Neutral Citation Number: [2024] EWFC 36

Case No: MA22D00013/ 19067022H/NW/R

IN THE FAMILY COURT
ON APPEAL FROM THE LAY JUSTICES
SITTING AT LEYLAND

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2024

Before:

MR JUSTICE MACDONALD

- -

Between:

C	**Appellant**
- and -	
D	**Respondent**

- -
- -

The Appellant appeared in person assisted by a McKenzie Friend
The Respondent appeared in person

Hearing dates: 29 and 30 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 February 2024 by circulation to the parties by e-mail.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. This matter has been remitted by the Court of Appeal for re-hearing of the appeal of C (hereafter referred to as 'the father') against the registration of a maintenance order made in Elbert County District Court, Colorado (hereafter 'the District Court) as long ago as 11 February 2019. The respondent to the appeal is D (hereafter 'the mother').

2. The appeal from the registration by the court officer at the Maintenance Enforcement Business Centre at Bury St Edmunds (hereafter 'the MEBC') was originally heard by the Magistrates sitting at the Family Court in Leyland and refused. The father thereafter sought to appeal that decision to a Circuit judge. The decision His Honour Judge Booth that he had no jurisdiction to hear an appeal was itself the subject of a further appeal by the father to the Court of Appeal. That appeal was allowed on 28 April 2022 (see *Re D (A Child)(Appeal from the Registration of a Maintenance Order)* [2022] 4 WLR 63). The Court of Appeal remitted the matter to me as Family Presiding Judge for the Northern Circuit for allocation.

3. On 31 October 2022, I granted an application by the father that his appeal against registration be allocated to be heard by a judge of High Court level sitting in the Family Court, pursuant to r.6(1)(b) and Schedule 2 Table 3 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840) and PD30A paragraph 2.1. I further granted an application by the father that the appeal be dealt with by way of rehearing (i.e. this court hearing the appeal against the registration afresh) rather than review (i.e. this court deciding whether the decision of the Magistrates to uphold registration was right or wrong), pursuant to FPR 2010 r.30.12(1)(b). In this context, I further directed that the re-hearing of the appeal would be limited to consideration of the grounds for refusing recognition set out in the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (hereafter "the 2007 Hague Convention") having regard to the terms of Art 23(7) of the 2007 Hague Convention.

4. There has been a significant delay in this matter coming on for the rehearing of the appeal. Subsequent to the decision of the Court of Appeal on 28 April 2022, and the orders of this court of 31 October 2022, the father pursued further applications for summary judgment on his appeal, for permission to adduce fresh evidence on the appeal and for further disclosure. Following this court dismissing those applications on 14 December 2022, the father appealed those decisions to the Court of Appeal. This resulted in these appeal proceedings being stayed by the Court of Appeal until permission to appeal was ultimately refused as being totally without merit on 23 July 2023. In addition, during this period the father pursued a number of applications with respect to the parties' daughter, Y, under the inherent jurisdiction of the High Court, which this court dealt with on 26 April 2023 (see *C v D (Jurisdiction Based on Nationality* [2023] EWHC 1251 (Fam)). Again, the father thereafter appealed that decision to the Court of Appeal, which refused permission to appeal on 31 July 2023. Immediately prior to the last listed final hearing of this matter on 29 November 2023, the father made an application for further disclosure from HMCTS and, on the day of the hearing, invited me to recuse myself from hearing the appeal in accordance with the dicta of Ward LJ in *El-Farargy v El-Farargy & Ors* [2007] EWCA Civ 1149. That final hearing was in any event prevented from going ahead due to a delay in

securing a transcript of the appeal hearing before the Magistrates. Finally, following the adjournment of the final hearing, the father made a formal application for my recusal. That application was dismissed by Sir Jonathan Cohen on 25 January 2024 (see *CD v MD* [2024] EWHC 118 (Fam)).

5. The delay that has attended this matter is regrettable in circumstances where, as pointed out by the Court of Appeal, Art 23(11) of the 2007 Hague Convention requires a competent authority taking any decision on recognition and enforcement, including any appeal, to act expeditiously in circumstances where the underlying obligation comprises or includes maintenance intended to meet current needs.

6. It was plain during the course of the hearing that the father sees the re-hearing of his appeal against registration as a means of mounting a much wider attack on the decisions of the US courts concerning Y. Indeed, at various points in the papers the father has stated in terms that his aim in this appeal is to achieve a decision of the English court that will "alert" the US courts to what he believes was mother's fraudulent conduct in the US, dishonesty and fraud on the part of the District Court in Colorado and abuse of process in that jurisdiction, which the father contends has had the effect of denying him contact with Y and denying him access to the US court system. This court has repeatedly made clear to the father, however, that in rehearing his appeal the court is concerned *solely* with the question of whether the registration of the child support order was wrong by reference to the limited grounds set out in the 2007 Hague Convention. That is the only issue that this judgment addresses. The court has also made plain that, contrary to the father's firmly held belief, the High Court of England and Wales has no power to interpret and apply US law.

7. In determining this appeal I have been provided by the father with a core bundle containing his Skeleton Argument and the documents on which he relies (which include a transcript of the hearing before the District Court at which the order that is the subject of registration was made), a supplementary bundle, which includes a transcript of the hearing before the Magistrates on 29 April 2021 and a correspondence bundle, which includes a transcript of the final hearing of the English financial remedy proceedings on 9 August 2018. In addition to her Skeleton Argument in response, the mother has provided the court with a number of documents, including the transcript of a Status Conference before the District Court on 21 March 2018, and two decisions of the Colorado Court of Appeals concerning the orders made by the District Court, including that which is the subject of registration.

8. By reason of the sheer volume of documentation produced and submitted by the father over the course of these proceedings, it has been difficult at times to discern and understand the father's arguments. In particular, the father is in the habit of repeatedly submitting lengthy and sprawling documents in which he states that he will wish to provide more detailed arguments in due course, thereafter re-writing and re-submitting those documents. Whilst the father plainly considers that, by this method, his arguments are advanced with persuasive clarity, the effect on the reader is almost precisely the reverse. In this context, and as I have done at previous hearings, I permitted the father's brother to make representations on the father's behalf. As he has before, he conducted himself, by and large, in an appropriate manner and has assisted the court with understanding the father's extensive, detailed and discursive written arguments. I also heard oral submissions from the mother, who referred

during the course of her submissions to a number of the documents she had provided to the court.

9. Finally, ahead of the hearing, the father requested that the court take on the role of asking any questions that he may wish to put to the mother. The court replied that any questions for the mother would be put by the court and that the father should prepare a list of questions. In retrospect, the father had clearly understood this to mean that the mother would be cross examined under oath at the appeal hearing (this understanding apparently reinforced by the fact that Magistrates had taken the submissions made by the parties under oath). During the course of the hearing, I explained that the court would not ordinarily hear oral evidence and cross-examination on an appeal having regard to FPR 2010 r. 30.12(2)(a). In interrogating the mother's submissions however, a number of the questions provided by the father in writing were of assistance to the court and the mother willingly dealt with those questions.

10. Given the complexities of this case, I reserved judgment and now set out my reasons for reaching the decision I have.

BACKGROUND

11. In the context of extensive litigation between the parties on both sides of the Atlantic, it is necessary to set out the procedural history of this matter in some detail.

12. The parents married in New Mexico in September 2012. The mother is a United States Citizen. The father is a British Citizen and holds a US 'Green Card'. Y was born in April 2013 in Manchester and holds dual British and US citizenship. The parties' marriage broke down during the course of 2015 and they separated on 10 July 2015.

13. Subsequent to the breakdown of the marriage, there has been substantial litigation in both this jurisdiction and the jurisdiction of the United States in respect of Y. The history of that litigation is as detailed in my previous judgment, reported as *C v D (Jurisdiction Based on Nationality* [2023] EWHC 1251 (Fam). In circumstances where this judgment concerns the financial matters consequent upon the breakdown of the marriage, it is not necessary to reiterate that history here save as follows.

14. On 11 January 2016, HHJ Wallwork granted an application made by the mother pursuant to s.8 of the Children Act 1989 for permission permanently to remove Y to the United States. In accordance with the terms of the order of HHJ Wallwork, the mother commenced an application in the District Court to seek an order mirroring the terms of the order of HHJ Wallwork. By an order dated 27 January 2016, HHJ Wallwork recorded that the father did not oppose the District Court accepting jurisdiction in respect of Y and that he agreed to waive his response period of 35 days service in order to allow registration of the English child arrangements order to commence without delay. The Child Arrangements Order made by HHJ Wallwork on 11 January 2016 was registered for enforcement in the District Court at the beginning of February 2016, the father having provided the required waiver form as directed.

15. The father issued a divorce petition in Liverpool on 26 January 2016. That divorce petition was based on the mother's alleged unreasonable behaviour, namely that she had attempted to abduct Y to the United States on 10 July 2015. That allegation was

raised again by the father at this hearing, who relies on it to bolster his argument that the mother has committed fraud in respect of the child support order made by the District Court. This is notwithstanding that at least three courts have subsequently made clear that there was no child abduction in this case (the father also appears to have litigated unsuccessfully in the Kings Bench Division and the Court of Appeal regarding a decision by the CPS not to pursue criminal charges of child abduction against the mother).

16. As noted in my previous judgment, during the course of the proceedings before HHJ Wallwork, the father elected not to pursue a finding of child abduction against the mother. In his judgment, HHJ Wallwork indicated his view that the circumstances in July 2015 went "against any consideration that there was an abduction in the classic sense". When the father attempted to invoke the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter 'the 1980 Hague Convention') in proceedings in the United States, the US Federal Court, District of Colorado held on 19 April 2021 that "The evidence establishes that there has been no abduction or wrongful removal of the parties' child". In my previous judgment, I set out in detail why the 1980 Hague Convention was of no application in this case in circumstances where there had been no wrongful removal or retention for the purposes of Art 3.

