Neutral Citation Number: [2025] EWHC 358 (Fam)

Case No.FD24P00301, FD24P00299

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 14 February 2025

Before :

MR JUSTICE POOLE

- -

Re: AA and BB (Children: Return Order: Dubai)

Between :

CC

Applicant

- and -

DD

Respondent

- -
- -

Jonathan Evans (instructed by Dawson Cornwell Solicitors) for **the Applicant**
The Respondent in person

Hearing dates: 12-14 February 2025

- -

JUDGMENT APPROVED FOR PUBLICATION

Mr Justice Poole:

1. AA and BB are the sons of the Applicant Mother, CC, and the Respondent Father, DD. AA is aged 11 and BB is aged 7 years 11 months. They currently live with CC in England having been retained by her in this jurisdiction in February 2024 following a holiday from Dubai where they lived and were being educated. The following applications have been made:
    i. CC's application, issued in the High Court, for a prohibited steps order to prevent DD from removing the children from this jurisdiction and a port alert.
    ii. DD's application in the High Court for:
        a. The children to return to the United Arab Emirates (UAE).
        b. An order permitting him "unfettered" communication with the children.
        c. An interim order granting him custody of the children.
        d. Access to educational and medical information about the children.
        e. An order that CC be only permitted supervised contact with the children.
        f. An order for family therapy to address the effects of alienation and to facilitate the rebuilding of the relationship between DD and the children.

2. The applications were both sealed on 12 July 2024. Various directions and case management hearings have been held and the final hearing was listed before me for three days beginning on 12 February 2025. Prohibited Steps Orders and a free-standing Port Alert have been made. Hence, although CC appears as the Applicant, this hearing and judgment focus on DD's application for summary return.

3. I have been provided with a 756 page bundle comprising the applications, orders, statements, a Cafcass report prepared by Ms Baker, an expert report on UAE law from Mr Ian Edge, and documents from Dubai.

4. DD had planned to attend the final hearing in person but on the eve of the hearing he informed the Court that he had taken ill and had been unable to fly to England. He asked to attend remotely, which I allowed. At the hearing he assured me that although he was unwell, he was able to participate remotely. Whilst he mentioned that he would try to fly over for the second and third day, by the end of the first day he had decided to remain in Dubai. I was satisfied that throughout the hearing DD was able fully to participate. His English was very good, albeit spoken with a heavy accent, and he had no difficulty asking questions of the witnesses and making his case with fluency.

History of Events

5. CC is a British national born in England. DD is a national from continental Europe national. They married in July 2013 in Dubai and AA was born five months later. AA was born in England. DD characterises his move with CC to England for the birth as a "relocation", stating that "This decision required us to leave our established careers and life in Dubai and begin anew". The parties lived in London and AA began to

attend a nursery. In October 2016, the parties moved back to Dubai. BB was born there in early 2017. The family lived together in Dubai until February 2020 when DD left for the European country of his birth, returning in September 2021. During that period the children lived with their mother in Dubai. The parties have different perceptions of this period of separation. According to CC, DD took a decision himself to move to the other country even when she told him that she did not want to move there. DD says that there was an agreement that the family was to relocate, that he went to the other country to set up a home, but that CC then chose to change her mind. The Covid pandemic interfered with his ability to return to Dubai. Upon DD's return to Dubai, the parties lived there separately. In October 2021 they divorced having entered into a comprehensive Divorce Agreement. DD continues to live in Dubai. He has a new partner who has two children.

6. The Divorce Agreement included a shared custody provision but with "actual custody" to CC. The children lived with CC but spent time two days a week and alternate weekends with DD. The divorce agreement also included financial provisions. DD is, he says, "the primary financial provider for our family. He says that there was a cost to him of over £400,000 from the aborted relocation of the family to the country of his birth. CC complains that he has breached the agreement to pay maintenance and rent and is currently in arrears in the amount of £91,735. In his final Position Statement to the Court DD offers to pay arrears of over £30,000 which he has calculated in accordance with a proposal he made in June 2023. There is no dispute that he has not paid anything under the agreement since the children's retention in England. In his C66 form, DD lists five addresses at which he has lived in the past five years. Meanwhile the mother had three different addresses in Dubai in the five years before she left. She says that she had to move for financial reasons due to DD's breaches of financial orders. The mother first applied to the court in Dubai to enforce the agreement in September 2022. There are extant enforcement proceedings for the arrears which are defended by DD who seeks a variation of the agreement: he says that the financial arrangements are unworkable and should be revised.

7. In September 2023, AA and BB were moved to a new school. CC says that this was done unilaterally by DD. An exchange of emails on 16 April 2023 shows that CC objected to DD making the choice by himself, and DD responded, "We can discussed [sic] certainly … but I am the Guardian of the boys, I pay all the school fees and I act in their best interest." On 9 October 2023, DD wrote to CC, "I am now in charge of the School Management and the School Fees as the Guardian of my children."

8. Various emails from DD to CC in late 2023, before the children's retention in England, include communications such as "your utter lack of respect and responsibility …. Your attitude and irresponsible behaviour is nefarious …"

9. On 9 February 2024, CC came to England with the boys for a holiday with the agreement of DD. All the maternal family live in England. CC and the children were due to fly back to Dubai later that month but CC decided, without DD's consent, to retain the children here. They started school together that same month and they remain at that school.

10. DD has written various emails directly to the children since their retention in England:

i. On 18 March 2024 to AA: "don't let your mother own your time with me and talk to BB too please. He seems distant and cold and scared of talking to me now … I am deeply saddened you've been taken away from me against my will and without any discussion: it is not right at all and I am doing all I can to get you back, my love … our time and our bond are indestructible."
ii. 29 May 2024 to AA and BB: "Your mother made a decision to take you away from Dubai and bring you to England without my permission … it happened suddenly, without warning. The decision has caused us to be apart and it's been really tough for me to be away from you. I want you to know that I am just as surprised and hurt by this as you are … please know that I am doing everything I can to bring you back home to Dubai where we belong. And you know your dad can do anything, with your help, right?"
iii. 18 July 2024 to AA and BB: "I arrived in [the county where the children now live in England] yesterday night as promised but the school, pushed by your mother's lawyers, cancelled our agreed meetings with you and your teachers. Now they forced me to go to London to fight for us, tomorrow morning I will be meeting the Judge to sort this matter out. I am doing all I can, my hearts, you know papa does. Be strong and wait for me, my brave [AA] and [BB]."

11. CC and the children live close to the wider maternal family who have supported them since February 2024. The children are native English speakers and have British accents. CC works in her brother's company. The wider family gathers together every Wednesday and the boys enjoy time with their young male cousin with whom they share sleepovers. The children have attended the same primary school since February 2024 and have made good friends there. AA will go to secondary school in September 2025. Both boys enjoy Karate classes and rugby. The father says he has not consented to and does not approve of their involvement in contact sports. In June 2024, CC and the children moved into a rented three bedroom house where they still live. The children are registered with a local GP and a dentist.

12. DD has made three visits to England since the boys' retention here, including a two week visit over Christmas 2024. He has indirect contact with the boys on an "as and when" basis, meaning that there are no restrictions on such contact.

The Parties' Positions

13. CC told the Court through Counsel that she believes that there are very significant barriers to her returning to Dubai: she has no immigration status, no savings, and would have no income and no home. A tourist visa would not permit her to work in Dubai. However, if the Court ordered the children should return to Dubai, she would not want to be separated from them and would do her best to return with them. She would need somewhere to live with them and would be wholly financially dependent on DD at least until she secured employment. She believes that it would not be possible to obtain employment without a sponsored visa. If the children remain in England they will continue to live where they are presently, close to the wider maternal family, with the children remaining in their current school until each moves to a local secondary school. CC says she would be happy for DD to continue to visit in England when the boys can stay with him. She would be content for DD to take the boys abroad on holiday for three weeks during the summer vacation provided that

protections were in place, and to split their time with each parent during half terms, Christmas and Easter holidays.

14. DD did not make any concrete proposals for arrangements on the children's return to Dubai in his written evidence prior to the hearing. He did say that the children would be able to return to their previous lives and school. He points out that the boys are familiar with his new partner and her two children and the family dog. At the opening of the hearing I asked DD whether he had any other proposals – I had in mind his proposals as to where CC and the children would live, how they and the mother would be supported financially and other practical arrangements so that I could know the circumstances in which the children would be likely to find themselves on return. He told me that he and his partner and her children are now living together, having recently rented a house. He said that he was going to write out his proposals and provide them an hour or so after the end of the first day of the hearing. In fact, his written proposals in his "Final Position Statement" were provided very shortly before the start of the second day of the hearing. He sets out "proposed support measures upon return". They include:

> "Psychological support for the mother and children as needed: I propose that [CC] resumes psychological treatment…
>
> Job support for [CC]: [I] will leverage my network to recommend her to high-profile firms and executives…"
>
> Children's immigration status: Both children can be immediately put under my VISA as dependant … we can study together with [CC] if temporary solutions can be accommodated for her under my VISA too.
>
> Housing stability: the children will continue with shared living arrangement: 50% of the time circa with me and my wife-to-be and her two children… I can provide [CC] with a one-month temporary accommodation in a serviced apartment…
>
> Co-parenting legal framework: I propose to temporarily abide to the governing principles of the Divorce Agreement and eventually to submit soon a new co-parenting agreement to the Dubai Personal Status Court.
>
> Financial Support: I propose to settle all outstanding arrears owed to the mother in the amount of [£30,273] as per the calculation shared in June 2023 … as full and final settlement of any pending financial arrears raised."

15. DD has set out in his Final Position Statement a "revised agreement proposed by me" which includes an equal share of the time the children spend with each parent (the Divorce Agreement provided for five nights every fortnight), reduced child support and rent contribution but continued payment of private school fees and some other outgoings.

16. By his Final Position Statement it is clear that the father is not pursuing the range of child arrangement and other orders that he originally sought. Some of those orders were draconian, doubtless motivated by his resentment against the mother for her retention of the children in England. It is of note that he sought to prevent her from having unsupervised contact with the children. Whilst he has not pursued those applications, he does seek now to tie the children's return to a variation of the Divorce Agreement allowing him more time with the children but a reduced financial commitment.

Immigration status

17. Both children have dual nationality being the nationalities of their parents: British and a European nationality. The UAE visas for CC and the children were cancelled on 23 February 2024 and were due in any event to expire two days later. Their residence files are both marked "permanent closed". CC says that the children were on her employment visa but she stopped working in Dubai on 5 July 2022. CC's understanding is that if she had to return to Dubai, she would need a sponsor and to apply for a visa for herself and the children. To have a sponsor she would need employment. An alternative would be for DD to sponsor her or for her to return on a 90 day visitor visa. The Court does not have expert evidence on immigration law in the UAE. However, it is clear that at present the mother and children have no immigration status in Dubai.

18. Very shortly before the hearing, CC made an application to instruct an expert in UAE immigration law which, had I granted it, would have caused the vacation of the hearing and its adjournment for at least a month. I decided to consider the application having heard oral evidence from Ms Baker and Mr Edge and having considered the written evidence of the parties, and submissions. Having done so, I have concluded that it is not necessary in this case for the court to receive such expert evidence in order to resolve the issues in dispute. However, had I not reached the determination I have reached on the father's application, I might well have required such evidence.

Family Law in Dubai

19. Mr Edge, a barrister with expertise in UAE law, provided a written report, an email with further comments, and gave oral evidence. He was jointly instructed. His evidence was clear and extremely helpful to the court. The Divorce Agreement was registered with the Dubai court and became part of a judgment of the court concerning the legal consequences following divorce. Mr Edge acquired a translation of the agreement but DD has put before the court translations of clauses which do not appear in the court registered agreement. I must focus on the court registered agreement and can only presume that DD has referred to some earlier draft or proposed revised draft. It is a little troubling that he has purported to refer to an agreement that was not registered by the court. In his written submissions before the hearing he did not

appear to accept the translation used by Mr Edge but at the hearing he did not challenge it.

20. Mr Edge has explained that the UAE is governed by a Federal Constitution which provides for the making of Federal laws, one of which is the Personal Status Law 2005 ("PSL"). Dubai has its own court system but the courts are bound by the Federal laws and the decision of the Federal Supreme Court which sits in Abu Dhabi. Whilst there is now a civil/secular set of family law principles to apply to non-Muslims in Dubai, the parties' divorce pre-dated the coming into force of that law. Mr Edge advises that any applications in relation to the parties' Divorce Agreement or family arrangements would have to proceed before the Shari'a (Islamic) court.

21. Mr Edge advises that it is likely that any decision of the English High Court would not be recognised or enforced in Dubai. There is no equivalent to a "mirror procedure" in Dubai but it is possible for foreign parties to submit an agreement to a court in the UAE to be confirmed by the court there so as to become enforceable locally. Of course, that process requires agreement. Here, the parties have a Divorce Agreement already registered in the Dubai court and there is no consent as to any variation of it.

22. The PSL will apply only where there are gaps in the Divorce Agreement. Under the PSL there are two main legal categories of care of young children according to Shari'a law: guardianship and custody. The guardian exercises full authority over the way the child is brought up whereas the custodian has day to day care of the child. Normally, following a divorce, the father will be the guardian until a daughter marries or a son reaches adulthood. After a divorce custody will end under the PSL when a boy attains the age of 11 or a girl attains the age of 13 but may be extended in an appropriate case and in the interests of the child. That is an instance of the court taking into account the best interests of a child but best interests is otherwise not an overriding principle in the PSL. A mother may lose custodianship if she has a medical or psychological problem or has formed an inappropriate relationship but the Dubai courts have become more flexible in their approach to this particular issue in recent years.

23. Mr Edge described the Divorce Agreement as unusual. In particular, there is no section dealing with Guardianship. There is, however, a section headed "Child Custody" which includes the following (adopting the numbering within the agreement):

> "2.1 The two parties have agreed that they will both be the principal custodians of the two children…
>
> 2.2 The two parties agree that [CC] will retain the actual custody of the children and the two children will live with [CC] permanently.
>
> 2.3 The two parties agree that they will not obtain an order preventing travel against the other party in any circumstances whatsoever or against the two children.

> 2.6 If either of the carers wishes to leave the UAE, with or without the two children, this matter will be discussed amicably between the two parties and they will reach an agreement tom maintain the best interests of the children as a principal consideration."

24. