

Judgment approved by the Court for handing down

MB v KB (Return under Inherent Jurisdiction: Qatar)

Neutral Citation Number: [2023] EWHC 3177 (Fam)

No: FD23P00396

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF AB (A GIRL) AND BB (A BOY)
AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 December 2023

Before:

MR DAVID REES KC

(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

MB

Applicant

and

(1) KB

(2) AB and (3) BB

(By their Children's Guardian LILLIAN ODZE)

Respondents

Mani Singh Basi (instructed by Mackrell Solicitors) for the Applicant
Jane Hayford (instructed by Duncan Lewis Solicitors) for the First Respondent
Cliona Papazian (instructed by Freemans Solicitors) for the Second and Third Respondents

Hearing dates: 27 and 28 November 2023

I direct no official shorthand note shall be taken of this Judgment and that copies of this Judgment as handed down may be treated as authentic

David Rees KC, Deputy High Court Judge

Mr David Rees KC:

1 INTRODUCTION

1. This is an application brought under the inherent jurisdiction of the High Court seeking the return of two children from England and Wales to Qatar.
2. The application which was issued on 1 August 2023 is brought by the children's father MB. It is resisted by the mother KB, with whom the children are currently living.
3. The eldest child is a girl, AB. She is currently 15 years old and will be 16 next summer. Her younger brother BB is currently aged 12 but will be 13 next month.
4. The father is represented by Mr Mani Singh Basi. The mother by Ms Jane Hayford. The children have been joined as parties to the application and are represented by Ms Cliona Papazian instructed by the Children's Guardian, Mrs Lillian Odze.
5. The parties have filed a significant volume of evidence. I have three witness statements from the father and two from the mother addressing the substantive issues in the case together with a third statement from the mother dealing with certain costs issues. I heard oral evidence from both parents and from Ms Odze, the Children's Guardian. The parties also adduced as expert evidence, a report on Qatari law from Mashael Alsulaiti Law firm, a firm of Qatari lawyers and I heard oral evidence from one of the authors of that report, a Ms Kamsha Mohapatra. As I explain, below I consider that this expert evidence was highly unsatisfactory, and I have treated it with considerable caution.

Background

6. Both parents are Egyptian citizens and were married in that country in 2005. Both have an engineering background and work in that field. In April 2008, shortly before the birth of AB, the father obtained a job in Qatar and moved there. The mother and AB followed around six months later. Thereafter the family lived in Qatar, although the mother returned to Egypt for a few months in 2011 for the birth of BB. In around 2012 when BB started to attend nursery, the mother also found work in Qatar.
7. The parents paint very different pictures of their marriage. The father describes their life in Qatar as calm, with both parents being focussed on work and bringing up the children. By contrast the mother describes a relationship characterised by verbal, emotional and physical abuse, something denied by the father. I will return to this later in this judgment.
8. The marriage broke down and the parents divorced in Qatar in April 2017. The parties agreed that the children would remain living with the mother and the children should spend time with the father every weekend and during the holidays. The father agreed to

provide maintenance, although the mother's case is that the father did not provide the full amount that he had promised to pay.

9. The mother and children remained in the former matrimonial home for some months, but then moved to a new rental apartment closer to the children's school. The father lived elsewhere in Qatar, but within a 20 minute drive of the mother and children.
10. It is common ground that the amount of time that the children spent with the father diminished as time progressed and the children grew older. The Guardian has been told by the children that they did not enjoy spending time with the father and that they had to be cajoled into doing so by the mother, and they have provided accounts to the Guardian of being shouted at and hit by the father. On the other hand, the father has exhibited photographs of him together with the children on various occasions in which the children appear to be enjoying themselves.
11. In September 2020, during the covid pandemic, the mother and children travelled to Egypt to visit family. Whilst there they were caught up in a national lockdown and had to remain in Egypt until April 2021. During this time, they had no direct contact with the father, but had regular indirect contact with him by phone and video calls.
12. The children attended school in Qatar. Initially they attended a French language school, but following their absence from school during the covid pandemic, they began to struggle with their studies and in March 2022 the mother transferred the children to an English language school. Although she had informed the father of the children's struggles with the French school and their wish to change schools, the transfer took place without the father's consent. However, the father ultimately took no steps to prevent the move.
13. The father remarried in November 2021. Neither parent has any other children.
14. The father's visa that permits him to live in Qatar is linked to his work. The children are entitled to live in Qatar pursuant to that visa as dependants of the father. The mother was also formerly a dependant on the father's visa, but since their divorce she has had a separate visa linked to her own employer.