17. The father's latest attempt to keep the allegation of child abduction alive centred at this hearing on a without notice passport order made out of hours by Newton J on 10 July 2015, on the application of the father. The father contends that the passport order demonstrates that the High Court determined that the mother intended to abduct Y to the United States. That interpretation is plainly erroneous. The High Court regularly makes interim orders, including Tipstaff orders, in cases of alleged child abduction in order to seek to maintain the *status quo* pending a substantive hearing. But such interim orders do *not* constitute a finding of child abduction.

18. The mother issued a divorce petition in the District Court in Colorado on 6 June 2016. Upon the father notifying the District Court of his divorce petition in Liverpool, the District Court stayed the mother's divorce petition pending the determination of forum. On 15 August 2017, HHJ Bancroft declined to stay the father's divorce petition pursuant to s.6 and Schedule 1, paragraph 9 of the Domicile and Matrimonial Proceedings Act 1973 and permitted that petition to proceed, with the mother directed to file and Acknowledgment of Service. HHJ Bancroft considered her decision to be a finely balanced one, but concluded that, with respect to the divorce proceedings, England was the appropriate forum.

19. On 18 September 2017, the mother filed a child support petition in the Elbert County Juvenile Court. As recorded in the subsequent judgment of the Colorado Court of Appeals dated 12 May 2022, that petition for child support was served upon the father in Colorado on 19 October 2017. On 31 October 2017, the father filed an amended divorce petition in Liverpool that was not issued or returned (the father later applied for a decree of *mandamus* with respect to the non-issue of the petition, which was dismissed by the County Court). On that date, the father also issued his application for financial remedy orders.

20. On 29 January 2018, the father filed a motion in the Elbert County Juvenile Court to dismiss the mother's child support petition on the grounds that the District Court did not have personal jurisdiction over him, that the Juvenile Court lacked subject matter

jurisdiction in circumstances where the issue if child support was being litigated in England and lack of due process. On 2 February 2018, the mother's child support petition was transferred to the District Court. On 2 March 2018, the father filed a motion in the District Court to stay the proceedings pending determination of *forum conveniens* for spousal and child maintenance by Family Court at Liverpool.

21. The father's application for financial remedies came before District Judge Baker for the first hearing on 15 March 2018. The court has a transcript of that hearing. It is clear from the transcript of the hearing on 15 March 2018 that no determination was made regarding the question of jurisdiction with respect to child maintenance, District Judge Baker merely expressing the view that that issue would be a matter for the Circuit judge:

> "**[The mother]:** And, and when you say should refer it to the Circuit Judge, are we, that's both the child support and, is it just child support?
>
> **District Judge Baker:** I, I think --
>
> **[The mother]:** Or financial matters? Both?
>
> **District Judge Baker:** It's, it's going to be the financial matters and the child support, I think. That makes sense, and I see [the father] nodding there. So, yes, it will be a, because otherwise there's a degree of incongruity for the child support to be dealt with by one Court and the overall financial remedies to be dealt with in another Court. But that's a matter, I don't say too much about that because that's a matter for the Circuit Judge who will deal with it when he or she comes to give directions."

22. On 21 March 2018, the mother's petition for child support came before the District Court for a Status Conference. Again, the court has a transcript of that hearing, at which the father attended by telephone. At the hearing, the District Court enquired of the mother's Attorney as to the progress of the proceedings in England, who confirmed the proceedings were ongoing. With respect to child support, the mother's Attorney referred to the court to a brief from the Assistant County Attorney demonstrating that, in the view of the Assistant County Attorney, the District Court had jurisdiction in respect of child support. The mother has provided this court with a copy of that brief, dated 23 January 2018.

23. The brief from the Assistant County Attorney sets out the parents' respective arguments concerning jurisdiction with respect to child support and English law concerning child maintenance as the Assistant County Attorney understood it to be. Highlighting that the mother's petition for child support was issued in accordance with Colorado law; where the father had stopped short of stating that either party had asked the Family Court at Liverpool to address child maintenance and that issue was squarely before the District court; where the father had acknowledged service of the summons and petition for child support and service was valid; where under Colorado law the court may exercise personal jurisdiction over a non-resident individual personally served with a summons within the State; where child support is in the best interests of children and of paramount importance; where the father had engaged in litigation in Elbert County on issues of child custody; and where both parents agreed that no court had assumed jurisdiction in respect of child support, the brief concluded

that District Court had personal and subject matter jurisdiction with respect to child support.

24. At the conclusion of the Status Conference on 21 March 2018, the District Court expressed the view that the fact that the English court had permitted Y to relocate to Colorado was determinative of the question of jurisdiction with respect to child support. However, the father having informed the District Court that there was to be a hearing at which the English court was going to address the issue of child maintenance, the District Court stayed the mother's petition for child support and directed the filing of status reports following the next hearing before the English court.

25. On 4 January 2018, the father had made an application in England for a declaration as to forum with respect to child maintenance and on 8 February 2018 the mother had applied to transfer the English proceedings from Liverpool to Manchester. Those applications came before HHJ Greensmith on 22 March 2018. It is important to set out the terms of that order in its entirety:

> "**UPON** considering the Respondent Wife's application dated 8/2/18 in which the respondent applies to the court for:
>
> 1. Re-timetabling of the Applicant Husband's application for financial relief; the First Appointment is listed for hearing on 12 April 2018; and
>
> 2. An order transferring the proceedings to the Family Court sitting at Manchester to be listed before HHJ Wallwork.
>
> **AND UPON** considering the Petitioner Husband's application filed 26 February 2018 for an order declaring:
>
> 1. The jurisdiction of England and Wales to be *forum conveniens* for the disposal of child and spousal maintenance ancillary to the main suit; and
>
> 2. Liverpool to be the more appropriate venue.
>
> **IT IS RECORDED**
>
> a. Both parties have indicated that they see no reason why the application should not be dealt with on paper.
>
> b. The respondent's residence outside the jurisdiction does not necessarily present a difficulty in collating the information and documentation required to complete a Form E;
>
> c. The application for financial relief: HHJ Wallwork (*sic*) involvement has been in relation to child welfare. There is no particular advantage in securing judicial continuity;
>
> d. The Respondent lives in the US and cannot reasonably argue she would be prejudiced by the case continuing in Liverpool as opposed to Manchester;

e. The divorce main suit has progressed in the Family Court at Liverpool following a judgment of HHJ Bancroft of 15 August 2017 determining *forum conveniens* and consequential order: it is a consequence of such order that this court is seised of all matters ancillary to the main suit including the making of orders for financial provision for the parties and any child of the family in so far as the court has jurisdiction to the exclusion of the Secretary of State.

f. The court has jurisdiction to make financial orders in respect of children (as opposed to the Secretary of State) as this court is seised of the parties' main suit of divorce and all three parties are not habitually resident in the UK.

IT IS ORDERED

1. The Respondent's applications for re-timetabling and transfer are dismissed.

2. The Petitioner's application is considered having been dealt with by the above recordings.

3. The matter will remain listed on 12 April 2018 before a District Judge for First Appointment.

4. The Parties have permission to appear by phone at the hearing on 12 April 2018: if required the parties should make arrangements with the court in advance of the hearing.

5. No order as to costs on the applications."

26. The order of 22 March 2018 is not a model of clarity. In particular, it does not clearly articulate what order the court made on father's application for a declaration as to forum with respect to child maintenance. The recital to the order states that "this court is seised of all matters ancillary to the main suit including the making of orders for financial provision for the parties and any child of the family in so far as the court has jurisdiction to the exclusion of the Secretary of State". This amounts simply to a restatement of the law. Within this context, and in so far as it can be said to make sense at all, paragraph 2 of the order of 22 March 2018 'orders' that the father's application for a declaration as to forum with respect to child maintenance is dealt with by the recital, i.e. by the restatement of the law. There was no judgment given on the application and the order itself contains no declaration in the proper form as to jurisdiction with respect to child maintenance.

27. On 12 April 2018, the father contends that he sent to the District Court the order of 22 March 2018. The father further asserts that, on that date, the mother provided to the District Court what he refers to as a "fraudulent purported expert statement" regarding the English law relating to child maintenance. That undated document, a copy of which is before this court, was entitled a "Summary of British Child Support Law" and was prepared by an English barrister. It purports to set out, in relatively simple terms, the legal position in this jurisdiction concerning child maintenance. In that regard, with respect to the question of jurisdiction, the document states that Child

Maintenance Service (hereafter "CMS") will only have jurisdiction where both parties reside in the United Kingdom and, that if one or more of the parties live abroad and subject to limited exceptions, the CMS will *not* be able to provide a calculation as to the amount of maintenance a non-resident parent should pay. With respect to the jurisdiction of the Family Court to make an order for child maintenance, the document lists the exceptions whereby the Family Court will have jurisdiction as to child maintenance as being where the parties agree the level of child maintenance and where the paying party's income exceeds £3,000.

