Neutral citation number: [2025] EWHC 955 (Fam)

Case No: **FD24P00600**

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 March 2025

Before:

MRS JUSTICE MORGAN

- -

L

Applicant Mother

-and-

D

Respondent Father

- -
- -

Jonathan Evans (instructed by **Duncan Lewis Solicitors**) for the **Applicant**
Natasha Miller (instructed by **Dawson Cornwell LLP**) for the **Respondent**

Hearing dates: 18 and 24 March 2025

- -

Approved Judgment

.....

MRS JUSTICE MORGAN

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Morgan:

1. The application before the court concerns one child, Sophia. She is 8 years old. She is the only child of the Applicant ('the mother') and the respondent ('the father').

2. This is the mother's application under the 1980 Hague Convention on the Civil Aspects of International Child Abduction as incorporated by the Child Abduction and Custody Act 1985 for summary return of the child to Colombia. Her application was issued on 27th November 2024.

3. The mother has been represented by Mr Evans, the father by Ms Miller. Each has provided in good time detailed and impressive skeleton arguments, amplified and developed orally at this hearing. Both mother and father have had very high quality representation by counsel expert in their field.

4. The father until the first day of the listed hearing continued to defend the application on the following bases:

   i) Habitual Residence

   ii) Article 13 (a) - Acquiescence

   iii) Article 13 - Child's objections

   iv) Article 12 (b) Grave risk of harm /Intolerability

   However he modified his position at the outset of this hearing such that he no longer pursued his defence on the basis of Acquiescence. He also through Counsel's skeleton for this hearing informed the Court that in the event that Court were to direct a return of the child to Colombia, he would not himself return, and neither would he accompany Sophia so as to return her. Since neither in his written evidence, nor at the hearing at which this final hearing had been listed, had he indicated that this would be his stance, I permitted short oral evidence from him on this aspect alone.

5. On 20th December Mrs Justice Judd extended the time for the filing of father's statement of evidence in response to the application to 20th January 2025 and provided for the mother to file a statement in response. She did not, as it happens, place any limit on the length of the statements but I nevertheless regard it as unacceptable that the mother and her legal advisers have taken advantage of that by filing in response to the father's statement (114 paragraphs over 22 pages with one exhibit), a statement which runs to 248 paragraphs over 70 pages with an indexed bundle of 71 exhibits. It is said in her Counsel's skeleton argument for this hearing that the mother's statement is '*lengthy'* and that she has felt '*compelled*' to respond to assertions made by the father. It is disappointing in this summary jurisdiction to see specialist solicitors taking that approach to written evidence. By happenstance, I had some time in the day before this hearing and had read the statement in readiness for it. Notwithstanding its inordinate length it could (and should) have been easily possible to address in a much shorter document the mother's evidence relevant to the issues at this hearing. A significant proportion of it is devoted to matters which might be of relevance to a court making substantive welfare decisions for Sophia's living arrangements. Some of the exhibits were in effect statements not in a proper form and from people for

whom no leave had been given. Ms Miller makes complaint that father has not had the opportunity to respond to the many issues arising out of Mothers statement with which he disagreed. I see why the complaint is made but that too misses the point that just as the inordinately long statement has no place in this application brought in Hague jurisdiction, neither has the approach of statements back and forth responding to whatever is said by the other.

6. For the purposes of determining this application I have read the parties witness statements, the exhibits to which my attention has specifically been drawn; and most if not all of the exhibits to which my attention has not been drawn; read the Cafcass report of Ms Magson; heard the oral evidence of Ms Magson; heard the evidence and cross examination of the father limited to the issue outlined at [4] above; heard the oral submissions of counsel for each party and read carefully their skeleton arguments. By the time the case came on for hearing there was agreement between counsel that it was unnecessary for me to hear evidence from the parties either in relation to habitual residence (given the plentiful written evidence) or on the question of the relevant date, each content to address that aspect in submissions. It was agreed also that notwithstanding the length and detail of the mother witness statement, it was purposeful neither for her to be cross examined about those aspects with which the father disagreed or for him to give his own oral evidence about those aspects.

Background to the Application

7. The mother is a Colombian national. The father is a dual British national and a national of another South American country. Sophia, is also a Colombian national and has recently been granted British citizenship.