Recent Events

15. From around 2021 it appears that AB began expressing a wish to study in England or the USA. The mother sought to raise this idea with the father, although he rejected it. The father's case is that the issue was not then raised again with him until February 2023 when the children approached him with a plan for them and the mother to move abroad to settle and secure residence elsewhere. At this stage no specific country was mentioned. The father described himself as being taken back by this conversation. He told the

children that they would discuss university when the time was closer, but until then they should stay together in the same country.

16. The mother provided a different account. Her evidence was that towards the end of 2022 AB reopened the subject of where she wanted to go to college and told her that she wanted to go to the UK to study and did not want to go to college in either Qatar or Egypt. By this time the mother was no longer in direct telephone contact with the father (previous arguments had meant that all contact between them was conducted by email). Instead, the mother approached the father's brother and explained the situation and told him that she wanted to plan to move to the UK with the father's approval, and subsequently told him that she had obtained a visa to do so. However, she received no substantive response to this proposal and the father's brother stopped answering her calls. She also asked AB to speak directly to her father who responded as I set out above.
17. Nonetheless, despite the fact that the father had plainly not agreed to a relocation, the mother pursued the idea. She applied for a visa for herself in the UK which was granted in around early February 2023. Having obtained a visa for herself she then applied for UK entry visas for the children. The documents that she produced in support of the visa application presented her as being solely responsible for her children's care, apparently to explain the absence of the father's consent to the grant of the visa. In April 2023 the mother and children travelled to the UK for an initial trip of a few days. The father was not aware that this visit had taken place and did not consent to it.
18. On 7 July 2023 the mother and children flew from Qatar to London for what was intended by the mother to be a permanent move. It is clear that the father was not aware that the mother and children were travelling to the UK on that date, and he had not consented to their going. The following day the mother sent an email to the father in the following terms:

“Due to AB long nagging and her dream to go to college at UK or US, I made a lot of effort to get them a visa to UK so the kids can study there.
I know when AB told you about it you told her you don't like the idea, and you are right. It is not easy to have the kids in a different country than the one you are living in. It would be hard for me too.
I remember you told me we may let her travel alone, but I would be scared to let the kids alone in a new place for them without an adult looking after them and without me watching them and guide them everyday, especially living in gulf where the kids are living in a bubble with no real experience in life.
I investigated a lot through friends on universities in Qatar and I found that all of them send their kids abroad alone or accompanied them since there is no real practical opportunity for universities in Qatar.
I know you told AB you think I'm the one who wants this move, but believe me it is a very hard move for me. I am going to start from scratch from learning stuff about work there, the system of the country, to everyday responsibilities. It is a hard move

for me to a cold weather I can't tolerate and much lower salaries than those in gulf, knowing that I will not be able to do savings and I still have instalments in Egypt. I don't even have a job yet and I am still looking.

We need to look ahead to the future instead of under our feet now. Now the kids will be having better education, permanent residence followed by a passport. Living in Doha is not permanent and we may have to leave at any point and in Egypt the situation is getting worse and worse everyday, so we need to secure a better future for them.

I will do everything you want to maximize your time with the kids. They can come to you in Doha to spend every break like winter and spring break, in addition to summer in Egypt as usual. I will ensure they have a video call with you at least twice a week, and you can also come to UK to visit. I would never want to affect your relationship with them. On the contrary, I always ask them to call you and go out with you.

Despite our differences, I know you are a good loving father and you care a lot about the kids and I love this part of you. Please don't get upset and I promise I will make everything you want to make you satisfied.”