28. Decree nisi was granted on 1 August 2018 District Judge Holligan. The final hearing of the father's application for financial remedies was heard by District Judge Baker on 9 August 2018. Once again, the court has a transcript of the hearing on 9 August 2018. At the hearing, the father confirmed in evidence that his application was for a £75,000 lump sum payment and £9,000 per annum in spousal periodical payments. District Judge Baker dismissed the father's application for a lump sum order and a periodical payments order. The District Judge imposed a clean break, with the father and mother's claims for financial provision, pension sharing and property adjustment orders being dismissed and neither is entitled to make any further claim in relation to the marriage under the Matrimonial Causes Act 1973 s.23(1)(a) or (b) and neither being entitled on the death of the other to apply for an order for provision out of the other's estate. It is clear on the face of the order of 9 August 2018 that the District Judge made no order for child maintenance. At the conclusion of the hearing, the following exchange took place that made clear that the father had not made an application for child maintenance:

> "**[The Father]:** Sorry, sir, would anything arising out of this come back to this court? If that is legal advice, just tell me-
>
> **JUDGE BAKER:** In terms of you being able to appeal, you mean?
>
> **[The Father]:** No, no – I was thinking in terms of [the mother] wanted to pursue child support, because-
>
> **JUDGE BAKER:** No, no-
>
> **[The Father]:** I think, just with the phrase you used about the lifetime until death might cover-
>
> **JUDGE BAKER:** No, no. Child support – child maintenance is not something that the English courts can deal with. It is dealt with by the Child Support Agency-
>
> **[The Father]:** Child Support Agency, yes?
>
> **JUDGE BAKER:** Or, I think they call it something different now, or, it is dealt with by another means but not by the financial remedy court, no. All right?
>
> **[The Father]:** Child maintenance-
>
> **JUDGE BAKER:** Child maintenance is agency – the Child Maintenance Enforcement Commission-

> **[The Father]:** Because, the – the order of Judge Greensmith said that one of the reasons we were staying here with finance was because all those matters were here because it's outside the remit of the Secretary of State because it's a foreign child.
>
> **JUDGE BAKER:** Yes. So, ordinarily, all matters involving child maintenance are dealt with by the CSA – Child Support Agency. In the event there is a child abroad, then the appropriate application – unless it is an application – it would be for a Schedule One order I think – or, it could be an application to the Financial Remedies Court for a specific type of remedy in respect of that child but in terms of the application you have made, it is not contained within that. Do you understand that?
>
> **[The Father]:** I understand, sir. Thank you."

29. As noted, the mother's petition proceedings for child support in the US had been stayed by the District Court on 21 March 2018. Following the final hearing in the English proceedings, the mother notified the District Court of the order made by the English court on 9 August 2018 and the District Court listed the petition for child support for a further Status Conference on 5 December 2018. In the event, the Status Conference continued for a second day on 10 December 2018.

30. At the Status Conference that commenced on 5 December 2018, the mother stated that the parties were still not divorced, which was a correct statement of the position having regard to the fact that DJ Baker had not yet pronounced decree absolute, which was made on 18 March 2019. At the Status conference the District Court addressed the question of jurisdiction with respect to child support. The District Court found that the Liverpool court had not addressed the issue of child support within the financial remedy proceedings, that the father had submitted to the jurisdiction of the Colorado court by accepting the mother's petition to register the Manchester child arrangements order and that the court had subject matter jurisdiction in respect of child support based on Y's presence in Colorado and the registration of the child arrangements order in that jurisdiction. In these circumstances, the District Court concluded that it had jurisdiction to entertain the child support petition. The father contends that the Status Conference in December 2018 should not have been conducted as a hearing with respect to the question of jurisdiction and, accordingly, that it did not constitute due process.

31. The child support petition came on for hearing before the District Court on 11 February 2019. The father alleges that the mother and the District Court colluded in fixing this date in circumstances where both the mother and the court were aware that this date was not convenient for the father. In his document entitled "Chronology / Commentary re: Recent Elbert Court Proceedings", the father states that upon him communicating to the court that 11 February 2019 was not convenient to him, the court office at the District Court requested alternative dates from the parties. Thereafter, the mother filed a motion to set the hearing 11 February 2019. That motion was opposed by the father, but the court set the date of the child support hearing on 11 February 2019.

32. In any event, the father argues that he was not properly served with notice of this hearing. It is plain from the court record that he was not present and was not

represented. The documents before this court indicate that the father was served by way of surface post sent to England on 18 January 2019. The father contends that he did not receive those papers until his return to England from the US on 2 March 2019. However, papers from the US Central Authority contained in the bundle assert that the father acknowledged the date of the hearing on 11 February 2019.

33. More fundamentally, it is clear from both the record of the hearing, and the transcript of the hearing before the District Court, that the father filed a number of motions for consideration by the District Court at the hearing on 11 February 2019. In a document entitled "Chronology/Commentary re: Recent Elbert Court Proceedings" dated 3 July 2020, the father relates that in that context he spent over $160 on the evening before the hearing preparing and copying documentation. On the morning of the hearing, the father sent an email to the District Court at 8.53am asking that the judge be notified that the father would not be appearing due lack of notice and insufficient time to prepare. At other points in the papers, the father appears to have contended that it was the discovery of a Californian authority, indicating that his attendance would mean he would waive a lack of service defence at appellate level, which prevented him from attending the hearing.

34. As I have noted, this court has both a record of the hearing on 11 February 2019 taken from the official court record and a transcript of the hearing. At the outset of the hearing, the District Court referred to the email from the father indicating that he had chosen not to attend the child support hearing and that email was read into the court record. The District Court noted that the father had attended the court building to speak to court staff and referred to the fact that he had filed a number of motions with the court ahead of the hearing up to 11.00pm the night before the hearing. The District Court then proceeded to dismiss the father's motion to dismiss the petition for child support, his motion seeking the quashing of the hearing notice order and his motion seeking enforcement of Colorado Rules of Court Procedure r. 16.2. Thereafter, the District Court made a finding that the father had been provided with sufficient notice and time to prepare for the hearing, found him default for wilful failure to appear having been served with notice to appear and issued a warrant for his arrest, setting the bond at $1000 or surety.

35. With respect to the substantive application for child support, the mother referred the District Court to the transcript of the final hearing before District Judge Baker on 9 August 2019, in which the District Judge stated that there had never been a claim for child maintenance before the court as set out above. The father contends that the mother fraudulently misled the District Court as to the position in England regarding child maintenance, both by way of the document referred to above and by failing to refer the District Court to orders made in England However, it is in any event clear that the father himself had, in April 2018, provided the court with a copy of the order made by HHJ Greensmith in March 2018, and that the District Court had reviewed the English orders at the hearing 11 February 2019. In that context, the District Court concluded as follows:

> "[The father] has, and the Court will, will find, falsely represented to this Court on numerous occasions that the Court in England has made, has entered orders for child support. It is clear to this Court, based on its review of the English court orders, that's not true."

36. With respect to the petition for child support, the court record and the transcript indicate that Mother was sworn and asked about her prepared child support 'worksheets' setting out her calculations with respect to child support. The mother gave her income as $4,911 per month gross and asked that the court impute a gross monthly income of £3,596 to the father based on prior statements made to the courts in the US and UK (the mother relied in evidence on a tax statement for the last year the father was working, showing an gross monthly income of £3600 for 10 of the 12 months, a statement at the final hearing before District Judge Baker that the father was making £36,000 per annum, a statement to Judge Holmes at the District Court that he had been offered two jobs in IT and a statement to the Court of Appeal in England that he was earning 40 percent about the average UK salary with modest housing costs and no debt). The mother gave evidence that the father was wilfully underemployed. With respect to retroactive child support, the mother informed the court that the father had been paying, at the mother's request, an average of $113.19 per month.

37. The District Court found the mother's testimony to be credible. Having made a finding that the father was wilfully under employed, based on the evidence the District Court made a finding that since March 2016 the father was capable of, and should have been earning $3,596 per month. Within this context, the District Court accepted the proposal in the mother's child support 'worksheet' and made an order for child support of thereafter $841.49 per month. With respect to retroactive child support, the District Court calculated the arrears at $27,310.85, which was reduced by the court having regard to the payments for child support already made by the father of $3,620.00, giving total arrears of $23,690.85. In these circumstances, the District Court made an order for child support requiring the father to pay child support and arrears for 24 months in the sum of $1,828.68 per, to include arrears payment of $627.36 per month, and thereafter child support in the sum of $841.49 per month. The child support order made by the District Court on 11 February 2019 was sealed on 3 April 2019.

38. The father appealed the making of the child support order to the Colorado Court of Appeals. The Colorado Court of Appeals handed down two judgments on the appeal on 12 May 2022. In the circumstances, those judgments were not available to the MEBC nor to the Magistrates at the time they dealt with the father's appeal against registration on 28 April 2022. However, the father's Skeleton Argument levels criticisms at that court and both parents have provided this court with copies of the judgments rendered by the Colorado Court of Appeals.

39. With respect to the question of jurisdiction over child support, the Colorado Court of Appeals rejected the father's argument that the District Court was wrong to conclude that it had personal and subject matter jurisdiction with respect to the issue of child maintenance. With respect to subject matter jurisdiction, having recorded the father's concession that the Family Court at Liverpool had not ordered any form of monetary support, it held that the Uniform Interstate Family Support Act s.14-5-207(a), CRS 2021 was not applicable. With respect to the father's argument that the order of HHJ Greensmith in March 2018 declared the English court *forum conveniens* on the question of child maintenance, the Colorado Court of Appeals concluded that the March 2018 order was inconsistent with the August 2018 proceedings before District Judge Baker, in which District Judge Baker confirmed that the father had made no

application for child maintenance within his application for financial remedies. In this context, the Colorado Court of Appeal observed as follows in paragraphs 23 and 24 of its judgment:

> "23. Based on the UK Court's order it appears that while the father could have theoretically pursued child support in a separate application in the UK courts (because the child was living abroad). Father's application, ruled on by the Liverpool Court, did not contain a request for child support and so that court could not address it. And the Liverpool Court acknowledged that financial issues related to the child were now being addressed in the United States, namely in the Elbert County District Court.
>
> At best for father, while a UK court could handle child support issues involving a child living abroad, the father had not made a request for, nor had the Liverpool Court exercised discretion over, child support at the time of its order. Father has cited no authority departing from the general rule that will be different in the UK from here. A court that has not exercised jurisdiction over a specific matter (e.g. child support) cannot by extension intend to exercise continuing jurisdiction over that issue.
>
> 24. Accordingly, we conclude that the Liverpool proceedings did not prevent the Colorado Court from exercising subject matter jurisdiction over child support."

40. The Colorado Court of Appeals also dismissed the father's appeal against the conclusion of the District Court that it had personal jurisdiction over him concerning child support. In circumstances where the father was served with the child support petition whilst he was in Colorado, the Colorado Court of Appeals determined that the service of the petition on the father within Colorado conferred personal jurisdiction over him with respect to child support. It rejected the submission that the fact that the father was in Colorado pursuant to a parenting order for contact with Y at the time he was served with the child support petition conferred on him limited immunity from service.