8. The parties formed a relationship in about 2012, married in the consulate of the other South American country of which the father is a national in 2014. Sophia was born in Bogota, Colombia in March 2017. The parties and Sophia lived in Colombia.

9. The parties separated in 2018. The mother's case is that she has always been Sophia's primary carer. It may be that the father does not accept that characterisation but for the purposes of this application it is unnecessary to examine any issues in that respect. In August 2020, the parties reached agreement in the nature of shared care as to Sophia's arrangements, which was formalised in Colombia. This provided that Sophia would spend time with her father on alternate weekends from Friday until Sunday and for half of all holidays. In Colombia, Sophia was enrolled in pre-school and kindergarten.

10. The mother has raised concerns that the father has been aggressive and threatening towards her and that he has threatened to take Sophia without her consent. The father in turn has been critical of the mother's standards of care of Sophia and has raised concerns that she is unstable and has had outbursts of anger including in Sophia's presence. It may be that there will come a time when those issues raised by the parties may form part of the subject matter relevant to a Judge making welfare decisions for Sophia, but they have not been the focus of my consideration at this application for summary return.

11. On 28th December 2023, the father, who also lived in Colombia travelled to England with Sophia. This was with the mother's express agreement. It had been agreed that

Sophia would come to England to be exposed to the English Language and culture, to spend time with her paternal family and so as to obtain a British passport for her. Travel to England was permitted by a notarised travel permit obtained as required in Colombia to enable travel abroad for a child. The mother's agreement is shown by her signature dated 22nd December 2023. The purpose of the trip is shown as '*visit family*' the outward travel date as 28th December 2023 and the return date on the travel permit is 6th April 2024.

12. It was also agreed that during the stay in England, Sophia should be enrolled in the school system here. Her place at her school in Colombia was kept for her and a fee paid (by the father) to preserve it.

13. On 28th January 2024, the mother travelled to England. It has been common ground at this hearing that she arranged to stay with a family for whom she used to work as a nanny but that she, the father and Sophia spent time together. The father says that on occasion she also stayed with him and that they on occasion had intimate relations. The mother agrees that on at least one occasion that was so. On April 16th 2024, ten days after the expiration of the permit to travel, the mother returned to Colombia alone and Sophia and her father remained in the United Kingdom. There are differing accounts (as to which more below at [14 – 30]) as to why this was and how the situation developed. It is, however, the case that the mother at some later point agreed that Sophia should remain and finish her school year to the end of July 2024.

Mother's Case

14. The mother's case is that the travel to England was only ever intended as a short trip and that the father wrongly retained Sophia. She contends that the relevant date for wrongful retention is at the end of May, though in closing submissions, Mr Evans submitted that on the basis of the father's evidence it might well be earlier. She asserts that the father was clear to all of his friends and acquaintances that he would be returning to Colombia within a short period of time. He maintains still an apartment there and had a dog for the care of which he made temporary arrangements with a friend. The mother has exhibited a message from this friend: '*because of the dog issue, he told me that he was leaving and would return in March, but then he told me that it would take him until June and that was when he told me that he was going to stay longer*'.

15. I pause at that point to say that many of the matters contained in the exhibits to the mother's statement are ones which should not properly have been put before the court in that way if at all and that a number of them are not in a form which means reliance can safely be placed on them. In relation to those which are text and other messages I exercise particular caution since it is on occasion clear that they are part of a wider run of messages which is not complete but they are not without value. The arrangements for the dog have assumed prominence in the parties' evidence and submissions. This message has a resonance not only with what the mother asserted, in support of her contention that it was never intended that the trip was a permanent move or a precursor to a permanent move but also in fact with the father's oral evidence when he was cross-examined about his change of position about returning to Colombia.

16. Whilst the mother was in England, she asserts that the father '*kept raising*' the mother staying permanently in England. She did not agree to this. Her employment and family commitments are in Colombia.

17. The arrival of Sophia's passport was delayed. The mother's evidence is that the father said it was necessary for Sophia to remain in England and not return to Colombia until the passport application process was completed and that she accepted that. The mother was clearly, even at that stage suspicious of the father and exhibits to her statement a copy of a message she sent to him on 2nd April 2024, thus before the expiration of the permit to travel, which reads: '*I feel half deceived. I should have known*'.

