportation of belongings to Libya. She recorded the mother's evidence that the parties had taken *two* suitcases of belongings; she included in her judgment a note of the mother's oral account on this point (which I note corresponded with the mother's third witness statement), as follows:

> "[37]… I made no additional arrangements. The 10 suitcases were not shipped with my consent. It's not true that there were an additional two suitcases sent from my mother's home. I took about five outfits for each child. I didn't take their belongings with me and there were two cupboards full of clothes toys and books in their furnished bedroom at the flat".

The judge recorded the father's contrasting evidence on this topic:

> "[55]… 'She booked the flights and I sorted the luggage. The plan was to settle. I wouldn't ship 12 large bags if we were going for a holiday'."
>
> "[61]…'We took everything. It wasn't a holiday.' He said that he had packed the bags and the mother had shopped for things that she would need to take to Libya. He said that she had obtained two credit cards in order to buy the items she needed. He added that there were 10 large bags by an agent which were collected and two further large bags that were left with the maternal grandmother. The bags were collected later by the transport company from the grandmother who handed them over".

29. The judge analysed the evidence on this issue at [91]-[93], and concluded with these comments:

> "[93] I have carefully considered the evidence of both parties on this point and I am not satisfied that on a balance of probabilities the shipping documentation was an elaborate scam created by the father in a premeditated plan for abduction to Libya or was anything other than genuine. *I am satisfied that it is more than likely that the parties shipped 10 cases of goods when they were packed and that another two cases were left with the maternal grandmother and were subsequently collected by the shipping company*. I have come to this decision on the evidence available to me…. I find on the evidence that a significant amount of luggage was shipped to Libya and that the luggage was not part of any part-time business selling second-hand clothing in Libya as the mother also alleged, but consisted of relevant possessions including shopping which the mother had undertaken in planning for the event". (Emphasis by italics added).

30. In light of these clear findings, the judge had no difficulty in concluding – as indeed she did – that the children had not been wrongfully removed from England to Libya ([106]).

31. The judge then went on to consider whether the children had been wrongfully retained in Libya ([107]-[121]). The mother asserted before the judge, as she did through counsel before us, that the wrongful retention occurred on 9 January 2018 when the mother returned for the first time to England to attend the appointment with the DWP. The judge's conclusion on this was as follows:

> "[108] … I find that they discussed the mother's return to the UK and agreed that it would be appropriate for [F] to travel with her as he was breastfeeding. I do not think that the mother was opposed to the older children remaining in Libya and I am not satisfied that there was any restriction at all placed by the father or his family on her returning. He

> purchased flights for both the mother and [F] and I think it is likely that both would have travelled in January were it not for the fact that an exit visa could not be obtained in time for the baby".

In this regard, the judge found that the father "was genuine in his willingness to facilitate [the mother's] travel..." back to the UK ([109]). The judge found that the mother asked members of the father's family to care for the children, adding "… and I do not think she gave them any indication of any reason why she would not return, or that she wanted all of the children to return [i.e. to England] with her" ([109]). The father was surprised that the mother stayed away for such a long period ([109]).

32. Significantly, the judge found that the mother at that time "was unclear in her own mind as to what she wanted for the future" ([110]), a theme which the judge reprised later in her judgment:

> "[113] … I find that during the early months of 2018 she *simply did not know what it was she wanted*. I'm satisfied that the father was perplexed as to what was happening, because he thought they would be living there as a couple and she would be caring for the children whilst he went out to work. I accept his evidence that he felt that she was abandoning the family and that his motivation at all stages was to enable the mother to travel freely in the hope that she would stay at some point in Libya. This is evidenced by the fact that as recently as April 2019, unaware of the proceedings because the mother had requested that he not be served, the father sent her a travel invitation to visit Libya." (Emphasis by italics added).

33. The judge referred to the enquiries which the mother made of a Libyan lawyer (e-mail 22.3.2018), Reunite, the Foreign and Commonwealth Office, and her current solicitors over the weeks which followed. The judge distilled the e-mail to the Libyan lawyer by drawing from references to:

> "[111] … the mother's dislike of Libya and to family disputes. In that email the mother said: "*the father is a good man*" and indicated that she wanted to move elsewhere in Libya with him. She was still contemplating the possibility of staying in Libya and of holidays in the UK. … she was having difficulty settling in to the paternal family home and to life in Libya and that she wanted their marriage to work as he was "a good man" and at the time she saw his family as the problem".