41. The Colorado Court of Appeals also rejected the father's arguments with respect to *res judicata*, in circumstances where the English court neither addressed nor entered a child maintenance order in the English proceedings. It likewise rejected the father's argument that the Status Conference in December 2018 should not have been conducted as a hearing and did not constitute due process. The Colorado Court of Appeals noted that the mother had notified the US court of the decision of English court and that the US court had set a status conference and indicated the subject matter to be discussed. Within that context, the Colorado Court of Appeals took the view that the father should have anticipated the discussion of personal jurisdiction in circumstances where the case had been pending for two years and the only issues awaiting determination were child support and father's objection based on personal jurisdiction. The Court noted that both parties had filed numerous pleadings making detailed arguments on those issues and that the District Court had expressly notified the parties that this was the issue that would be discussed when Status Conference resumed on 10 December 2018.

42. With respect to the father's contention that had not been given proper notice of the child support hearing on 11 February 2019, the Colorado Court of Appeals was satisfied that the father had notice of the hearing by at least 31 January 2019, that being the date he filed a motion to continue the hearing on that date. It further noted that the father had appeared at the courthouse on 8 February 2019 and spoke to court staff about the hearing, that between 31 January 2019 and 11 February 2019 he had filed five motions totalling two hundred pages seeking to vacate the child support petition and delay the hearing and that, as set out above, the father had emailed the Court Clerk seven minutes prior to the start of the hearing to inform her that he would not be attending. Within this context, the Colorado Court of Appeals was satisfied that the father had adequate notice and made "an intentional choice not to prepare or appear for the hearing".

43. Finally, with respect to the merits of the child support order made by the District Court, the Colorado Court of Appeals rejected the father's submission that the District Court should not have made the order based on the mother's evidence. The Colorado Court of Appeals noted that the District Court had found the evidence of the mother credible and, in the circumstances, was entitled to rely on it. Whilst agreeing that the District Court had erred in making a finding that the father had failed to provide a financial affidavit, when the record showed he had, the Colorado Court of Appeals declined to criticise the District Court for preferring the mother's evidence in reaching its conclusion on the principle and quantum of child support. It considered that the District Court was under no obligation to rely on the father's documentation when he had not attended the hearing to admit the financial affidavit or other evidence as to his income.

44. In the foregoing circumstances, the Colorado Court of Appeals declined to interfere with the child support order made by the District Court. On 6 February 2023 the Colorado Supreme Court denied the father's Petition for Writ of Certiorari.

45. The application for registration and enforcement of the child support order made by the District Court was transmitted by the Elbert County DHS CSS Unit to the English and Welsh Central Authority, the Reciprocal Enforcement of Maintenance Orders Unit ("REMO") on 17 April 2019. The application for registration was expressed as being made under the provisions of the 2007 Hague Convention. Thereafter, pursuant to Art 23 of the 2007 Hague Convention, the application was transmitted to the MEBC on 15 May 2019.

46. The child support order made by the District Court was registered by the court officer at the MEBC on 28 June 2019 in the DFJ area of Cheshire and Merseyside, pursuant to Schedule 1, paragraph 2(4) of the International Recovery of Maintenance (Hague Convention 2007) Regulations 2012 and FPR 2010 r.34.30 and PD 34E paragraphs 4.1 and 4.2. On 28 June 2019, pursuant to FPR 2010 r. 34(8), notice of the registration and the basis for recognition was sent to father and to the mother. A currency conversion undertaken pursuant to Schedule 1, paragraph 4 of the Regulations resulted in a monthly maintenance figure of £651.96 per calendar month and total arrears of £18,355.04. The father was advised of his right to bring a challenge or appeal within 30 days of the notification under Arts 22(6) and 22(7) of the 2007 Hague Convention.

47. Following the registration of the order on 28 June 2019, a considerable delay ensued, in part due to the COVID-19 pandemic. Ultimately, a notice of hearing was issued listing the matter before the Magistrates sitting in Liverpool on 13 July 2020. On 3 July 2020, the father issued an application on Form N244 seeking an order (a) staying the proceedings pending decision of the Colorado Court of Appeals, (b) transferring the proceedings to a venue of the Lancashire DFJ area, (c) vacating a hearing listed on 13 July 2020, (d) requiring the court to provide specific information and, (e) allocating case to a Judge of High Court level or to the Family Division of the High Court. It would appear that following this application, District Judge Baker made an order transferring the proceedings to the Lancashire DFJ area and vacating the hearing on 30 July 2020. It has not been possible, however, to locate a copy of that order.

48. On 30 July 2019, the father gave notice to the MEBC of his intention to appeal against the decision to register the child support order made by the District Court. The father contends that he filed "grounds of appeal by correspondence" in the Family Court at Liverpool, which grounds he contends were accepted. On 31 August 2019, the father submitted by letter to the MEBC an application to amend grounds for appeal. Both the father's document in support of his applications dated 3 July 2019, and his notice of intention to appeal dated 30 July 2020, are very large documents ranging across the entirety of the litigation between the parties. However, the three central complaints made by the father can be distilled as follows:

    i) The District Court did not have jurisdiction to make an order in respect of child support in circumstances where it did not have subject matter jurisdiction or personal jurisdiction in respect of the father and where the English court had jurisdiction with respect to the issue of child maintenance.

    ii) The child support order had been made without due process in circumstances where the father had not been properly served with notice of the child support hearing on 11 February 2019 and the requirement that he attend the hearing was contrary to Colorado law.

    iii) The child support order was secured by way of fraud, both on the part of the District Court and the mother.

49. On 1 April 2021, the Legal Adviser made an order listing the matter for hearing on 29 April 2021 to determine (a) whether the proceedings should be stayed, (b) if not, what should be the allocated judge level for the proceedings, and (c) if it determined the proceedings should be dealt with by the Magistrates, the father's appeal against the registration of the order. Within the order of 1 April 2022, a number of matters are recorded by way of recitals to the order:

    i) That the proceedings had been transferred to the Lancashire DFJ area, but no further action or listing had followed that transfer.

    ii) That, subject to further submissions, the Legal Adviser could not see the relevance of the provisions of business allocation rules in The Family Court (Composition and Distribution of Business) Rules 2014 concerning claims in respect of a judicial act under the Human Rights Act 1998 nor action in respect of the interference with the due administration of justice and did not consider

the proceedings raised complexities warranting allocation to a judge of High Court level.

iii) That the father had issued an application to transfer to the proceeding to the Lancashire DFJ area, which application had been granted by DJ Baker on 2 July 2020 pursuant to FPR 2010 r.29.17 but which order was not on the court file.

iv) That, due to the COVID-19 public health emergency, a hearing date in the Lancashire DFJ area remained outstanding.

50. On 7 April 2021, the father issued a Form N244 Application Notice applying to revoke the order of 1 April 2021. That application was refused on 12 April 2021. That latter order reiterated that the court would deal with the father's application for a stay at the final hearing and again left open the option for the father to make further submissions as to allocated judge level at the hearing on 29 April 2021. The order of 12 April 2021 indicates that the order of 1 April 2021 listing the matter for hearing on 29 April 2021had been received by the father on 7 April 2021, some three weeks prior to the final hearing.

51. The appeal against the registration of the order came before the Magistrates in the Family Court sitting at Leyland on 29 April 2021. The Magistrates refused the father's preliminary application for a stay pending the outcome of the Colorado Court of Appeals in circumstances where the MEBC had made enquiries of the US Central Authority as to the status of the appeal and no application for stay had been made by the Authority seeking registration, where there was no certainty as to timescale for the outcome of the appeal, where registration had taken place as long ago as June 2019 and where the application concerned only registration and not enforcement. The Magistrates likewise refused the father's application for the matter to be reallocated to a Judge of High Court level, in circumstances where the Regulations denoted the Magistrates as the appropriate level of tribunal, where there was no claim under the Human Rights Act 1998 before the Magistrates and where the question of fraud and interference with administration of justice fell to be dealt with as a ground under the 2007 Hague Convention.

52. With respect to the appeal itself, the court has a transcript of the hearing and a copy of the Magistrates' Reasons, produced pursuant to the requirement in FPR 2010 r.27.2. In the latter, the Magistrates summarised the registration process that had taken place. They then recited the relevant provisions of the 2007 Hague Convention (including Art 28, which states that "There shall be no review by any competent authority of the State addressed of the merits of a decision"), the International Recovery of Maintenance (Hague Convention 2007) Regulations 2012 and FPR 2010 Part 34. The Magistrates went on to note the terms of the order and that the arrears were now substantially in excess of the registered amount given the delay in the proceedings. Thereafter, having noted that the grounds of any appeal were limited to the bases for recognition and enforcement in Art 20 and the grounds for refusing recognition in Art 22, the Magistrates did their best to identify the grounds of appeal on which the father relied. The Magistrates considered these to be whether, pursuant to Art 22(e)(i), the father did not have proper notice of proceedings and an opportunity to be heard, whether, pursuant to Art 22(b), the decision was obtained by fraud in connection with a matter of procedure and whether, pursuant to Art 22(d), the decision of the District

Court was incompatible with a decision rendered between the parties having the same purpose.

53. In dismissing the father's appeal, the Magistrates rejected the contention that, pursuant to Art 22(e)(i), the father did not have proper notice of proceedings and an opportunity to be heard. The Magistrates were satisfied that the evidence indicated that the father had notice of the hearing and an opportunity to be heard in circumstances where the father knew of the hearing, having filed motions to be addressed at that hearing and having emailed the court on the day of the hearing to state he would not be attending.