18. In response the father replies to her, '*I told you, I'm coming back*'. The mother returned to Colombia on 16th April 2024. It is her case that it was due to the father's assertion that Sophia could not return until she had received her British passport, that Sophia's return was delayed. Her agreement at that stage to extend the stay was because the father maintained that he would be returning Sophia to Colombia as soon as the passport was received.

19. The mother's case is that she expected the father to bring the child back imminently but that he did not. She asserts that she was increasingly worried and was in contact with him to ask about return. Again, recognising that I do not have the run of all of the messages it is nevertheless illuminating that there is a message from the father on 25th April 2024, to the mother: '*I'm told it can take 1 to 2 months for the passport to arrive. I'm praying they arrive quickly and trying to save for the new tickets*'. Whatever the context of the run of messages, there is significance to that message in the light of the father's position at this hearing.

20. On 29 April 2024, after a message from the mother '*I have to be honest, I'm having a hard time with the Louise issue*' there is a reply from the father:, '*I called to find out about the remaining documents, including her Colombian passport, last week I was told that it may take another two weeks to 2 months and that I should wait*'. For sake of clarity, it is evident that the parties sometimes refer to Sophia by one of her middle names, Louise.

21. On 6 May 2024, the mother wrote to the father, '*how much money is needed; and you send me Louise with a flight attendant; I don't believe you anymore*'. Both from the messages and from the father's own evidence in his witness statement it can be seen that there were continuing discussions about the father returning Sophia to Colombia and as to how and when that might be achieved.

22. The mother complains that in addition to the continuing delay in returning Sophia, the father sought to prevent her speaking to Sophia during phone calls about Colombia and was seeking to influence her against Colombia and in favour of the United Kingdom. In the father's own statement for this hearing, he writes of conversations in late May when, he says he had formed a view that the child should not return, '*I shared my plans of staying in the UK with Sophia with [*the mother] *and this deeply affected her, leaving her heartbroken. The situation escalated into a heated discussion, with her angrily demanding that Sophia should return to Colombia by 20 June 2024*'. It is notable that at the time he included that in his statement he was defending the application on the basis, inter alia, that the mother acquiesced.

23. On this basis the mother's case is that the father had decided unilaterally and wrongfully to retain Sophia in England and Wales by the end of May 2024, putting the relevant date at May 30th 2024.

24. Whilst she sets out in detail in her statement the details of the ongoing discussions – and what the father refers to as her 'demand' for Sophia's return, the mother's case is that she agreed on a pragmatic basis that Sophia should complete her school year before returning to Colombia. It is not accepted on her case that this put the date of wrongful retention back since first there is clear evidence of the mother pressing for a return and second it is asserted that the father had in any event by then decided that he would not be bringing her back. He is crystal clear about this in response to an email from the mother in which she expresses herself on 3rd July 2024 as being '… *still without a date*'. His response on 15th July 2024 is : '*The circumstances have changed, I understand that there are agreements, but the agreements must be evaluated in the light of new circumstances, that you recognise that I have the right to express my reasons means that you recognize my equal parenthood*' On the same day, the father writes, '*So Louise is stable and doesn't experience so many changes, such as to leave her, go back to Colombia, then come back here, at her age she needs stability*' . The mother relies on this as further evidence of his unilateral retention of Sophia.

25. The mother's case on Sophia's habitual residence is that whenever the date falls it lies in Colombia. It will be convenient to consider the detail of the habitual residence elsewhere.

Father's Case

26. The father asserts that at the time of the alleged wrongful retention the child was habitually resident in England. As with the mother's case on Habitual Residence it will be convenient to discuss that elsewhere. He asserts that any wrongful retention did not take place until the end of July 2024. He relies for this on the mother's evidence in her statement that "*The agreement had always been that Sophia would visit for three months, obtain her passport and return to Colombia. She did not return in April as agreed as the reason I was given was that her passport had not arrived. However, when the Respondent stated in mid-July that he would not return her, we began to have difficult conversations*".