The judge concluded, significantly, that having made these enquiries in the first half of 2018, and having sought advice, "she is a woman who knew … that she could take legal action to secure the return of the children if she chose to do so" ([111]).

34. In conclusion on this aspect, the judge said this:

> "[119] Throughout 2018 the father facilitated the mother's wish to return to the UK and then to return to Libya. I am not satisfied that he interfered with the mother's parental rights. When it became clear that she wanted to divorce and return to the UK late in 2018 there was a divergence of opinion as to the future. However, this does not, in my estimation constitute interference with the mother's rights of custody, and thus does not amount to a wrongful retention".

35. The judge then turned to the issue of habitual residence. It had been agreed between the parties that the children were habitually resident in England as at December 2017. The judge expressed herself to be in "no doubt" that D and E had "*some degree of integration* into life in the UK" ([124]; italics added for emphasis) before December 2017.

36. The judge discussed the various ways in which the children had, on her assessment, integrated into Libyan life after their arrival there on 26 December 2017 and prior to 3 December 2018. She referred, *inter alia*, to the following:

    i) the children's immersion within the paternal family "home and life" ([126]); the children lived in a flat forming part of the paternal family home;

    ii) that the two older children were receiving pre-school and nursery education in Libya;

    iii) a Libyan au pair was engaged;

    iv) the children had relationships with their Libyan cousins of similar ages "with whom the children play";

    v) the Arabic language was used to converse with them when the mother was not there;

    vi) for the youngest child, F, "his primary attachments were to those who cared for him in Libya including his parents, his paternal aunt and the wider paternal family including grandparents" ([125]);

    vii) D was receiving medical treatment for her pre-existing asthma condition in Tripoli.

37. The judge recognised that, however deeply immersed the children became into life in Libya, their integration would have been "slowed" by the absence of their mother – their former primary carer – for weeks or months at a time. The judge had, earlier in her judgment, recorded the agreed fact that the mother had been the main carer of the children when the family lived in England (judgment [34] and [63]), and separately the father's evidence ([67]) that he felt that the "children should be with their mother". At [128] she said:

> "Their former primary carer, their mother, was absent for weeks at a time and they were separated from each other during those periods because [F] was cared for by the

> paternal aunt and the grandmother. This slowing of the process is a matter which I have kept to the forefront of my mind."

38. The judge drew these strands together thus:

> "[132] I am satisfied that by 3 December 2018 all three of these children had achieved a significant degree of integration into both social and family environment in Libya. I am also satisfied that their mother consented to them moving to Libya, that she vacillated in her intentions about remaining there herself and that she only made it clear to the father that she wanted the children to return to the UK in the latter part of that year. It is also relevant that these are children who are Libyan nationals, whose parents intended them to live for the foreseeable future in Libya. Through most of 2018 the father and his family were the people who cared for the children and it is clear, and unchallenged, that his habitual residence was in Libya" [132].

39. She added in the next paragraph:

> "[133] … it is clear to me that their stable environment throughout 2018 was in Libya. The requirement is of "*some degree of integration*" but on the evidence before me by the time the mother made her application on December 3 2018 the integration was substantial. Whilst the 'tipping of the seesaw' was undoubtedly delayed because of the circumstances appertaining in the children's lives during the first few months of 2018 I find that the seesaw had tipped very firmly in favour of all three children losing their pre-existing habitual residence in the UK and gaining habitual residence in Libya by the time the mother made her application, by which time these children had almost no continuing link with the UK save for video contact with their mother. The court therefore does not have jurisdiction on the basis of habitual residence in the UK at the time of the application." (Emphasis by italics in the original).

40. In the final short section of the judgment, the judge disposed of the tentative suggestion, raised by the father (notably, not the mother) at the hearing, that the *parens patriae* jurisdiction could be exercised on these facts. I deal with this at [51]-[58] below.

The appellant's case

41. The essence of the mother's case on appeal was that the judge's conclusions on jurisdiction did not accord with the weight of the evidence, and that the factual findings are 'flawed', 'inconsistent', 'contradictory' and 'perverse'. Specifically, it was argued that the judge was wrong to conclude that the children had not been wrongfully retained by the father in Libya on 9 January 2018, the specific date on

which the mother alleged the wrongful retention had occurred, and further wrong to conclude that the children had become habitually resident in Libya by 3 December 2018. At the hearing before the judge, Miss Guha had described the determination of habitual residence as "the key issue"; on appeal, Miss Langdale developed that submission by arguing that, looked at overall, the judge had failed to undertake a true "child-centric" evaluation of the experiences of *these* particular very young children in a country which they had never visited previously, and separated from their mother, their former primary carer.