54. The Magistrates likewise rejected the father's contention that, pursuant to Art 22(b), the child support order was obtained by fraud in connection with a matter of procedure. The Magistrates concluded that there was no evidence fraud by the judge and rejected the contention that the evidence demonstrated the District Court was deliberately misled by the mother with respect to the position as to jurisdiction in England. With respect to the latter, the Magistrates noted that the English court had not made child support orders incompatible with the order made by the District Court, the existence of financial remedy proceedings in England was known to the District Court and the record of the hearing before the District Court made this clear. The Magistrates likewise rejected the submission that the document purporting to set out the law in England concerning child maintenance was evidence of fraud, it being for the mother to put her case to the District Court and for the District Court to decide whether to accept or reject it.

55. Finally, the Magistrates rejected the father's contention that, pursuant to Art 22(d), the decision of the District Court was incompatible with a decision rendered between the parties having the same purpose as the order of the District Court. The Magistrates undertook a detailed review of the litigation in England and concluded that the only application before the English court was the father's application for lump sum and periodical payment orders, both of which were dismissed on 9 August 2018 with a clean break, with no reference to an order being made in respect of child maintenance. In this context, the Magistrates concluded that whether or not the Liverpool court could have made an order for child maintenance where not precluded from doing so by the Child Support Act 1991, no such order had been made and therefore there was nothing in the English orders incompatible with the child support order made by the District Court for the purposes of Art 22(d).

56. The father issued his notice of appeal against the decision of the Magistrates on 19 May 2021. The grounds of appeal appended to the Notice of Appeal adopt the same prolix and discursive approach taken by the father with respect to all of the documents he has filed in these proceedings. However, the grounds of appeal against the decision of the Magistrates can be properly summarised as follows:

    i) The Magistrates failed to address the fact that the MEBC had inappropriately and inadequately case managed the proceedings by failing to address three N244 applications made in July 2020 (challenging the jurisdiction of the Magistrates to hear the matter and seeking a Judge level transfer to a Judge of High Court level), in January 2021 (seeking to reconfirm the address for service of the mother) and in April 2021 (seeking a stay of proceedings on various grounds).

ii) The Magistrates denied the father a fair trial in breach of Art 6 of the ECHR in circumstances where he was not given sufficient time to respond and required the father to submit documentation on 48 hours' notice, where the Magistrates failed to provide guidance as to the preparation or timetable for a bundle, and by proceeding on 29 April 2021 to hear the substantive appeal against registration on submissions.

iii) The Magistrates failed to deal on the appeal against registration with the pleaded child welfare issues by finding facts, breached the father's rights under Arts 6 and Art 8 of the ECHR and failed to consider the manner in which the proceedings in Colorado "formed a critical part of the [mother's] traducing of an English Family Court's Final Hearing Order".

iv) The Magistrates failed to address the evidence that, in addition to breach of estoppel, *res judicata* and an implied contractual agreement between the parties, the proper forum for child maintenance was the jurisdiction of England and Wales and the mother's application was an abuse or process, pursued an improper collateral purpose and was vexatious. The reliance placed by the Magistrates on the final order of 9 August 2018 was misplaced and their interpretation of the effect of that order wrong.

v) The reasons given by the Magistrates were inadequate and failed to address the individual grounds relied on by the father and to make findings on the disputed issues of fact and law.

vi) The Legal Adviser was wrong to pre-determine the father's application for re-allocation of the matter to a Judge of High Court level and revisited the application at the final hearing in only a cursory and inadequate manner. In deciding that r.15 of the Family Court (Composition and Distribution of Business) Rules 2014 determined the question of allocation of the case, the Legal Adviser was wrong in law.

vii) The Magistrates' decision to refuse to stay the proceedings pending the outcome of the father's appeal against the child support order to the Colorado Court of Appeals was wrong.

viii) The Magistrates failed to address adequately or correctly the father's allegations of fraud by the Colorado courts and wrongly concluded that the English court could not second guess the decisions of the Colorado courts.

ix) The Magistrates failed to deal adequately with the father's argument concerning notice of the hearing before the District Court on 11 February 2019.

x) The Magistrates failed to deal adequately with the father's allegations that the mother had perpetrated a fraud in obtaining a child support order in Colorado by misrepresenting to the Colorado court the position under English law concerning child maintenance, including the provision of a "false document" dealing with that law.

xi) The Magistrates adopted a perfunctory process that was not appropriate having regard to the complexity of the issues involved. The decision to deal with the appeal on the basis of submissions only was inappropriate.

57. On 14 June 2021, HHJ Booth dismissed the father's appeal from the order made by the Magistrates on 29 April 2021 on paper, on the basis that there was no right of appeal against registration having regard to the terms of the Maintenance Orders (Reciprocal Enforcement) Act 1972 and of Schedule 2 of the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007. That decision was overturned by the Court of Appeal on 28 April 2022. The Court of Appeal determined that, contrary to the conclusion of HHJ Booth, there is a right of appeal from the order made by the Magistrates refusing the father's appeal against registration:

> "[25] … As can be seen, section 31K(1) gives a right of appeal to the Court of Appeal 'in such manner and subject to such conditions as may be provided by Family Procedure Rules' but subject to any order made under section 56(1) of the Access to Justice Act 1999. Such an order has been made, namely the Access to Justice (Destination of Appeals) (Family Proceedings) Order 2014 (SI 2014/602). By article 2(3)(q) of that Order, an appeal 'lies to the family court (instead of to the Court of Appeal)' from 'two or three justices of the peace'". Rule 6 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840) ('the 2014 Distribution Rules') provides that such an appeal is to a circuit judge (there are limited circumstances in which it is to a High Court judge).
>
> [26] The FPR 2010 deal with applications for the enforcement of orders under the 2007 Convention in Part 34, in particular Chapter 3 and PD 34E. The 'prescribed officer' is defined by rule 34.2 as 'the court officer'. Rule 34.30(6) provides that, except where PD 34E provides otherwise, 'the court must register the order unless … (c) in the case of an application under Article 23(2) or (3) of the 2007 Hague Convention, Article 22(a) of that Convention applies'. This reflects article 23(4) of the 2007 Convention. It is a paper exercise in respect of which, as provided by article 23(4), neither party 'is entitled to make any submissions'.
>
> [27] Rule 34.31(2) provides that an appeal made under article 23(5) of the 2007 Convention 'must be to the family court'. This reiterates that the right of appeal is that provided under the Convention and is an appeal from the registration of an order or the refusal to register an order by the court officer.
>
> [28] As submitted by Mr Venables, the appeal structure is as follows: under the 2007 Convention and its implementing legislation, a party is entitled to appeal to the family court from the registration of a maintenance order or from the refusal to register an order. The 2007 Convention states that any further right of appeal is governed by domestic law. None of the implementing legislation for the 2007 Convention, including the CJJA 1982, the 2012 Regulations and the FPR 2010, contain any provision in respect of further appeals. In particular, they do not provide that there is no further right of appeal. It is, therefore, necessary to look to the general

> domestic provisions governing family appeals to determine what further appeal rights are available. To quote from Mr Venables' submissions, a party is entitled 'to invoke the usual rights of appeal that litigants enjoy in domestic law from any other decision made by the family court'.
>
> [29] Mr Venables referred in his submissions to the fact that second appeals would be subject to the usual test under section 55 of the Access to Justice Act 1999. It is not clear whether he was specifically including the second appeal with which we are concerned. What he says is, of course, right if the second appeal is to the Court of Appeal. However, section 55 only applies to appeals to the Court of Appeal and does not apply to a second appeal to a Circuit Judge in the Family Court. As referred to below, permission to appeal in such a case is governed by Part 30 and PD 30A of the FPR 2010."

And following consideration of the contents of FPR 2010 Part 30:

> "[32] Although not directly relevant to this appeal, it would seem from the second column in the table that permission to appeal is not required when the appeal is from a bench of two or three lay magistrates or a lay justice. I say "seem" because this issue was not argued substantively in this appeal and it may be that there is some other provision which I have overlooked. However, if I am right, while the absence of a permission filter in respect of the registration of an order under the 2007 Convention (and other maintenance orders governed by the Acts set out in Schedule 1 of the 2014 Distribution Rules) may be deliberate, if it is, as this case demonstrates, it may operate to impede the obligation to "act expeditiously" as required by article 23(11) of the 2007 Convention."

58. As I have noted, having allowed the appeal the Court of Appeal remitted the matter to me to determine allocation in my capacity as Family Presiding Judge for the Northern Circuit. Upon application by the father, I allocated the matter to myself sitting in the Family Court, pursuant to r.6(1)(b) and Schedule 2 Table 3 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840) and PD30A paragraph 2.1 and granted an application by the father that the appeal be dealt with by way of a rehearing rather than review, pursuant to FPR 2010 r 30.12(1)(a).

59. Again, as noted above, subsequent to the orders of 31 October 2022, the father pursued further applications for summary judgment on this appeal, for permission to adduce fresh evidence on the appeal and for further disclosure. Following this court dismissing those applications on 14 December 2022, the father appealed those decisions to the Court of Appeal. This resulted in these appeal proceedings being stayed by the Court of Appeal until permission to appeal was ultimately refused as being totally without merit on 23 July 2023. Again as noted above, immediately prior to the last listed final hearing of this appeal on 29 November 2023, the father made an application for further disclosure from HMCTS and, on the day of the hearing, invited me to recuse myself from hearing the appeal in accordance with the dicta of Ward LJ in *El-Farargy v El-Farargy & Ors* [2007] EWCA Civ 1149. Finally, following the adjournment of the last final hearing due to a delay in securing a transcript of the hearing of 29 April 2019, the father made a formal application for my recusal. That application was dismissed by Sir Jonathan Cohen on 25 January 2024.

SUBMISSIONS

60. As I have stated, this appeal is being dealt with by way of rehearing pursuant to FPR 2010 r.30.12(1)(b), limited to consideration of the grounds for refusing recognition set out in the 2007 Hague Convention.

61. Notwithstanding the court having acceded to the father's application to deal with the appeal by way of re-hearing rather than review, a significant portion of the father's submissions centred on the question of whether the decision of the Magistrates to uphold registration was right or wrong, and his desire for explicit findings to be made in respect of his grounds of appeal dealing with what he contends were the errors made by the Magistrates and the Legal Adviser, rather than the question of whether one or more of the grounds for refusing recognition set out in the 2007 Hague Convention was made out. Indeed, neither the father's Skeleton Argument, nor the more focused submissions made by the father's brother, dealt substantially with the grounds for refusing registration under the 2007 Hague Convention. However, in circumstances where the father is a litigant in person I have done my best to extract from his lengthy and prolix documentation the arguments advanced by the father that are relevant to considering whether one or more of the grounds under the Hague Convention 2007 for refusing registration could have been made out.

62. Doing the best I can with the submissions made by the father in writing, and orally on his behalf by his brother, concerning the correctness or otherwise of the registration, the father relies on the following submissions relevant to grounds set out in the 2007 Hague Convention:

    i) The child support order made by the District Court was incompatible with a decision rendered in the English proceedings between the father and the mother and having the same purpose in circumstances where, having regard to the decisions of HHJ Bancroft of 15 August 2017, District Judge Baker in March 2018, HHJ Greensmith in March 2018, District Judge Baker in July 2018 and District Judge Baker in August 2018, the issue of child support was *res judicata* in circumstances where the English court had jurisdiction with respect to child maintenance, had been determined as the correct forum and was seised of that issue. In the circumstances, recognition should have been refused under Art 22(d) of the 2007 Hague Convention.

    ii) In circumstances where Colorado law provided the rules for notice, the father did not have proper notice of the child support hearing and an opportunity to be heard as he was not served with notice of the hearing of 11 February 2019 in accordance with Colorado law. In the circumstances, recognition should have been refused under Art 22(e)(i) of the 2007 Hague Convention.

    iii) The child support order made by the District Court was obtained by fraud. In particular:

        a) The District Court and the Colorado Court of Appeals "invented massively prejudicial false facts; and used those false 'facts' as the basis of orders seeking to justify the unlawful actions" of the District Court;

b) The District Court falsified the court record as to the nature of the Status Conference held on 5 and 10 December 2018 and as to the failure by the father to provide a financial affidavit;

c) The District Court summoned the father to attend a child support hearing in person contrary to Colorado law;

d) The District Court fixed the child support hearing on date court officers knew had been fraudulently obtained and notified to the court by the mother alone;

e) The District Court issued the hearing notice by surface post in the knowledge it would have been unlikely to reach the father in a timely fashion;

f) The District Court failed to apply "proper Colorado law" for assessing child maintenance based on the parties' known incomes, made a retrospective child support award that was unlawful in circumstances where it pre-dated service of the proceedings and based its award on a single, four-year-old tax document;

g) Upon the father's non-attendance at the child support hearing, the District Court issued a bench warrant for his arrest, which was not served on him;

h) The District Court unlawfully ordering the removal of Y from the father's custody without evidence;

i) The District Court failed to list a post-deprivation hearing contrary to Colorado law;

j) The District Court failed to address a petition seeking to enforce the father's visitation rights;

k) The District Court failed to address a recusal motion prior to determining the custody order;

l) The District Court unlawfully issued an order denying the father indefinitely from access to the Colorado family courts;

m) The Colorado Court of Appeals unlawfully denied the father an appeal with respect to the custody order;

n) The Colorado Court of Appeals "falsely pretended" in its order of March 2022 that the father was responsible for being denied access to the family courts in Colorado;

o) The father was never made aware of nor offered a remedy;

p) The mother engaged in extensive fraud and litigation misconduct. In particular, the mother (i) systematically misrepresented English law and procedure by failing to inform the District Court of the existence

> and outcome of the English divorce petition and to make the District Court aware that the English court had been seised of and retained jurisdiction in respect of child maintenance and was *forum conveniens*, (ii) procured outside the proper procedures in Colorado an expert report on English law concerning the English law relating to child maintenance which had no application to the case, which was incorrect and which the mother refused to withdraw (causing her own lawyer to withdraw from the proceedings in the District Court) and (iii) submitted to the District Court that obiter comments made by District Judge Baker in August 2018 overrode the decisions of HHJ Bancroft and HHJ Greensmith;
>
> and in the circumstances, recognition should have been refused under Art 22(b) of the 2007 Hague Convention and / or on the ground that recognition would in the circumstances be manifestly incompatible with public policy in England and Wales pursuant to Art 22(a) of the 2007 Hague Convention.

63. It can be seen that the arguments run by the father at this re-hearing divide into broadly the same three grounds that the father advanced before the Magistrates. Namely, that registration should have been refused because, pursuant to Art 22(e)(i) of the 2007 Hague Convention, he did not have proper notice of proceedings and an opportunity to be heard, pursuant to Art 22(b) the decision was obtained by fraud in connection with a matter of procedure and, pursuant to Art 22(d), the child support order was incompatible with a decision rendered between the parties having the same purpose. To that is added the ground that the recognition of the child support order made by the District Court was manifestly incompatible with public policy in this jurisdiction, pursuant to Art 22(a) of the 2007 Hague Convention.

64. In responding to the appeal, the mother submits that the father had notice of the child support hearing on 11 February 2019 and chose not to attend, as evidenced by his involvement in the hearing, and that his notice arguments were subsequently rejected by the Colorado Court of Appeals. The mother further submits that there is no evidence in this case that the child support order of 11 February 2019 was obtained by fraud in connection with a matter of procedure and that that assertion was also subsequently rejected by the Colorado Court of Appeals. Within that context, the mother submits that there is nothing that could have grounded a conclusion that the recognition of the child support order would be manifestly contrary to public policy in this jurisdiction. Finally, the mother submits that the child support order was not in any way incompatible with an order made in this jurisdiction, there having been no order for child maintenance made in this jurisdiction and the order for child support made by the District court being based on clear evidence that the District Court accepted in circumstances where the father had chosen to absent himself from the hearing on 11 February 2019.

THE LAW

65. The UK and the USA have both ratified the 2007 Convention with effect, respectively, from 1 August 2014 and 1 January 2017. The 2007 Convention initially entered into force in the United Kingdom as a result of the European Union's ratification of the Convention on behalf of all European Union Member States, except Denmark. Prior to the departure of the United Kingdom from the European Union,

the 2007 Hague Convention was directly applicable, albeit supplemented by The International Recovery of Maintenance (Hague Convention 2007 etc) Regulations 2012. Following the departure of the United Kingdom from the European Union, the Private International Law (Implementation of Agreements) Act 2020 amended the Civil Jurisdiction and Judgments Act 1982 to provide that the 2007 Convention has the force of law in the United Kingdom.

66. Chapter V of the 2007 Hague Convention governs recognition and enforcement. The Explanatory Report on the 2007 Convention by Alegría Borrás and Jennifer Degeling states that the term "recognition" in the Convention refers to the acceptance by the competent authority addressed (in this case the English court) of the determination of the legal rights and obligations made by the authorities of origin (in this case the US District Court) and that the 2007 Hague Convention provides a system that is designed to provide the widest recognition of existing maintenance decisions. The Explanatory Report further makes clear that Chapter V of the 2007 Hague Convention applies both to situations where, as in this case, only recognition is currently sought and to situations where recognition and enforcement are sought.

67. With respect to the grounds for refusing recognition and enforcement, Art 22 of the 2007 Hague Convention provides as follows:

> "**Article 22**
>
> **Grounds for refusing recognition and enforcement**
>
> Recognition and enforcement of a decision may be refused if -
>
> a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed;
>
> b) the decision was obtained by fraud in connection with a matter of procedure;
>
> c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
>
> d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
>
> e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin -
>
> i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
>
> ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or

f) the decision was made in violation of Article 18."

68. The Explanatory Report on the 2007 Hague Convention makes clear that the objective of the 2007 Hague Convention is to recognise and enforce as many maintenance decisions as possible, but that recognition or enforcement may be refused in the *limited* circumstances set out in Art 22. Even where one or more of the conditions set out in Art 22 of the 2007 Convention is met, the court addressed retains a discretion to recognise the maintenance decision.

69. As regards the specific grounds for refusing recognition, with respect to the public policy ground under Art 22(a), the Explanatory Report suggest that public policy exception is of very limited application and the question is whether recognition of the decision would lead to an intolerable result in the State addressed. The Explanatory Report further makes clear that verifying whether a maintenance decision is contrary to public policy should not serve as a pretext for embarking on a general review of the merits of the maintenance decision. With respect to Art 22(b), and decisions obtained by fraud in connection with a matter of procedure, in seeking to draw a distinction between this ground and the public policy ground in Art 22(a), the Explanatory Report states that the concept of fraud presupposes the presence of a subjective element of wilful misrepresentation or fraudulent machinations, and not simply a mistake or negligence, on the part of the party seeking recognition and enforcement. As to Art 22(d), the Explanatory Report makes clear that this ground concerns conflicting decisions. With respect to the ground in Art 22(e)(i) concerning notice, the Explanatory Report makes clear that the term "proper notice" in Art 22(e)(i) signifies that it is sufficient that the defendant be notified in a way to provide an opportunity to react, but that it is not necessary for the defendant to have been duly served.

70. Art 23(7) of the 2007 Hague Convention provides that a challenge or appeal against the registration of an order may *only* be founded on the grounds for refusing recognition set out in Art 22, or on the bases for recognition set out in Art 20 (none of which are relied on in this case) or on the authenticity or integrity of any document transmitted in accordance with Art 25(10(a), (b), (d) or 3 (b) (a ground that, again, is not relied on in this case).

71. It is further important to note that Art 28 of the 2007 Hague Convention prohibits the State addressed from undertaking its own investigation into the merits of the decision in the State of origin:

"**Article 28**

No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision."

72. With respect to the terms of Art 28, the Explanatory Report on the 2007 Convention makes clear that the provision is designed to ensure that the maintenance decision is not reviewed by the State addressed, although Art 28 is without prejudice to the review necessary to determine whether the provisions of Chapter V concerning registration and enforcement apply in the given case.

73. With respect to domestic procedure for registration under the 2007 Hague Convention, pursuant to The International Recovery of Maintenance (Hague Convention 2007) Regulations 2012, r.4(1), the Lord Chancellor is the designated Central Authority for England and Wales. Schedule 1 Paragraph 2(2) of the 2012 Regulations provides that an application for registration is to be transmitted by the Lord Chancellor to the Family Court. The application will thereafter be determined in the first instance by the prescribed officer of pursuant to Schedule 1 paragraph 2(4). Pursuant to Schedule 1 paragraph 2(5), the decision of the prescribed officer may be appealed to the Family Court in accordance with the relevant rules of court as dealt with in the judgment of the Court of Appeal. Once the maintenance decision has been registered, it becomes enforceable in the Family Court in the same manner as a maintenance order made by that court, pursuant to Schedule 1 paragraph 2(8).

DISCUSSION

74. Having considered carefully the extensive submissions made by the father in writing, and on his behalf orally, I am satisfied that the father's appeal against registration of the child support order made by the District Court on 11 February 2019 must be dismissed. My reasons for so deciding are as follows.

75. The father's lengthy documents and extensive legal arguments, ranging over large areas of family and civil law, have acted to obscure what is, in fact, the relatively straightforward legal and procedural history of the child support order that has been the subject of registration in this case.

76. The mother issued a petition for child support in the United States in September 2017. This was followed shortly thereafter by the father issuing proceedings for financial remedy orders in this jurisdiction, by which application he sought lump sum and periodical payment orders. Upon the District Court becoming aware of the proceedings in England, in March 2018 the US child support petition was stayed pending clarification of the relief being sought in the proceedings in England. Following the conclusion of the financial remedy proceedings in England in August 2019, in which no order for child maintenance was made, the stay on the US child support petition in the District Court was lifted. Being satisfied at the Status Conference in December 2018 that it had jurisdiction, the District Court proceeded to determine the US child support petition at a hearing on 11 February 2019 that the father had notice of but chose not to attend. Having heard evidence and found the testimony of the mother credible, the District Court made the child support order that was the subject of registration in this jurisdiction. Whilst the father appealed the making of that child support order to the Colorado Court of Appeals, largely on the grounds that he now advances in support of his appeal against registration in this jurisdiction, the Colorado Court of Appeals declined to disturb the child support order made by the District Court. The Colorado Supreme Court declined to entertain a further appeal by the father.

77. Within the foregoing context, the question for this court on appeal is whether the subsequent registration of the child support order in this jurisdiction was wrong, having regard to the stipulation in the Convention that the only bases for refusing registration are the limited grounds set out in Art 22 of the 2007 Hague Convention. Whilst not addressing substantially the 2007 Hague Convention, the father's extensive

and wide-ranging submissions concentrate, in the final analysis, on four grounds under that Convention. Namely, and in the order I propose to address them:

i) That the child support order made by the District Court was incompatible with a decision rendered in this jurisdiction between the mother and the father having the same purpose as the child support order made by the District Court, pursuant to Art 22(d) of the 2007 Hague Convention.

ii) That the father was neither present nor represented at the hearing on 11 February 2019 when the law of Colorado provided for proper notice of the proceedings and the father did not have proper notice nor an opportunity to be heard on 11 February 2019, pursuant to Art 22(e))(i).

iii) That the child support order made by the District Court was obtained by fraud on the part of the mother and on the part of the District Court in connection with a matter of procedure, pursuant to Art 22(b).

iv) That the recognition of the child support order made by the District Court was manifestly incompatible with the public policy of the jurisdiction of England and Wales, pursuant to Art 22(a).

78. Before this court, the father has sought to mount an extensive critique of merits of the District Court's decision to make child support order based on the evidence available to it. In particular, and for the detailed reasons set out in his written documents, the father submits that the District Court was not entitled on the basis of the evidence relied on by the mother on 11 February 2019 to reach the conclusion that he was wilfully under employed, that he was capable of and should have been earning $3,596 per month and that the appropriate order was child support in the sum of for 24 months in the sum of $1,828.68 per, to include arrears payment of $627.36 per month, and thereafter child support in the sum of $841.49 per month. Within this context, the father asserted that the District Court failed to apply "proper Colorado law" for assessing child maintenance based on the parties' known incomes, made a retrospective child support award that was unlawful in circumstances where it pre-dated service of the proceedings and based its award on a single, four year old tax document.

79. However, as set out above, Art 28 of the 2007 Hague Convention admits of no review by this court of the *merits* of the decision in respect of maintenance made by the District Court. This court is confined to considering the narrow grounds set out in Art 22, which is the task to which I now turn, starting with Art 22(d) of the 2007 Hague Convention.

80. The father made extensive submissions before this court that sought to demonstrate that the District Court did not have jurisdiction to make the child support order that it did on 11 February 2019. Those submissions concentrated, in part, on seeking to demonstrate that the English court had jurisdiction in respect of, and was the appropriate forum for, child maintenance, the father relying on the orders made in the English divorce proceedings by HHJ Bancroft and the English financial remedy proceedings by HHJ Greensmith and DJ Baker.

81. I am not satisfied that the English court ever reached a definitive decision as to jurisdiction or forum with respect to child maintenance. The judgment of Her Honour Judge Bancroft considered the question of forum with respect to the divorce proceedings. For reasons set out above, the order of HHJ Greensmith of 22 March 2018 does not constitute an order definitively determining the question of jurisdiction or forum in relation to child maintenance within the financial remedy proceedings. The comments made by District Judge Baker at the final hearing of the financial remedy proceedings on 9 August 2018 likewise did not determine that question.

82. More fundamentally, the Explanatory Report for the 2007 Hague Convention makes clear that Art 22(d) is concerned with conflicting *decisions*. In the circumstances, for the father to have succeeded in demonstrating that Art 22(d) precluded registration in this case, he would have had to be able to point to the English court having *exercised* any jurisdiction it had with respect to child maintenance by making an order as between the mother and the father having the same purpose as the child support order made by the District Court and with which the order of the District Court was incompatible. In the circumstances, the question for this court is whether there was evidence to demonstrate that the child support order made by the District Court was incompatible with a decision in this jurisdiction rendered between the mother and the father and having the same purpose as the child support order made by the District Court.

83. On the evidence before the court, and even assuming the English court had jurisdiction with respect to child maintenance, it is plain on the face of the orders made by the English court in the financial remedy proceedings that the English court made no order with respect to child maintenance. This is unsurprising in circumstances where the father's claim for financial remedy was limited to a lump sum order and a periodical payments order, both of which were refused, and a clean break order made. As conceded by the father in his Skeleton Argument, the mother had not presented a claim for child maintenance in England. In the circumstances, I am satisfied that there was no basis in this case for refusing registration under Art 22(d) on the grounds that the child support order made by the District Court was incompatible with a decision in this jurisdiction rendered between the mother and the father and having the same purpose as the order made by the District Court.

84. With respect to the father's submission that he was neither present nor represented at the hearing on 11 February 2019 and did not have proper notice nor an opportunity to be heard on that date pursuant to Art 22(e))(i), the Explanatory Report makes clear, within the context of the Convention being designed to provide the widest recognition of existing maintenance decisions, that the term "proper notice" in Art 22(e)(i) signifies that it is sufficient that the party be notified in a way that provides an opportunity to react, but that it is not necessary for the party to have been duly served. Within this context, it is plain on the evidence that the father both knew of the hearing on 11 February 2019 and knew in sufficient time to prepare and file extensive and considered motions to be dealt with at that hearing.

85. The father does not appear to dispute that he attended the District Court on 8 February 2019 and spoke to court staff about the hearing on 11 February 2019, that between 31 January 2019 and 11 February 2019 he filed five motions totalling two hundred pages seeking to vacate the child support petition and adjourn the hearing and that he was filing motions for consideration by the District Court at up to 11.00pm the night

before that hearing. As I have noted, in a document entitled "Chronology/Commentary re: Recent Elbert Court Proceedings" dated 3 July 2020, the father relates that in that context he spent over $160 on the evening before the hearing preparing and copying documentation. Likewise, the father does dispute that on the morning of the hearing on 11 February 2019, he sent an email to the District Court at 8.53am asking that the judge be notified that he would not be appearing at the hearing.

86. Within the context of the foregoing evidence, even accepting the father's submission with respect to the difficulties created by the District Court giving him formal notice via surface mail, it was not sustainable for the father to contend that he did not have notice of the child support hearing on 11 February 2019 sufficient for him to have an opportunity to react for the purposes of Art 22(e)(i) of the 2007 Hague Convention. It is further clear that the father had an opportunity to be heard at the hearing on 11 February 2019 but chose not to avail himself of that opportunity. Whilst the father contended his summons to attend the hearing in person was contrary to Colorado law, that was not a matter that this jurisdiction could adjudicate upon and, in any event, is a submission that was rejected by the Colorado Court of Appeals. In the circumstances, I am satisfied that there was no basis for refusing registration in this case under Art 22(e)(i) of the 2007 Hague Convention.

87. Turning next to the father's assertion that the child support order made on 11 February 2019 was obtained by fraud in connection with a matter of procedure for the purposes of Art 22(b), the Explanatory Report makes clear that the concept of fraud in this context presupposes the presence of a subjective element of wilful misrepresentation or fraudulent machinations, not simply a mistake or negligence. Within this context, the father directed his allegation of fraud in connection with a matter of procedure against both the District Court and the mother.

88. I am satisfied that there was no evidence that the District Court perpetrated a fraud in connection with a matter of procedure to justify the refusal of registration under Art 22(b) of the 2007 Hague Convention. The father's frank allegations of fraud against the District Court centred on his assertion that District Court "invented massively prejudicial false facts" and used those false facts as the basis of orders seeking to justify the unlawful actions" of the District Court. There was no evidence however, to support the father's assertion that the District Court manufactured facts to suit that court's own ends. The father further asserted that the District Court acted fraudulently in connection with matters of procedure by fixing the date for the hearing on 11 Feburary 2019 in collusion with the mother, by falsifying the court record as to the nature of the Status Conference held on 5 and 10 December 2018 and by falsely recording that the father had failed to provide a financial affidavit. However, I am satisfied that neither of these matters could have come close to demonstrating the subjective element of wilful misrepresentation or fraudulent machinations on the part of the District Court necessary to bring the matter within the ambit of Art 22(b) of the 2007 Hague Convention.