27. The father asserts that on the mother's own case, she agreed to Sophia staying in England beyond 6th April 2024 and that therefore it was only in July, when the father raised concerns about whether Sophia should be returned at all, that things became difficult. The father relies on a message dated 19th July 2024 which the mother exhibits to her own statement: "*You asked for a deadline until the passport arrived, then you asked for the Colombian passport to arrive, then you asked for the school year to end. I listened to each request. And I ask you to please comply. You told me July 15 as the last date. I told you July 30, 2024. So I ask you again to keep your word…"*

28. The father's case is that from the mother's own acknowledgement that she acceded to the father's requests that Sophia remain longer in England and that it was she who proposed 30 July 2024 (i.e. after the conclusion of the school term) as the appropriate

date for return it must follow that it is any retention beyond that date that could be considered as wrongful retention.

29. Furthermore, it is the father's clear contention that the parties had been contemplating a permanent relocation to England and that discussions about that had continued during the time that the mother was in the United Kingdom from January to April 2024. He says (both to this court and to the mother in messages) that she had always known his position – i.e. that he intended to relocate to the United Kingdom and of his wish that she and Sophia should do so also.

30. In the event that, contrary to the father's primary case, the Court finds that Sophia's habitual residence lies in Colombia, he relies on Article 13 b). There are in essence two strands to the argument advanced on his behalf in this respect. First he relies on Sophia's description to the Cafcass Officer of her mother's volatile temper and her description of the mother 'lashing out' in the sense of swiping items off a table; of her shouting and 'losing it' and asserts that a return to Colombia and her mother's care would subject her to the risk of grave harm within the meaning of 13 b). Allied to that the father regards as the excessively demanding schedule of the school and extra-curricular systems in Colombia requiring very early starts and long days which would be wholly alien in the United Kingdom for a child of Sophia's age. Second, in the light of his own position on return as now advanced , any return to Colombia for Sophia would be without him and so not only would that represent a loss to her of the close relationship she has with him, but it would mean that he would not be there to ameliorate those characteristics of the mother which represent a risk, he asserts, of grave harm.

Father's Oral Evidence

31. The father was called to give oral evidence in the light of his position that he would not under any circumstances return to Colombia or accompany his daughter were she to be returned by the court. I found him a most unimpressive witness on this aspect of the case. The logic of his position was near impossible to follow. He had known, I find, since 14th December 2024, that the mother had instituted proceedings in Colombia in respect of his retention of Sophia. The mother sent him messages which said: *there is a process with the Attorney General's Office against you for abduction where they could freeze your assets.* This she followed up with *if you return voluntarily and there is evidence of this I can cancel the complaint filed.*

32. That information predated the hearing on the 20th December before Mrs Justice Judd. It predated his statement, the time for filing of which was extended at the hearing on 20th December to a date in January. He did not at any point say, or intimate in any form that the existence of those proceedings meant that he would not return. His explanation for saying so the day before this hearing was that very shortly before this hearing, the mother provided an Attorney General's letter, from Colombia indicating that she was not pursuing or cooperating in the proceedings and they were accordingly '*archived'*. To me, the father said in terms that he would not return because he was in jeopardy of imprisonment since the proceedings had not been expressed as '*dismissed*' but '*archived*'. He said that he had had dealings with the Attorney general's office when working in Colombia; that he knows how they operate and that even if the mother did not support the proceedings or cooperate with them a

'third party' perhaps a member of her family might do so. He said that if Sophia were returned without him, it would be better for her to be able to speak to him on facetime from another country than to have him in prison and see him once a month. Questioned about the illogicality about the first part of his grave harm defence, that the child would be returning to a situation of intolerability were she to be returned to her mother given that even on his own case it had been his intention, as evidenced by the ongoing discussions about it at an earlier stage to bring Sophia back leave her with her mother with a view to perhaps later as a family unit moving to the UK, he had no satisfactory answer. Neither did he have a satisfactory answer to the fact that there had been no request for any protective measures and no suggestion that he would not return at any stage. Beyond saying that he had mentioned it to his solicitors although he accepted it was not in his statement (as to which naturally there was no further exploration permitted) he again had no satisfactory answer. He had to accept that he retained an interest in a property in Colombia, presently let to a tenant, for which although he said it was not a mortgage, he was making repayments to the bank; '*I do not have the deed until it is paid off*' he said, he insisted that he would not return at all to Colombia, not even to pack up and sort out his property and affairs there. I was left at the conclusion of his evidence with the impression that Mr Evans was right when he put to him that he had, so late in the day and unheralded, asserted that he would not return, he had done so tactically to seek to strengthen his defence under 13 b).

Cafcass Officer's Oral Evidence

33. Ms Magson had been directed on 20th December 2024 to prepare a wishes and feelings report and specifically to consider the issues of Sophia's views on returning to Colombia; whether her views are authentically her own or influenced by either parent and her maturity. The direction was within the context of the father's indication that his defences included that of the child's objection.

34. I have read carefully Ms Magson's helpful report, the detail of which I do not rehearse here. Whilst it did not depart from her report, her oral evidence brought to life the picture of Sophia which she had set out in her written evidence. Sophia had been polite, engaging, and a delightful child but unforthcoming with detail. Ms Magson did not think that especially unusual. She was lacking in maturity, by reason, explained Ms Magson, of her age. She was 7 when Ms Magson spoke to her, it was not that she is an immature 7 year old it was that she had only the maturity of her age. Her English was, as had been reported excellent, so it was not that she was not able to communicate but she did not give much in the way of detail either of life in Colombia or of life in England. She spoke most forcefully in a way which showed itself in the tone of her voice, when expressing her wish to remain living in England with her father. She did towards the end of the meeting demonstrate, by acting it out, her mother 'losing it' on an occasion by swiping things off a table and in doing so was serious about it but, interestingly Ms Magson said when trying to describe her demeanour '*anxious would be too strong a word*'.

35. Although cross examined properly and thoroughly by Mr Evans it remained her position that she did not detect signs of Sophia's views being influenced by her father or in fact by either parent. She was a child who was concerned about how her mother might react on hearing what she had said, and Ms Magson did not convey that as

being a sense of fear about her mother's reaction but rather a concern for how her mother might feel. Sophia was in that sense she agreed, returning to a proposition put to her earlier, an empathetic child. In her conversations with her Sophia had expressed a clear preference for living in the United Kingdom. There was nothing however that amounted to an objection to a return to Colombia. She rated it as about 6/10 when asked (with the UK 8 or 9) and could not think of anything negative about Colombia. Although she seemed to understand that staying here would mean separation from her mother, Ms Magson was not convinced that she had the maturity to appreciate the long-term effect or impact of that separation. She is not at the moment, or when spoken to, separated from her mother as her mother has travelled to England but she has experienced periods of separation in the lifetime of these proceedings. Sophia spoke warmly of her paternal family who she has got to know well and of their involvement in her life; she described a wide range of extra-curricular activities in which she is involved, ballet classes, craft activities and social activities through the Church she attends with her father. She also described missing her family and cousins in Colombia. Consistent with her role in the case, Ms Magson made no recommendation, she simply reported the views she had from the child and her own conclusion that they appeared to her to be Sophia's own authentic views.

36. Before leaving the witness box and prefacing her observations with an acknowledgment that they were really observations about welfare issues and not jurisdiction, Ms Magson emphasised the need for this little girl, wherever she is living and whichever court may be making welfare determinations for her if that is what follows on, to have a relationship with and to see both sides of her family.

The Relevant Date For Considering Retention

37. Having reviewed carefully all of the evidence, I am satisfied that the relevant date is 30th May 2024 rather than the 30th July. Whilst I accept the clear evidence that mother agreed to extend the stay for Sophia to the end of the school summer term it is to be seen within the context of her strong unambiguous expressions of a wish to have her returned which the father describes as her demand and a position from which she is, in the correspondence between them, immoveable. I agree with counsel however that there is little or no distinction between those two dates for the purpose of the decisions to be made in this case. If I am wrong about the date of 30th May, and the date is 30th July, that which follows is equally applicable.

Habitual Residence

38. Whether there is jurisdiction for this court to make the order sought by the mother at all and or to go on to consider the father's remaining pursued defence under 13 b) is dependent on the conclusions I reach as to Sophia's Habitual Residence.

39. Article 3 of the Hague Convention provides that the removal or retention of a child is to be considered wrongful where:

    a) It is in breach of rights of custody attributed to a person, an institution or any other body either jointly or alone under the law of the State in which the child was habitually resident immediately before the removal or retention and

b) At the time of removal or retention those rights were actually exercised either jointly or alone or would have been so exercised but for the removal or retention [emphasis added]

40. Counsel in this case agree on the law applicable in relation to Habitual residence and I therefore do not set out its development at length. The burden of establishing habitual residence in Colombia lies with the mother see *Re IK (A Child) (Hague Convention : Evidence Consent) [2022] EWHC 396.* Ms Miller and Mr Evans each rely on and commend to the court the distillation of the applicable principles emerging from Hayden J's judgment in *Re B (A Minor): Habitual Residence) [2016] EWHC 2174 @ [17]* which (with the omission of (viii) per Moylan J's guidance in *Re M (Children) (Habitual Residence : 1980 Hague Child Abduction Convention) [2020] EWCA 1105* I replicate here:

> *(i) The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A v A, adopting the European test).*
> *(ii) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual inquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, In re L).*
> *(iii) In common with the other rules of jurisdiction in Council Regulation (EC) No 2201/2003 ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the practical connection between the child and the country concerned": A v A , para 80(ii); In re B , para 42, applying Mercredi v Chaffe (Case C-497/10PPU) EU:C:2010:829; [2012] Fam 22 , para 46.*
> *(iv) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (In re R).*
> *(v) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In re LC). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration.*
> *(vi) Parental intention is relevant to the assessment, but not determinative (In re L, In re R and in re B).*
> *(vii) It will be highly unusual for a child to have no habitual residence. Usually a child loses a pre-existing habitual residence at the same time as gaining a new one (In re B).*
> *(viii)*
> *(ix) It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (In re R and earlier in in re L and Mercredi).*
> *(x) The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child*

to be fully integrated before becoming habitually resident (In re R) (emphasis added).
(xi) The requisite degree of integration can, in certain circumstances, develop quite quickly (article 9 of Brussels IIA envisages within three months). It is possible to acquire a new habitual residence in a single day (A v A; In re B). In the latter case Lord Wilson JSC referred (para 45) to those "first roots" which represent the requisite degree of integration and which a child will "probably" put down "quite quickly" following a move.
(xii) Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (In re R).
(xiii) The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (In re B supra).

41. I note and accept that that distillation has been referred to with approval by McFarlane LJ in *In the Matter of L (Children) [*2017] EWCA Civ 441, Black LJ in the Court of Appeal and subsequently Lord Hughes & Baroness Hale in *In re C and another (Children) (International Centre for Family Law, Policy and Practice intervening)* [2017] EWCA Civ 980, [2018] UKSC 8 [2018] 2 W.L.R. 683. As observed by Cobb J in *Re S (1980 Hague Convention; Habitual Residence Article 13 [2023] EWHC 2717,* the determination of a habitual residence is essentially a question of fact drawing on the cardinal principles of a number of cases in which the issue has fallen to be considered. My consideration accordingly has been centred on Sophia's life and a careful consideration of her own particular circumstances in the fact specific situation of this individual case. I have held in my mind also Ms Miller's well pitched submission that in the circumstances of this case the relevance of reflection of Lord Hughes in *In Re C and another (Children) (Internation Centre for Faily Law, Policy and Practice Intervening) [2019] AC 1*, as to whether a child might have become habitually resident in the "destination State" by the date of the wrongful removal or retention "*It is perhaps improbable in the case of removal, but it is not in the case of retention. It may particularly happen if the stay in the destination State is more than just a holiday and lasts long enough to become integrated into the destination State*".

42. As I have considered the degree of integration Sophia has in this jurisdiction I have reminded myself that it is she, the subject child, who is the focus of that consideration. Her own integration in social and family environment here is what matters. It need not be complete, and that when what has frequently been described as '*some degree*' of integration is considered, the stability of that integration is of importance, as is the fact that the notion of 'stability' is to be regarded as distinct from the notion of

'permanence'. Since there are here (as is almost inevitably the case) competing claims for Habitual residence as between the mother's case (Colombia) and the father's (England and Wales) an element of the analysis of 'some degree of integration' and its sufficiency or otherwise to establish Habitual Residence involves a balancing of the connection and integration between the child and each of those jurisdictions i.e. that which Sophia had with the State where she resided before her arrival as well as that which she has here. It would be wrong for me to approach the factual analysis of her integration here without regard to her life lived elsewhere and her deep roots in another State.

43. Mr Evans makes the powerful point that before her trip to the United Kingdom – as to the purpose of which he submits the intentions of her parents are both clear and important – Sophia had never lived anywhere other than Colombia. She had no connection with the United Kingdom in the sense of social and family integration other than tangentially in legal, rather than social terms, in the sense that her father holds British as well as nationality of another South American country. That is what entitles her to a British passport. It is right that her parents spoke to her in both Spanish and English and I have taken careful note of the mother's statement in which she emphasises that Sophia was enrolled in a bilingually English school. Whilst the evidence suggests that her first language is Spanish the mother's evidence that she had an 'impressive' level of English is congruent with the impression of the Cafcass reporter and of the school she has since attended in England. It is reasonable to infer from all of that that whilst having her roots and all of her life lived in Colombia, Sophia is likely to have had an awareness of the English side of her heritage. She had however, until December 2023, never visited the UK even for a holiday.

44. Sophia as well as living all her life in Colombia was well integrated with her maternal family there. Her Grandmother (presently undergoing chemotherapy) school friends, cousins (who she told the Cafcass Officer she misses) are all part of her social and family integration and have been a part of her life to date. A life which has been rooted since birth in Colombia.

45. Sophia will, from both of her parents, have understood the trip to England to be something less than permanent. I express it in that way because for a child then aged 6 (now 8) involving as it did enrolment in a school from January 2024, it is less likely to be understood by her as a holiday but there is no suggestion that there was, for example, anything in the sense of her saying a final goodbye to her school friends. To the contrary the evidence is that the school place in Colombia was held open by payment of fees to secure it.

46. Sophia will, on the evidence from both parents, have been aware of part of the purpose of the trip being to secure a passport for her. Although I treat with some caution the mother's evidence of Sophia 'praying' for the passport so that she could return to Colombia I accept that this will have been part of her understanding of why she was coming to England for 3 months.

47. By contrast with her experience of living in Colombia across two homes with her parents, here she has lived in comparatively cramped living conditions with her paternal family. This submits Mr Evans in effect will have been a disrupted living arrangement which will have militated against her achieving a sufficient degree of

social integration to establish Habitual Residence. As I understand his submission it is the disruptive effect on her opportunity to integrate that he invites me to attach weight to rather than a qualitative comparison of the homes in each jurisdiction.

48. Sophia was, with her mother's agreement enrolled only temporarily in a school in England for a period of 3 months from January 2024 and this was on the basis of a temporary arrangement to support her improving her English.

49. Sophia has since moved to a new school, a move Mr Evans relies in as an indicator of lack of stability in her life, since to the Cafcass officer that school reports Sophia as performing in January 2025 as ' below expected levels'. It is further submitted on the mother's behalf that this underperformance is to be ascribed to the fact that she is not taught in the medium of her first language and that this in itself is further evidence of instability and further evidence that she would not have acquired by the summer of 2024 a new Habitual residence.

50. Adult intentions whilst not determinative remain relevant. I accept the clear evidence that at the outset it was intended Sophia should be returned to Colombia – even if it be right that the father had in his own mind determined that he would relocate. In oral evidence before me (albeit in relation to why he now would not accompany Sophia back in the event of a return order), the father himself asserted that (before changing his mind) he had foreseen Sophia returning to Colombia, and he had intended packing up and settling his affairs there even if the plan would ultimately become one where what he called 'the family' moved to England. When considering the question of intention in respect of Habitual Residence, Mr Evans submits that the circumstance of this case are far removed from those which underpinned the decision in *Re EF and GH (Children) (1980 Hague Child Abductions Convention)* [2024] EWHC 3576 which had arisen in circumstances of a discussion of planned relocation.

51. In considering the mother's case on Habitual Residence, I have been careful to avoid the trap of thinking of it in terms of whether Sophia has lost her habitual residence in Colombia and considered instead whether the matters on which the mother places reliance are such that when I look at the degree and stability of her integration here I should conclude that Sophia had not gained Habitual residence here.

52. Ms Miller for the father asserts the relevant date – whether 30th May 2024 or 15th or 30th July 2024, Sophia was habitually resident in England and Wales. Sophia had by July been resident in the UK for seven months (by May 2024 five months). She invites the court to accept what she submits is strong evidence that Sophia's Habitual residence lies in England.

53. Submissions on behalf of the father as to Sophia's upbringing even when in Colombia having a strong component reflecting her British heritage, echo almost exactly the mother's own evidence about the promotion of English language in her life and its importance long before the events which give rise to these proceedings. To that extent there is a connection with her heritage on her father's side albeit that until December 2024 she had not so much as visited England and Wales.