42. Miss Langdale took us to a number of documents in the trial bundle, the contents of which, she argued, were material and had not been addressed by the judge in her judgment either adequately or at all. These included specific text messages passing between the mother and the father (see for my discussion of this point [70] below) and correspondence passing between the mother and various agencies/organisations in the first half of 2018. Miss Langdale dwelt specifically on the e-mail which the mother had sent to a Libyan lawyer in March 2018; she criticised the judge for having selected only limited parts of that e-mail in her judgment (especially, that the mother had described the father as a "good man": see [33] above), which had given a false impression of its true tone and content. She complained that the judge had failed to mention, or address, *inter alia*, the following sections of the e-mail:

> "Once we arrived in Tripoli the children's passports and mine were taken and many issues started to occur. Firstly I was informed that the children will not be leaving Libya until he says, and possibly not until they are of grown age… I was not under the knowledge that I would have to remain in Libya indefinitely…
>
> When I returned [to Libya in February 2018] I wanted to try to communicate with [the father] and understand what we could do for this marriage, but I started to discover many things about the family and the responsibilities he had with them and how us coming to Libya was all pre planned. The arguments started after few days… at that point he took the children ... five days later after many problems with me creating in the family house and contacting the British foreign office he returned to talk…
>
> Since my arrival to the UK I have tried to come to solution with [the father] as in we rent another accommodation elsewhere and move away from his family. He stated that his father wants to transfer the law firm over to him and that he wants to try build something for his future. So, on those grounds I understand, but I cannot live with his family…
>
> Now I am in a terrible situation because if I report [the father] as having abducted the children from the UK he may get criminal offence and jeopardise his career but at the same time he never explained all these plans in the first instance, and for me living in Libya is very difficult with the children.

> I also under Sharia law have grounds for divorce for many reasons over the past two years… but again I wish to try for the sake of these children and because I believe we were put together for a reason, work something out and come to agreements."

43. Miss Langdale further and finally criticised the judge for failing to reflect in her judgment the extreme security situation pertaining in Libya at present.

44. It is not asserted on appeal that the judge erred in her identification of the relevant law, but Miss Langdale criticised the judge for applying it in a somewhat formulaic way.

45. Miss Langdale supplemented her arguments as to the judge's flawed approach to the evidence with a complaint about the disadvantage suffered by the mother in participating in the hearing in London while the father participated by video-link from Tripoli. Miss Langdale argued that the judge failed to make adequate allowance for the "challenges" faced by the mother in giving oral evidence; she maintained that the "stakes were intolerably high for the mother"; the judge was further criticised for allowing the mother "little or no latitude for the pressure and anxiety that the mother was subjected to when giving oral evidence".

The respondent's case

46. Mr Hames contends that the judgment is essentially sound; he makes the predictable but nonetheless powerful point that the judge had the significant advantage over us of having seen and heard the witnesses and was in a strong position (a) to form a view about their reliability, and (b) to assess how their oral evidence fitted together with the documentary evidence to form a factual picture.

47. In this regard he relied on the comments of King LJ in *Quan v Bray* [2017] EWCA Civ 405 at [88], in which she had drawn from a wealth of caselaw in this area:

> "Of particular resonance therefore are the words of Lewison LJ in *Fage v Chobani UK Ltd* [2014] EWCA Civ 5:
>
> "[114] Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial Judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include

> i) The expertise of a trial Judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
> ii) The trial is not a dress rehearsal. It is the first and last night of the show.
> iii) Duplication of the trial Judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
> iv) In making his decisions the trial Judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
> v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
> vi) Thus even if it were possible to duplicate the role of the trial Judge, it cannot in practice be done".

Mr Hames urged us not to engage in the exercise of evidential 'island hopping' on this appeal (see (iv) in the passage of *Fage v Chobani* cited above). He submitted that, however "extensive the archipelago may be", we would never be in the same position as the trial judge to appreciate the sea of evidence.

48. He further drew our attention to the judgment of Longmore LJ in *Aerospace Publishing Limited v Thames Water Utilities Limited* [2007] EWCA Civ 3 to this effect (at [70] ibid.):

> "In a complex factual case such as the present it will often be comparatively easy for an appellant to allege that a judgment is imperfectly or inadequately reasoned on one aspect or another and even to persuade this court, on an unopposed permission application, that that is arguably so. Appellants must, however, be aware that there is no obligation on a judge to give a particular response to every submission made (judgments in this country are quite long enough already) and that, unless it becomes apparent in the course of the appeal that a serious injustice has been done, appeals on the ground of inadequacy of reasons in complex factual disputes are likely to fail."