19. On their arrival in the UK the mother and children initially stayed with a friend of the mother, but moved into rental accommodation in late August. The children have been attending school in the UK since the start of the autumn term. The mother has found a job in the UK, commencing her employment at the start of October. On 21 November 2023 she was granted a 5 year skilled worker visa by the Home Office.
20. The mother has given up the furnished rental property that she shared with the children in Qatar. Their possessions there have either been brought to the UK or disposed of. She has resigned from her employment in Qatar. This means that her visa to live in Qatar (which was sponsored by her erstwhile employer) will now come to an end. I understand that although it has not yet been cancelled, this is likely to happen in the near future.
21. On 23 July 2023 the father issued proceedings in the Qatari courts. Those proceedings sought an order permitting the father to have contact with the children in Qatar.
22. On 1 August 2023 the father issued these proceedings in the High Court seeking the return of the children. Location and disclosure orders were granted by Roberts J on 3 August 2023 and the proceedings were served on the mother on 23 August 2023. There were *inter partes* hearings before Judd J on 29 August 2023 and before Russell J on 9 November 2023.
23. On 14 November 2023 the Qatar court issued a ruling rejecting the father's application for contact with the children in Qatar. The judgment (which was in evidence before me) states:

“The plaintiff based his request on the fact that the defendant moved the children in custody to England for the purpose of depriving him of seeing his

children, without his permission, in a country that is difficult to reach, thus making it impossible for him to carry out his duties of supervision, discipline and education.

Other than that it has been proven from the lawsuit papers that the residence of the custodians in England is not for the purpose of moving, but for the purpose of education, which negates the claim of the plaintiff. In addition their place of residence does not meet the description stated in the law in that it is difficult to reach, as the plaintiff can go to see his children without difficulty and they also return to their homeland in school vacations and after their graduation... the court believes that it is in their interest to continue their studies to obtain a better education...”

24. An appeal against this decision was issued by the father on 21 November 2023 and hearings in that appeal took place on 26 November and on 3 December. None of the parties sought to persuade me that my decision should await the outcome of that appeal. In any event, shortly before I circulated a draft of this judgment to the parties, I was informed that the father’s appeal had been dismissed. I understand that the effect of this decision is that the Qatari court (which is aware of the removal of the children and the circumstances surrounding the same) is content for the children to remain in the UK, in that it has not issued any order requiring the mother to return the children to Qatar, either permanently or for the purpose of allowing the father to have contact with them in that jurisdiction.
25. The mother’s position at the start of the hearing appeared to be that she would not be willing to return to Qatar with the children if a return was ordered. She had therefore not set out any protective measures that she would require. In her oral evidence her position became more nuanced, and she accepted that if a return was ordered she would ultimately return to be with the children. However, she indicated that it would take between 6 and 12 months before she would be in a position to return. Her visa position in Qatar is linked to employment there. She has resigned from her previous employment in Qatar and although her existing visa has not yet been cancelled it is likely to be. She would therefore need to find a new job in Qatar which could provide her with a new work visa. The mother considered that it would be likely to take some time for her to find a suitable job in Qatar as, following the end of the football world cup in late 2022, there has been a downturn in construction work in that country and many companies in that field have let go significant portions of their staff.
26. For his part, the father has offered a number of protective measures if the mother returns with the children including the payment of a month’s maintenance in advance (including reasonable rental costs); seeking and funding an expert social worker or psychiatric support (as instructed by the court) to assist with reconciliation; paying for the children’s

return flights and schooling; to only seek contact as ordered by the Qatari courts; not to contact the mother or attend the airport on her return.

The evidence

27. I heard oral evidence from both parents. In my view both were largely truthful in their evidence, although I also considered that both significantly sought to minimise actions and conduct on their behalf which are likely to have adversely affected the children. Indeed both, in different ways, demonstrated that they do not have a full insight into how their own actions are likely to have affected the children.
28. There is a significant dispute between the parents about the extent to which the father (both during the subsistence of the marriage and thereafter) subjected the mother and children to domestic abuse, including emotional and coercive control. Although the possibility of a fact-finding hearing on these issues was originally mooted by the Guardian in her report and by the mother, the point was not pursued, and no party asked me to follow this course of action. I therefore approach this issue with some caution as any conclusions that I draw are based on the limited evidence which I have heard, much of which has been focussed on the immediate circumstances surrounding the children's move from Qatar to the UK.
29. However, having heard evidence the parents, and taking into account admissions made by the father, I consider that I am in a position to make the following findings:
- (1) The father has hit the children in the past. He has admitted doing so. In his evidence he described hitting them on the hand, although his account was that he did not hit them hard. In cross-examination he told me that in doing so it was not his intention to hurt the children, rather to tell them that their behaviour was not nice. In their meeting with the Guardian both children describe being hit by the father. AB describes her experience thus:

“He would make me put my hands out and he would hit them with his hands, hard, and they would leave a mark for multiple days... that was mainly how he hit us, on our hands but whenever we were hurt, he never cared”.

I am not in a position to make a finding that the father hit the children with such force that the marks lasted for multiple days. However, he accepts that he did indeed hit them on their hands with a view to chastising them, and I consider that children's account to Mrs Odze that the father hit them “hard” to be a credible one. In the light of that finding, I consider that other allegations that the children made about the father's behaviour to the Guardian, that he would shout, and break things are also likely to be true. I am also fortified in this view by the fact that both parties are agreed that at one stage the relationship between the father and the children was sufficiently poor that therapy was recommended. Precisely how

this recommendation came about, and the nature of the therapy that was considered were all contentious matters. However, the fact that it is common ground that this issue was even raised as a possibility is in my view strongly suggestive that the relationship between the father and children was not as straightforward or harmonious as the father's evidence would otherwise suggest.

- (2) The father behaved in a controlling and distressing manner to AB in the course of a telephone call shortly after the children had arrived in the UK. AB told the Guardian:

“[I] would call him twice a week as was ordered but it was too emotionally exhausting. He made me feel horrible about moving here even before the court ordered contact. When he talked to us it was with a tone as if he hated us.”

The father was cross-examined about this and accepted that in a telephone conversation that took place shortly after the children had arrived in the UK, he had challenged AB about the move to the UK. He had felt deceived that neither the mother nor the children had told him that they were going. However, his account of the conversation clearly demonstrated to me that he was entirely focussed on his own position and had no insight on how his own behaviour might affect the children. He told me that he had asked AB “Why did you lie to me? How could you do that to me?”. He told me that he had told AB to think of the impact of what she had done. He said that she needed to “face the reality of what she had done” and acknowledge that she had done a “severe wrong to one of her parents”. The language used by the father in the witness box left me with the impression that he was unable to see events from any perspective other than through the prism of his own injured feelings. I am in no doubt that AB's account that the father made her “feel horrible” about the move is a plainly truthful one and sadly demonstrates a need by the father to elevate his own hurt feelings above the welfare of his children. I note also that the father's admitted actions in the course of this call have many similarities with allegations made by the mother and children about past controlling and demeaning behaviour.

- (3) The children are deeply concerned about being returned to Qatar or to the father. The mother gave evidence that when BB had heard that the father was in the UK for the court hearing he had been so upset he had involuntarily wet himself, whilst AB confided in her mother that she was worried that there was something wrong with her because “being around father makes me think about ending my life.” The mother also told of AB having had panic attacks on returning from previous visits with the father. In their conversations with the Guardian both children spoke negatively about both Qatar and their father. AB explained that she had wanted to leave Qatar for some time and did not want to be in the same country as her father, whilst the Guardian described BB breaking down in tears at one point in her interview at the thought he might have to return to Qatar.

30. The mother's behaviour is not beyond criticism either. It is clear that she undertook the move to the UK (and indeed the earlier trip in April 2023) without the father's consent. The mother sought to suggest that the father was aware that she was planning to move to the UK with the children and knew everything apart from the exact date of the move. I cannot accept this evidence, which I consider to be at odds with the explanatory email of 8 July 2023 that she sent to the father after arriving in the UK. Whilst the mother may have tried to communicate a general intention to move abroad via the father's brother, she clearly did not tell the father in any detail what she was proposing let alone take steps to obtain his unequivocal consent. I consider that her likely reason for this was that she knew that if the father was aware what she was planning to do, he would have taken steps via the Qatari courts to prevent her from leaving.
31. In her evidence the mother also sought to place the responsibility for the decision to move onto the children, referring to AB as her "boss". Whilst I accept that AB was (and remains) keen to study in the UK, I considered that the mother was seeking to minimise her own fundamental role in giving concrete expression to that desire and effecting the relocation here. The move has only been possible because the mother was prepared to give effect to it, to surrender her tenancy of her property in Qatar, to give up her job there and seek employment in the UK. At times the mother seemed to be denying that she had an independent agency beyond giving effect to the children's wishes. I do not accept that this is the case; but for the mother's own decisions and actions, the move could not have occurred. The mother too appeared to have little insight into how her own conduct could have affected the children; for example she appeared to have expected the children to raise the question of the move with the father and obtain his consent to the move; something which in my view was clearly inappropriate.

The Position in Qatar

32. By an order of Russell J dated 9 November 2023 the parties were given permission to obtain a joint report from an expert in Qatari law. The order did not identify the expert chosen but directed the father's solicitors to take the lead in the instruction. The firm of Mashaal Alsulaiti were identified and instructed. The letter of instruction dated 13 November 2023 posed 17 questions to be answered. The letter also identified the relevant provisions of FPR Part 25 and the statement that is required at the end of any expert's report.
33. The document provided in response to this letter of instruction is dated 20 November 2023. It is far from satisfactory. It does not address all of the questions posed in the letter of instruction and has reformulated a number of the other questions. The document also fails to comply with FPR Part 25 in a number of important ways:
- (1) The document does not identify its authors. It is stated as being provided by Mashaal Alsulaiti law firm; however, no detail is provided as to the individuals at the firm who prepared the report.

- (2) The document does not identify the expert's qualifications and experience.
 - (3) It lacks the statement required by PD25B para 9.1(i) as to the expert's duties; and
 - (4) It lacks the appropriate statement of truth.
34. Some (but not all) of these deficiencies were remedied by Ms Mohapatra, a junior counsel in Mashaal Alsulaiti, when she gave oral evidence about this report. She told me that she had jointly prepared the report with senior counsel Mr Abbelraruf Gribeh; that she herself was qualified in Qatar law; she had been qualified for three years and family law formed part of her practice and she had provided expert evidence on other occasions. She also confirmed that the contents of the report were true to the best of her knowledge and belief.
35. Ms Mohapatra, however, proved to be an extremely disappointing witness. I found her oral evidence to be confusing and at times contradictory. Moreover, under cross-examination she appeared to be very much focussed on advising how the father could achieve a return of the children to Qatar rather than providing an impartial expert view of the position under Qatari law. I therefore approach her evidence (and in particular her oral evidence) with great caution. However, it is my only source of evidence of Qatar law and none of the parties seek to argue that I should reject it in its entirety. Giving greater weight to the written report than to her oral explanations I draw the following conclusions:
- (1) Under Qatar law, the mother is permitted custody of the children until they attain the age of fifteen in relation to a girl or the age of thirteen in relation to a boy. Thereafter custody passes to the father, although the court may extend the mother's custody in certain circumstances if it considers it to be in the interests of the child to do so.
 - (2) The parent with custody may not remove the children from Qatar without the permission of the other parent or the court. If one parent refuses permission, it is open to the other parent to apply to the court for an order permitting them to take the children abroad.
 - (3) Where the Qatar court is considering issues relating to children, it will look to identify the interests of the child.
 - (4) However, there is no formal mechanism whereby the voice of child can be heard within Qatari legal proceedings. Their views might be reported to the court by the police or by the lawyers for the parents, although the court would "rarely" hear from the children themselves. The court might direct that the views of a child (aged 15 or over in the case of a girl and 13 or over in the case of a boy) may be investigated through the Family Counselling Centre. However, there is no equivalent to the English process by which (as has occurred here) a child may be joined as a party to the proceedings and represented by a Guardian.
 - (5) Domestic abuse under Qatari law, focusses on physical abuse; effectively matters that can be reported to the police. More insidious forms of abuse such as

emotional abuse and coercive control do not appear to be matters which would be taken into account by the Qatari court.

- (6) The effect of the existing Qatari court decision is that the mother is under no obligation to return the children to Qatar.

Mrs Odze's conclusions

36. Mrs Odze, the children's guardian in these proceedings had prepared a report for the court dated 30 October 2023 and gave oral evidence and was cross-examined by Ms Hayford and Mr Basi on behalf of the parents. She describes AB as "an articulate and intelligent young person who made direct eye contact with me throughout the interview and at times came across as quite confident". BB was described as "a delightful adolescent boy ... I found him to be polite and articulate" although Mrs Odze considered his maturity to be slightly below his chronological age and she perceived a "certain vulnerability" about him.
37. Both children spoke negatively about both Qatar and their father. AB explained that she had wanted to leave Qatar for some time, did not want to be in the same country as her father and did not want to have contact with him. She recounted incidents in which he had smashed and thrown her possessions and described him hitting her hands hard, so as to leave a mark. She felt that he belittled her and denied enjoying the time that she spent with him.
38. BB was also negative about his father, describing the father hitting and shouting at him. His description of his father to Mrs Odze was largely consistent with that provided by AB. He too explained that he did not want to spend time with the father but had been encouraged to do so by the mother. He described the father hitting him and breaking his toys. He told Mrs Odze that he ignored his father's calls as he did not want to speak to him and that were a return order to be made he would "feel sad". He said that "I would do anything not to go back to Qatar to my Dad" and "I would like to stay here in the UK far away from my Dad in Qatar".
39. Mrs Odze sought to explore generally whether AB was being influenced in her views of her father by her mother. AB denied this and said that the mother had always told her not to say bad things about the father and that she had always pushed the children to see him and spend time with him. However, Mrs Odze told me that she had not been able to apply the CAFCASS tool for assessing whether there had been any alienating behaviours by the mother as this could not be applied in cases where there have been allegations of domestic abuse.
40. In her recommendations Mrs Odze concluded that the father's style of parenting had had a psychological and emotional impact on the children and on BB in particular. She recognised that it was evident that the children did not want to go back to Qatar, and that leaving that country had been a long-standing wish of theirs (particularly AB). Although

they have only been in England for a few months, they have made friends here and like their school.

41. In her oral evidence Mrs Odze (who is a highly experienced CAFCASS officer) told me that the children came across as genuine in their views and very much wanting their voices to be heard. She considered the case was an unusual one in that the children (and AB in particular) were expressing very clear opposition to a return. On behalf of the Guardian, Ms Papazian opposed the return of the children to Qatar.

The Law

42. The parties are agreed on the applicable legal principles and I have been referred to the analysis of these set out by Cobb J in *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412 (Fam) and by MacDonald J in *D v T* [2023] EWHC 1247 (Fam). The following passage is taken from the latter decision from para [29].

“[29] The relevant law is now well established. In *Re J (A child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 the House of Lords confirmed that the High Court has jurisdiction under its inherent jurisdiction to order the return of a child to a country that is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In determining whether to take such a course, the House of Lords confirmed that the child’s welfare will be the court’s paramount consideration and that the court will not import the principles governing the 1980 Hague Convention when determining an application for a return order under the inherent jurisdiction.

[30] At [41] in *Re J (A Child) (Custody Rights: Jurisdiction)* Baroness Hale stated that in such cases the court is tasked with making a ‘swift and unsentimental decision’ as to whether the child should be returned. In making that decision, in *Re J (A Child) (Custody Rights: Jurisdiction)* Baroness Hale considered that the following factors will be relevant:

- i) Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his or her home country. On the other hand, summary return may very well be in the best interests of the individual child.
- ii) The focus has to be on the individual child in the particular circumstances of the case.
- iii) The court may find it convenient to start from the proposition that it is likely to be better for a child to return to him or her home country for any disputes about her future to be decided there. A case against him or her doing so has to be made but the weight to be given to this proposition will vary enormously from case to case.

- iv) It should not be assumed that allowing a child to remain in this jurisdiction while his or her future is decided here inevitably means that he or she will remain here for ever.
- v) An important factor will be the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. Factors relevant to determining what is the child's 'home country' will be his or her nationality, where he or she has lived for most of his or her life, his or her first language, race or ethnicity, religion, culture and education so far.
- vi) A further important factor will be the length of time the child has spent in each country. A distinction falls to be drawn between a child who has been here for a short time and is deeply unhappy and a child who has been here for some time without objection. In the latter case it may be less disruptive for him or her to remain a little while longer while the medium and longer time future is decided than it would be to return.
- vii) It is wrong to proceed on the basis that the future of the child should be decided according to a concept of child welfare which exactly corresponds to that which is current in this jurisdiction.
- viii) The court will not start from any a priori assumptions about what is best for any individual child. It will look at the child and weigh the factors set out in the welfare 'check-list' in s. 1(3) of the Children Act 1989. Within this context, the court can in an appropriate case give great weight to the culture in which a child has been brought up when deciding how and where he or she will fare best in the future.
- ix) Differences between the legal systems cannot be irrelevant but their relevance will depend upon the facts of the individual case. Where there is a genuine issue between the parties as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned.
- x) The effect of the decision upon the child's primary carer must also be relevant, although again not decisive.

[31]. In *Re NY (A Child)* [2020] AC 665, the Supreme Court confirmed the power of the High Court to make a summary return order under the inherent jurisdiction. It is of note that the Supreme Court formulated the question for the court as being whether the child's welfare requires his or her immediate return.

[32]. As the manner in which the court should approach an application for such an order, the Supreme Court in *Re NY (A Child)* stated that before making such an order, the court should give consideration to whether, in order sufficiently to identify what the child's welfare requires, it should conduct an inquiry into any or all of the factors

in set out in welfare ‘check-list’ in s. 1(3) of the Children Act 1989 and, if so, how extensive that inquiry should be.

[33]. Where the case involves disputed allegations of domestic abuse, having regard to FPR PD12J the Supreme Court held that the court will also need to ask whether it should conduct an inquiry into those allegations in order sufficiently to identify whether it is in the child's best interest to make an order for summary return and, if so, how extensive that inquiry should be. The court will also need to consider whether the evidence before it is sufficiently up to date to enable it to determine an application for summary return, whether findings are required sufficient to justify summary return, whether oral evidence is needed and, if so, the extent of that evidence, whether a report from a CAFCASS Officer should be directed and consider the comparative ability of the jurisdictions engaged to reach a swift resolution on the substantive issues between the parties.

[34]. The decision of the Supreme Court in *Re NY (A Child)* does not act to alter the ‘swift and unsentimental’ approach to applications for summary return orders under the inherent jurisdiction articulated by the House of Lords in *Re J (A Child) (Custody Rights: Jurisdiction)*. Rather, *Re NY (A Child)* seeks simply to ensure that the court has asked itself the questions that are required to ensure it is properly equipped to apply the approach set out in *Re J (A Child) (Custody Rights: Jurisdiction)*. At [63] in *Re NY (A Child)* Lord Wilson made clear that:

“The effect of the above is not to submerge efficient exercise of the inherent jurisdiction to make a summary order within an ocean of onerous judicial obligations. The linked obligations are obligations only to consider the eight specified matters.”

43. Because the decision as to whether the children should be returned to Qatar is a welfare decision I am required to have regard to welfare checklist set out at section 1(3) of the Children Act 1989:

“In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g)the range of powers available to the court under this Act in the proceedings in question.”

I am also required by section 1(2A) Children Act 1989 to presume (unless the contrary is shown) that involvement of a parent in the life of child concerned will further the child’s welfare.

Discussion

44. I have concluded that I should dismiss this application and refuse to return the children to Qatar.
45. I start from the proposition identified by Baroness Hale in *Re J (A child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 that it is likely to be better for a child to return to him or her home country for any disputes about their future to be decided there. I also recognise that there are a number of factors in this case which point towards a summary return. Until July of this year, these children had effectively lived their whole lives in Qatar (save for the period when they were stuck in Egypt during a covid lockdown). They had been attending school there, they were familiar with its culture and both parents were living there. They clearly had a very close connection with Qatar, and until July of this year had little connection with the UK.
46. However, here I consider that these factors are outweighed by a number of other factors. First, although the children have only been living in the UK for a relatively short period of time, they are now clearly settled here and have quickly integrated into life here. They are attending school and making friends. Their mother has acquired work and now has a 5 year skilled worker visa. A summary return to Qatar at this stage would clearly be a very disruptive event for the children.
47. Second, a return to Qatar will not be a return to the *status quo ante*. Their tenancy of their previous home in Qatar has been given up. Although the mother has softened her position and has indicated that she would ultimately intend to follow the children to Qatar if I order their return, she is unlikely to be able to move within the timescale of a summary return, even if the six to 12 month timetable she sought to suggest in her evidence is unrealistically lengthy. As such there may be a period, if I order a summary return, where the children would be required to live in Qatar with the father before the mother could join them.
48. A further factor is the that in the light of the extremely unsatisfactory evidence that I have received of Qatari law, I am concerned that that the voices of these children will not be fully heard if they are returned to Qatar. AB is now 15; BB will shortly also become a teenager. They are clearly both of an age where their views need to be fully taken into account in any judicial assessment of their welfare. As Mrs Odze has identified both children have strong views on where, and with whom, they should live, and I accept Ms Papazian’s submissions that these need to be properly heard in any consideration of their

welfare. Having only Ms Mohapatra's evidence to guide me on the circumstances under which the Qatari courts will investigate and receive the views of the children I am not confident that these views will receive the prominence that they require. The children will not be parties to any proceedings in Qatar, and I remain unclear (despite Ms Mohapatra's oral evidence) as to the circumstances under which a report into the children's views might be ordered from the Family Counselling Centre or the status that such a report might have in the Qatari proceedings.

49. Indeed, it is the views of the children which I consider are the factor of magnetic importance here. Both have expressed the firm view that they do not wish to return to Qatar or to the father and AB, in particular, appears particularly vehement in her views. In the light of the factual findings that I have reached as to (a) the previous relationship between the father and the children and (b) the father's own actions immediately after the move in seeking to place blame on AB for the impact of the move on him, the children's views do not surprise me. As Mrs Odze identified in her evidence, to rebuild his relationship with the children, the father will need to reflect on his past actions with a view to gaining an insight as to how his behaviour has affected the children. I was particularly struck by the reaction of the children to the news that the father had travelled to England for the court hearing (see para 29(3) above).
50. The reality in this case is that I am looking at the welfare of two intelligent and articulate children, one of whom is approaching her 16th birthday, who are expressing strong, clear and consistent views that they do not wish to return to Qatar. Those views are, in the light of the limited factual findings that I have made perfectly understandable, and I consider that they must be given great weight in the balance that I have to strike. To order a summary return of these children to Qatar in the face of such views would in my judgment be wholly contrary to the children's welfare.
51. Finally, I note that the Qatar court, both in its initial decision and in its dismissal of the father's appeal has been willing for the children to remain in the UK with the mother. The approach taken by the Qatari court therefore aligns with my own conclusions as to the welfare of these children.
52. Overall, taking all the evidence into account, I consider that the welfare of these children requires me to dismiss the father's application. In reaching this decision I wish to be clear that I am not necessarily determining where the children should live in the long term. I am dealing today with the father's application for a summary return, and I have decided that on the facts of this case a "swift and unsentimental" return to Qatar would not be in the best interests of these particular children.
53. For the reasons set out above this application is dismissed. I will make arrangements with counsel to deal with any ancillary matters arising from my decision.