89. Whilst there was clearly a disagreement as to the appropriate date for the hearing, there was no evidence that the date ultimately fixed by the court was as the result wilful misrepresentation or fraudulent machinations by either. As noted above, and made clear in the father's own document, upon the father communicating to the court that 11 February 2019 was not convenient to him, the court office at the District Court

requested alternative dates from the parties. Thereafter, the mother filed a motion to set the hearing 11 February 2019. That motion was opposed by the father, but the court set the date of the child support hearing on 11 February. The fact that the date chosen by the court following the contested motion was the same date as the mother had originally proposed and had argued for in her motion could come nowhere near constituting proof of fraud in connection with a matter of procedure for the purposes of Art 22(b).

90. There does not appear to be a dispute that the matter was listed for a Status Conference on 5 December 2018 and continued on 10 December 2018. Within this context, there was no evidence to support the assertion that the manner in which the hearing was recorded on the court record amounted to a fraud in connection with a matter of procedure. The height of the father's case in this regard appears to have been that because the Status Conference was used to determine the issue of jurisdiction and then entered into the court record as a Status Conference, that entry was made fraudulently because the hearing was not, in fact, used as a Status Conference. As noted by the Colorado Court of Appeals however, the District Court had set a Status Conference, indicated the subject matter to be discussed at that Status Conference and was entitled to approach the Status Conference in the manner that it did where the case had been pending for two years and the only issues awaiting determination were child support and the father's objection based on personal jurisdiction.

91. With respect to the allegation that the District Court falsely recorded that the father had failed to provide a financial affidavit, the Colorado Court of Appeals acknowledged that omission. However, beyond the fact of the omission itself, there was again no evidence that this constituted a *fraud* on the part of the District Court in connection with procedure for the purposes of Art 22(b).

92. The remaining submissions that the father relies on to make good his assertion that the District Court perpetrated a fraud in connection with a matter of procedure for the purposes of Art 22(b), centred on the conduct by the District Court of the hearing on 11 February 2019. I am likewise satisfied, however, that they were not capable of establishing fraud on the part of the District Court in connection with a matter of procedure.

93. The decision of the District Court to issue a bench warrant following the father's failure to attend was consequent upon the father choosing not to attend the child support hearing on 11 February 2011 in breach of an order requiring his attendance. The decision of the District Court to make a custody order with respect to Y arose in circumstances where the District Court was concerned as to who would care for Y should the arrest warrant issued by the court be executed. Whilst the father may have, and indeed did, disagree with those steps, there was no evidence to suggest that they were the result of fraud in connection with a matter of procedure relating to the petition for child support.

94. These, and the other procedural matters relied on by the father as demonstrating fraud by the District Court in connection with a matter of procedure, were dealt with in my previous judgment concerning the father's applications under the inherent jurisdiction with respect to Y. As I observed in that judgment in the context of the father contending that he is now not able to get a fair trial in the jurisdiction of the United

States in circumstances where he asserted that the District Court is incompetent and corrupt, which observations apply equally to the father's allegations of fraud in connection with a matter of procedure:

> "[63] Again, the simple fact that the outcomes in District Court have not been those the father wishes cannot not itself be evidence of incompetence or lack of independence or corruption. Further, by reason of the dogged approach of the father to the litigation in the United States, as detailed above each of the substantive decisions made by the District Court (comprising the issue of the bench warrant, the temporary custody order, the refusal to disqualify on the grounds of bias, the order preventing the father from acting pro se and refusal to enforce the child arrangement order pending resolution of the bench warrant) has been the subject of close examination on appeal by the Colorado Court of Appeals. It is clear from the evidence before this court that the father raised many of the complaints that he now places before this court when before the Colorado Court of Appeals. In the circumstances, most or all of the complaints the father now makes to this court regarding the conduct of the District Court have been ventilated before and examined by the appellate courts in the United States. Indeed, in many respects the father's application before this court represents simply a further attempt to litigate matters already dealt with by the courts in the United States."

95. In seeking to make good his contention that registration of the child support order made by the District Court should have been refused on the ground of fraud provided for by Art 22(b), the father also asserted that the mother engaged in fraudulent conduct before the District Court with respect to matters of procedure. In particular, the father alleged that the mother failed to provide the District Court with orders made by the English court that demonstrated that the English court was seised of, and retained, jurisdiction in respect of child maintenance and was *forum conveniens* on that issue. The father further alleged that the mother submitted a report concerning the English law relating to child maintenance which had no application to the case, which was incorrect and which the mother refused to withdraw, and which had the effect of misleading the District Court on matters of English law. Once again, I am satisfied the evidence was not capable of bearing out those contentions.

96. For the reasons set out above, the English court never reached a definitive decision as to jurisdiction or forum with respect to child maintenance. More fundamentally, it was clear that the District Court was provided with copies of the orders from the English court and considered them. As I have related, at the Status Conference on 21 March 2018 the District Court was provided with a brief from the Assistant County Attorney that concluded that the District Court had jurisdiction in respect of child maintenance having regard to the contents of the orders made by the English court up to that date and the fact that the father had stopped short of stating that either party had asked the Family Court at Liverpool to address child maintenance. On 12 April 2018, the father contends that *he* sent to the District Court the order made by HHJ Greensmith on 22 March 2018. It was further plain from the transcript of the hearing on 11 February 2019 that the District Court again had available to it, and reviewed, the orders made by the English court in the financial remedy proceedings arising from the father's claim for a lump sum and periodical payments order. The District Court

made a finding, which it was not open to this jurisdiction to review, that it was *the father* who had sought to mislead the court as to the import of the orders made in England. It was also clear that in refusing to disturb the child support order made by the District Court, the Colorado Court of Appeals was likewise equipped with the orders made by the English court, including the order of HHJ Greensmith.

97. In the circumstances, there was no cogent evidence that the mother withheld from the District Court the orders made by the court in England in an effort to perpetrate a fraud on the court. Indeed, having reviewed the English orders in question, the District Court found it was the father who had attempted to mislead the court in that regard.

98. I am also not persuaded that the evidence was capable of demonstrating that the mother's conduct in relation to the report concerning English law amounted to a fraud in connection with a matter of procedure for the purposes of Art 22(b). It is arguable that the report lacks precision and clarity. However, there was no evidence that the submission of, and reliance on, the report formed part of an attempt by the mother to perpetrate a fraud on the court with respect to a matter of procedure.

99. By operation of s.44(1) of the Child Support Act 1991, where a child is habitually resident abroad the Secretary of State does not have jurisdiction to provide a maintenance assessment. In those circumstances, it is said by the father that the English court had jurisdiction to make a maintenance order in respect Y and that the mother misled the District Court in that regard by her submission, reliance on and refusal to retract the report. But the accuracy of the father's assertion with respect to the law in this jurisdiction depends on the proper interpretation of s.8 of the Child Support Act 1991, which governs the limited circumstances in which the court may still make a child maintenance order. By s.8(1) of the 1991 Act, the provisions of s.8 stipulating the limited circumstances in which the court may still make a child maintenance order only apply where the Secretary of State would have jurisdiction, which she would not have done in this case if Y were habitually resident in United States. In this context, there appears to be no authority on the point of whether a court in this jurisdiction can make a child maintenance order where the jurisdiction of the Secretary of State is excluded by the fact that the child is now not habitually resident in this jurisdiction.

100. It is not necessary for this court to decide the point. It is made simply to highlight the fact that whilst the report secured by the mother and provided by the District Court is not a model of precision and clarity, in circumstances where it did not make clear the position with respect to the jurisdiction of the English court to make a child maintenance order for child who is habitually resident outside the jurisdiction, that point is itself not entirely clear cut and is capable of argument. Within this context, the presentation of the position in the report, and the mother's reliance on the report before the District Court, could not come close to being evidence of *fraud* on the part of the mother.

101. Finally, with respect to the father's submission that registration should have been refused on the grounds of public policy, Art 22(a) of the 2007 Hague Convention, the Explanatory Report suggest that public policy exception is of very limited application and the question is whether recognition of the decision would lead to an intolerable result in the State addressed. In the context of the matters analysed above, I am not

persuaded that there was anything in this case that would have justified the conclusion that the recognition of the child support order made by the District Court on 19 February 2019 was manifestly incompatible with the public policy of this jurisdiction.

102. As I have noted above, the father sought explicit findings in respect of his grounds of appeal dealing with what he contends were the errors made by the Magistrates and the Legal Adviser in upholding the decision as to registration. However, where the father succeeded in persuading this court to deal with his appeal as a rehearing and not a review, those arguments are rendered redundant in circumstances where the task of this court has been to repeat the exercise undertaken by the Magistrates, rather than review the decision that they reached. In the circumstances, it is not necessary for me to deal with the father's extensive submissions with respect to the conduct of the hearing before the Magistrates on 29 April 2022.

CONCLUSION

103. It is now over five years since the District Court made its child support order. Since the order was made by the District Court on 11 February 2019, the father has, through repeated requests for ever more detailed levels of disclosure, the serial production and submission of large volumes of written material and the deployment of misconceived legal arguments, managed to use the legal process to delay and to obfuscate what is, in reality, a straightforward case. The result is that the father has now managed to avoid for an extended period his responsibility to pay maintenance for his daughter pursuant to the terms of the child support order.

104. For the reasons set out above I am satisfied that, having regard to the limited grounds for refusing registration provided by Art 22 of the 2007 Hague Convention, there was no basis for concluding that registration of the child support order of 19 February 2019 should have been refused. In the circumstances, the registration of the child support order made by the Elbert County District Court was not wrong and, accordingly, I dismiss the father's appeal.