49. Mr Hames submitted that as the mother had not contended that there had been a wrongful removal of the children from England to Libya, it was very difficult for her to argue, on these facts, that there had been a wrongful retention at all, and certainly as soon as 9 January 2018. In this regard, he referred us to the speech of Lord Brandon in *Re H; Re S* [1991] 2 AC 476, which confirmed that for the purposes of the *Hague Convention 1980* (which of course includes similar provisions on 'wrongful removal' and 'wrongful retention' in *Article 12*) both removal and retention of a child in breach of custody rights were single events "occurring on a specific occasion" (p.499/500).

50. He submitted that on 9 January 2018, the date on which the mother contends that the children had been wrongfully retained in Libya, the evidence clearly contra-indicates any wrongful interference by the father with the mother's rights of custody; he illustrated this by reference to the judge's finding that at the point the mother left Libya in January 2018 "the father did not want her to leave" (see the quotation reproduced at [22] above).

51. Mr Hames further submitted that eleven months on, by 3 December 2018, there was powerful evidence that the children had achieved more than just "some degree" of integration into life in Libya, notwithstanding the absence of their mother from their lives for extended periods; the judge was, indeed, entitled to find that the integration was "substantial" ([133]). He emphasised that this was a pure "question of fact" for the judge, and that she discharged the obligations as a trial judge without any proper basis for complaint.

Parens patriae: the additional ground of appeal

52. Before turning to my discussion and conclusions on this appeal, it is convenient to dispose of a discrete point, namely the mother's application to add, at a relatively late stage, a further ground of appeal. By notice dated 12 March 2020 the mother sought permission to argue that the judge should have investigated whether it was appropriate to exercise the *parens patriae* jurisdiction in this case.

53. On 16 March, on a review of the documents only, Baker LJ deferred decision on this application to this appeal hearing. At the outset of the hearing we heard brief submissions on whether we should permit this additional ground to be advanced; we indicated that we would decide the issue at the conclusion of the appeal, and we heard brief submissions upon it.

54. For my part, I would refuse permission to the appellant to be able to rely on this additional ground of appeal; I say so for three reasons.

55. First, counsel for the mother had not presented her case before the judge at the hearing on the basis that the judge should exercise this *parens patriae* jurisdiction; the mother's case had been explicitly presented on the basis that the English Court's jurisdiction was to be founded either on the basis of *Article 8 BIIR* or *Article 10 BIIR* (para [22] of the judgment makes this clear). As it happens (and as I mentioned at [40] above) the judge briefly addressed the issue at the conclusion of her judgment (largely, if not exclusively, it seems because counsel for the father had pre-emptively raised the issue of *parens patriae* in order, if required, to defend the point); she said this:

> "[136]…there has been neither a formal application nor any submissions on behalf of the mother asserting that the court should exercise its *parens patriae* jurisdiction, whether on welfare / protection grounds or for reasons deriving from *forum necessitatis* arguments."

56. Consistent with the way in which the case was presented before the judge at first instance, the appellant's case on this appeal was originally presented on the basis that the 'legal framework' was limited to a consideration of *Article 8* and *Article 10* of

BIIR. It seems to me that the appellant is in very considerable difficulties in arguing that the judge was wrong not to accept jurisdiction on a basis which was not argued before her.

57. Secondly, and in any event, a *parens patriae* jurisdiction founded on the basis of nationality is a relative rarity. As Baroness Hale and Lord Toulson said (*obiter dicta*) in *Re B* [2016] UKSC 4 (in a passage explicitly supported by Lord Wilson at [53]), there are three main reasons "for caution" (indeed, "great caution") before an English court would or could conclude that it can exercise jurisdiction based on nationality:

> "[59] first, that to do so may conflict with the jurisdictional scheme applicable between the countries in question; second, that it may result in conflicting decisions in those two countries; and third, that it may result in unenforceable orders."

They added at [61]:

> "There is strong reason to approach the exercise of the jurisdiction with great caution, because the very nature of the subject involves international problems for which there is an international legal framework (or frameworks) to which this country has subscribed. Exercising a nationality based inherent jurisdiction may run counter to the concept of comity…"

58. Thirdly, the court's reliance on, or deployment of, the inherent jurisdiction is highly discretionary. It would in the circumstances be very difficult indeed for the appellant mother to persuade us that the judge was wrong not to exercise her discretion to invoke this jurisdiction in the absence of some error of principle or misunderstanding of the facts; this is particularly so (although I realise that this is repeating the first point above), as the case had not been argued before the judge at first instance in this way.

59. Even if we had decided that the mother should be allowed to rely on this further ground of appeal, then for the reasons outlined above, I would have had no hesitation in concluding that this ground would not have added materially to the merits of the appeal, or affect the ultimate outcome.

Discussion

60. *Procedural unfairness*: First, it is convenient that I should address the short and discrete argument that there was some procedural bias or unfairness in the way the trial was conducted, with the mother in London in person, and the father in Libya on video-link, which placed the mother at a disadvantage (referred to at [45] above). I note that this concern was not raised at the hearing itself; Miss Guha sought no special measures for the mother in order for her to participate in the proceedings, as she could have done had the situation warranted it (see *rule 3A.3, 3A.4,* and *3A.7* of the *Family Procedure Rules 2010*). Moreover, I am satisfied that, when reviewing the evidence, the judge was alert to the possibility that the mother's participation in the proceedings

could have been diminished by reason of her vulnerability, and/or arising through her complaint of domestic abuse. She reflected this, specifically, in her judgment:

> "[83]… I have … borne in mind that victims of very serious physical and emotional abuse can often present with a flat affect and demeanour or impaired memory during their evidence, which should not be interpreted as a lack of candour, whilst I have been assessing the mother's evidence. Memory is not made up of a video recording which can be replayed on demand, and the fact that somebody cannot remember an event particularly clearly does not mean- without more- that they are lying or have a faulty memory. Someone who appears to be a very clear historian may in fact be lying."

Equally, it is fair to observe, the judge was alive to the "disadvantages – and potential advantages" for the father in giving evidence by video-link.

61. Given the clear self-direction at [83] of the judgment ([60] above), and in the absence of any indication at the hearing that the mother was, or was likely to be, prejudiced by the context in which she gave her evidence or participated in the proceedings, I am unable to conclude that the process of the hearing materially impacted on its outcome.

62. *Assessment of credibility*: Secondly, I turn to the judge's assessment of the parties' credibility, given its significance in underpinning her factual findings. This was undoubtedly a factually multi-stranded and complex case, and on key issues there was materially divergent evidence. Many of the factual issues were interwoven, and they variously connected in one way or another to the legal tests which the judge was required to apply. In my judgment, the assessment of the evidence and its application to the law was made immeasurably more difficult by the fact that *both* parties were, to a greater or lesser extent, in the judge's finding, unsatisfactory witnesses and historians.

63. Although condemning of both parents' dishonesty, the judge was entitled nonetheless, and faithful to her *Lucas* direction (see [15] above), to conclude that on key factual issues relevant to her determination of the application, the father's evidence was to be preferred to that of the mother. She had found the mother to be "deliberately vague" on matters which contradicted her case specifically on this application (see [19] above) and had told "obvious lies" in order to "to bolster her case" (see again [19] above). By contrast, the father's admitted/proven lies, albeit exposed by (not volunteered in) the forensic process, were most notably directed to his immigration status in the UK (see [20] above), and were thus not directly relevant to the central issues in the case.

64. In evaluating this and other issues on this appeal I turn, as I must, to the authorities cited to us by Mr Hames (see [47] above) and in particular the oft-cited remarks of Lord Hoffman in *Piglowska v Piglowski* [1999] 2 FLR 763 at 784, cited by King LJ in *Quan v Bray* (above):

> "… the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and

> the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts."

65. I readily accept the advantage which the judge has had in "seeing the parties", and that "the atmosphere of the courtroom" at first instance cannot be, and has not been in this appeal, "recreated by reference to documents (including transcripts of evidence)" (per Lewison LJ in *Fage v Chobani*: see again [47] above), Having conscientiously considered the arguments advanced by Miss Langdale, and the documents referred by her to us, this is not a case in which I feel "compelled" to reject the judge's assessment of the parties, or the judge's preference for the evidence of the father. In short, Miss Langdale was unable to demonstrate to me on this appeal, either by reference to the documents available at trial, or her criticisms of the judgment, that there was any proper basis for disavowing the judge's assessment on credibility of both or either party.

66. *Article 8 & 10 BIIR*: As to the substantive issues, the judge correctly affirmed that she was concerned with two key provisions of *BIIR*, and she identified the applicable caselaw, on which she had been addressed by counsel. It is of course well-established since *In re I (A Child)(Contact Application: Jurisdiction)* [2009] UKSC 10 that *BIIR* applies to cases involving countries other than signatory countries. *Article 10 BIIR* ensures that a person who has 'wrongfully removed or retained' a child cannot successfully assert a change of habitual residence; this can apply where the issue arising relates to a removal/retention of a child to/in a country outside the European Union, and "ensures that in case of wrongful removal or retention, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention retain their jurisdiction for a period" (see Black LJ (as she then was) in *Re H (Abduction: Jurisdiction)* ('*Re H*') [2014] EWCA Civ 1101, [2015] 1 FLR 1132 at [46]). In *Re H*, Black LJ added (materially for present purposes):

> "… jurisdiction is retained in the courts of England and Wales by virtue of *Art 10* of *BIIR* and has not been lost, because the children have not yet acquired a habitual residence in another Member State" ([53]).

67. It is well-known that *Article 8* imports the 'General Jurisdiction', which is founded upon the child's place of habitual residence, providing that the court "shall have jurisdiction" in matters of parental responsibility over a child who is "habitually resident in that Member State at the time the court is seised". A court shall be deemed to be seised at the time when the document instituting the proceedings is lodged with the court (*Article 16(1)(a) BIIR*); in this case 3 December 2018.

68. *Specific facts under challenge*: As I earlier indicated (para. [41] above), Miss Langdale argues that judge adopted a 'flawed approach' to the relevant factual evidence, and reached conclusions which were internally inconsistent and 'perverse'. Underlying her submissions was a complaint that the judge had failed to provide sufficient reasoning in the judgment (by omitting reference to material documents) to support the conclusions reached. As Green LJ said in *SB (Sri Lanka v Secretary of State for the Home Department)* [2019] EWCA Civ 160:

> "[62]/[63] … a failure to address relevant evidence will inevitably be accompanied (and compounded) by a failure to provide any reasoning or discussion about that evidence … The level of detail required will vary considerably from case to case …"

69. Inevitably, the judge could not traverse in her judgment all of the extensive and controversial evidence (documentary and oral) which she had considered over two days of hearing, nor would I expect her to do so. Although Miss Langdale extended a tempting invitation to us to dip into selected parts of the "sea of evidence", and took us to a few of "the islands" (see [47] above), I was left unpersuaded that these 'islands' of evidence, even taken cumulatively and accepted at face value, would make any or any significant difference to the judge's overall conclusions. The most that could be said, in my judgment, is that had the judge extended her analysis and assessment yet further with reference to some or all of the documents highlighted by Miss Langdale in her submissions, the judgment may have been more contoured, but the conclusions not different. As Miss Langdale focussed our attention on (a) the content of the text messages, and (b) the e-mail to the Libyan lawyer, I in turn address those documents, and her arguments, specifically.

70. *(a) Text messages*: The mother had exhibited to her witness statements screenshots of many text messages passing between the parents in the period under examination; Miss Langdale sought to make much of the content of the father's communications. These are undeniably strongly worded, angry, and occasionally offensive, messages. When pulling the strands of evidence together, it seems to me that the judge was mindful of this material; she recorded in her judgment that:

> "[70] The father agreed that some of the text messages that he had sent to the mother were offensive, commenting that they were sent when he was upset and angry".

And later:

> "[114] Part of the evidence focused on very unpleasant messages from the father to the mother in the latter part of 2018. I find that the marriage was breaking down by that time, that he was hurt and distressed by the fact that he found himself an unwilling sole parent in Libya and that he was angry with the mother because he saw her actions as an abandonment of her children."

71. However, the text messages to which our attention was drawn did not, in my judgment, provide the secure evidential platform from which Miss Langdale purported to launch her challenge to the judge's conclusion that there had been a wrongful retention. The text messages which she highlighted had passed between the parents from November 2018 into the late spring of 2019, at a time when the parties' marriage was undoubtedly disintegrating; the content of these messages was not, in my judgment, germane to the question of whether there had been an unlawful retention on 9 January 2018. Separately, Miss Langdale sought to rely on these text messages further to undermine the judge's conclusion that the children had acquired a sufficient "degree of integration" in Libya by 3 December 2018. In this regard she

concentrated on a specific text message sent by the father to the mother in which he referred to the children having "suffered so much because of your [i.e. the mother's] way of thinking … because you have abandoned my kids, they start to show great signs of psychological issues, experience extreme sadness in life…". I was not persuaded that Miss Langdale made good her submission in this regard either: first, the text message in question was dated April 2019 (i.e. four months after the date the English Court was seised), and secondly, the judge explicitly acknowledged that the absence of the mother in the children's lives would have operated as a brake on their acquisition of habitual residence in Libya (see [75] below).