54. Sophia is living with her paternal family at her father's home. That includes her paternal grandmother and until recently included her uncle though he has moved out easing the cramped space. She sees and spends time with the wider paternal family

across London, which includes cousins an aunt and an uncle. I bear in mind that this is clear evidence of some integration into family life.

55. Ms Miller submits that the fact that when Sophia came to London with her father in December 2023, her mother came soon after, in January 2024 to join them, remaining until April 2024. As a consequence of this any disruption or lack of stability from the move for Sophia, a child used to having two parents in her life, was likely to have been mitigated. It is a reasonable inference to draw and I draw it, that Sophia will have understood her mother as approving of her enrolment in a school in England and so her experience of that will have been of something which had the support of both her parents – in whose shared care from January to April she spent her time in England.

56. Sophia has been enrolled in school in England since January 2024, moving on in September 2024 to a new school. The school in Jan 2025 reports her performance as below expected levels. She was reported (by the first school as at July 2024) as having many friends at school, and (by the second as at January 2025) as getting on well with her peers.

57. Outside school Sophia has extracurricular activities which include ballet, singing, craft and church groups. She is described as '*passionate*' about ballet The mother is expressly supportive in her written evidence of the ballet classes in which Sophia has been enrolled since 2024 although she now regards the father's motivation, in enrolling her as malign. From the Cafcass report emerges a picture of a child with many activities, many friends and popular with other children at her school(s).

58. Sophia is registered with a general practitioner, a dentist and an optician. There is evidence at this hearing that she has been referred to - and in June 2024 had a consultation with - a paediatric physiotherapist in clinic at Guys and St Thomas' NHS Evalina Children's Hospital.

59. Mr Evans in his skeleton argument had made a most attractive and initially persuasive case that Sophia's habitual residence lies in Colombia. The more I have engaged in the exercise to which the long line of authorities directs me, of looking at the factual situation of this particular child however the less convinced I have become of that initial persuasiveness. It has underscored for me the value of engaging in that exercise. I have striven not to allow that factual analysis to become infected by the notion of whether one or other parent is more or less 'deserving' of being able to establish Habitual Residence. Such a notion has no business in the exercise which is a dispassionate consideration of what Sophia's factual circumstances in this particular case tell me. In this case I am satisfied that Sophia has a sufficient degree of social and familial integration to establish Habitual Residence here. In reaching that conclusion I have had regard to and taken care to re-read before finalising my view, the long and detailed statement of evidence filed by the mother insofar as those parts of it which are relevant to Habitual Residence are concerned. I have considered carefully that by no means all, but a good deal, of her social integration, as is often the case for a child of this age, comes from her involvement in school life. Mr Evans relies strongly on the point that the mother only agreed to enrol her in the school until the date of the expiration of the permit to travel and that any agreement to allow her to finish her academic school year was as he puts it *on a very practical level.* That may

perfectly well be so, but it does not affect my consideration of Sophia's own situation. To the extent that that is relevant I consider that the mother, ironically, in recognising pragmatically that there would be benefit to Sophia in continuing at the school and completing the school year was acknowledging, perhaps unwittingly, that Sophia had a degree of social integration in the school which it would not be in her interests to disrupt. Mr Evans makes the further submission that the fact that the father unilaterally changed her school in September so any integration in the earlier school becomes irrelevant is not one which I accept detracts from the conclusions I have reached having regard both to the relevant dates and to her overall degree of social integration.

60. This child has in my judgment by 30th May (and therefore even more so by any date in July) achieved not just some degree of social and familial integration in this jurisdiction but a significant and I find sufficient degree to establish that her habitual residence lies here. Whilst it had during the early part of the hearing appeared to me to be a finely balanced case in the question of Habitual Residence, on a proper review of the evidence and acknowledging the conspicuous skill with which Ms Miller advanced that aspect of her case, that is no longer my view.

61. In the light of my finding as to her Habitual Residence, I accordingly do not find that the retention was wrongful. In those circumstances is it unnecessary for me to speculate as to any approach that I might have taken to the 13 b) defence since it does not arise.

62. The mother's application for summary return must by reason of my determination as to Habitual Residence be dismissed for want of jurisdiction.