72. *(b) E-mail to the Libyan lawyer*: Miss Langdale's criticisms of the judge's failure to provide in her judgment a fuller review of the contents of the mother's e-mail to the Libyan lawyer (see [42] above) are not in my judgment well-made. Extracts of this e-mail are located in this judgment at [33] and [42] above. When the e-mail is read in its totality, it does not, in my judgment, validate the mother's case that the father had 'wrongfully retained' the children in Libya; rather, it conveys the clear impression that the mother wished to resume life in Libya albeit in a different way. Specifically, the mother proposed that she and the father could or should live together with the children, but separate from the paternal family. At the very least, the contents of this e-mail corresponded with, and indeed underlined, the correctness of the judge's conclusion (and to which I have made reference at [32] above) that in the first half of 2018 period this mother was unclear in her own mind as to what she wanted for the future. If that latter point needed re-inforcing, it would be found in the fact that, having received support and/or advice following the communications (of which this was one) in the first half of 2018, the mother delayed in taking any steps to seek the return of the children until December 2018 (see again [33] above).

73. *Wrongful retention*: The mother's forensic flag was pinned firmly to the mast of wrongful retention having occurred on 9 January 2018, when she travelled, alone from Libya, back to England for the DWP interview. Her case had not been argued at the hearing, nor before us, on the basis that there was any *repudiatory* retention of the children, as that concept was discussed in the judgments of the Supreme Court in *Re C* [2018] UKSC 8 (see especially [43], [47], [50], and [51]). On the judge's findings as to the circumstances in which the children had been removed from this country (permanently and "mutually consensually": see [24] above), it is my view that she could not in any event have properly concluded that there had been any repudiatory retention within days of the family's arrival in Libya.

74. The judge's clear findings (reproduced at [24]-[30] above), which supported her assured conclusion that the permanent removal of the children from England to Libya had been "mutually consensual", seems to me to be amply supported by the evidence, which was properly analysed, and cannot properly be dislodged. The corollary was that the mother faced a formidable task in persuading the court at first instance that the father had 'wrongfully retained' the children some 14 days later. This challenge was manifestly not met by the mother, for the reasons which the judge set out in her judgment, which I have reproduced at [31]-[34] above. Perhaps most significant among the findings were that: (a) the mother's return to England at this time was discussed between the parties; there was no apparent suggestion that the older children would be accompanying her, and there was, so far as I can tell, no challenge to the evidence that an exit visa had genuinely not been obtained for F; (b) the father

was “genuine in his willingness to facilitate [the mother’s] travel...”; (c) the father did not want the mother to leave Libya (see [22] above), and (d) that the mother asked members of the paternal family to care for the children while she was away. The judge’s conclusion on this aspect of the case at [119] of her judgment (reproduced at [34] above) is in my view utterly unimpeachable.

75. *Habitual residence*: As earlier indicated, it was agreed between the parties that the children were habitually resident in England prior to December 2017. The judge expressed herself as having “no doubt” that the older two children had “*some degree of integration*” in England up to 2017, and were habitually resident here (judgment [124]). The phraseology adopted by the judge (i.e. ‘some degree of integration’) was challenged by Miss Langdale as failing to reflect the true extent of the children’s *complete* integration in England in their early lives, given:

    i) the fact that the children had not lived anywhere other than England, with their parents, during their lives;

    ii) that “weight” needed to be given (as it was) “to the grandparents’ home as a significant feature in the older children’s lives prior to December 2017” ([123]);

    iii) the judge’s later finding that the mother had never lost habitual residence in England and Wales ([127]);

    and

    iv) that it had been agreed between the parties that the children were indeed habitually resident in England prior to December 2017.

76. While recognising the validity of Miss Langdale’s submission to some extent, I am not persuaded that it carries her appeal further forward; the expression used by the judge is, of course, one borrowed from established caselaw, and in particular the CJEU decision of *Mercredi v Chaffe (case C-497/10)* [2011] 1 FLR 1293 at [56]:

> “… the concept of 'habitual residence', for the purposes of Arts 8 and 10 of the Regulation, must be interpreted as meaning that such residence corresponds to the place which reflects *some degree of integration* by the child in a social and family environment”. (Emphasis by italics added).

The language of *Mercredi*, and the approach which it advocates has been repeatedly and explicitly endorsed by the English Courts (see for instance Baroness Hale in *Re A (Jurisdiction: Return of Child)* [2013] UKSC 60; [2014] 1 FLR 111 (‘*Re A*’) at [54(iii)]).

77. The judge rightly, and importantly, reflected in her judgment that the process of the children’s integration into their new country had probably been slowed by the absence of their mother for tracts of time (I refer to this at [37] above). Although not explicit in her judgment, her phraseology was a nod to the speech of Lord Wilson in *Re B (Habitual Residence)* [2016] UKSC 4, wherein he said this at [46]:

> "In making the following three suggestions about the point at which habitual residence might be lost and gained, I offer not sub-rules but expectations which the fact-finder may well find to be unfulfilled in the case before him:
>
> (a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;
>
> (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and
>
> (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, *were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it*." (Emphasis by italics added).

78. In considering whether the children had acquired habitual residence in Libya, the judge drew on some or all of the evidence which I have adumbrated in [24] and [36] above. Contrary to the argument advanced by Miss Langdale at [41] above, that evidence in its totality does in my judgment demonstrate that the judge adopted a child-centric approach in her evaluation of the case, and had specific regard to the circumstances of these particular children. Furthermore, in light of the well-known authorities on this point, she was entitled, in reaching this conclusion, to consider that:

    i) The parties had jointly agreed to move to Libya; the "reasons for the family's stay in the country in question" is a material consideration in the evaluation (Baroness Hale in *Re A* at [54(iii)]);

    ii) Over the eleven months in which the children had been in Libya before the application was made in this court, they had become dependent on members of the paternal family. As Baroness Hale pointed out in *Re A* at [54(vi)], the court must consider "the social and family environment of an infant or young child", and to consider upon whom he/she is dependent adding, materially for these purposes "whether *parents* or *others*". (Emphasis by italics added).

79. In marrying the facts to legal principle, the judge was entitled (indeed well-advised) to apply the analogy of a 'see-saw' to describe the shift of habitual residence from England to Libya; she did so at [133]:

> "[133] Whilst the 'tipping of the seesaw' was undoubtedly delayed because of the circumstances appertaining in the children's lives during the first few months of 2018 I find that the seesaw had tipped very firmly in favour of all three children losing their pre-existing habitual residence in the UK and gaining habitual residence in Libya by the time the mother made her application, by which time these children had almost no continuing link with the UK save for video contact with their mother".

This concept was borrowed from the judgment of Lord Wilson in *Re B (A Child) (Habitual Residence: Inherent jurisdiction)* [2016] 1 FLR 561 at [45]

> "The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw. As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up will probably come the child's roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it."

80. The judge, having rightly adopted the conventional language from caselaw in her description of the children's habitual residence in England (see [75] and [76] above), confirmed that she knew that the legal test required her to find similarly that the children had acquired "*some degree of integration … in a social and family environment*" in Libya by 3 December 2018. In this regard, she concluded that:

> "[133]… it is clear to me that their stable environment throughout 2018 was in Libya. The requirement is of "*some degree of integration*" but on the evidence before me by the time the mother made her application on December 3 2018 the integration was substantial". (Italics in the original).

The judge cannot properly be criticised, in my view, for reaching this conclusion for the reasons which she gave.

Conclusion

81. As Moylan LJ observed when granting permission to appeal in this case (see [3] above), the appellant mother faced the challenge of overcoming a high threshold in this appeal if she were to succeed in persuading us to allow the appeal.

82. For my part, I am clear that the judge conscientiously appraised the parties, and assessed their reliability on the key issues of fact; she had the considerable advantage of doing so from her unique position as the trial judge. In a structured judgment, she performed a wholly satisfactory assessment of the evidence. While she plainly did not refer to all of the material filed or adduced orally, nor specifically to the troubled political climate and security issues in Libya, she drew on a sufficiently extensive range of the evidence in this factually complex case, in a way which was in my view

appropriately reflective of the preponderance of the evidence, to demonstrate those factors which particularly influenced her in reaching her conclusion.

83. No material error has, in my judgment, been exposed by the judge's failure to include or discuss aspects of the evidence which the mother, through counsel, has highlighted on the appeal. In this regard, I was not persuaded that taking the 'island hopping' journey, so attractively advocated by Miss Langdale, led me to a different outcome from that reached by the judge. The judge's ultimate conclusion on the issue of jurisdiction, supported by a combination of sufficiently carefully analysed findings of fact and by a proper rehearsal and application of the law, is, in my view, secure.

84. For the reasons set out above, I would therefore dismiss this appeal.

Lord Justice Baker

85. I agree.

Lord Justice Bean

86. I also agree.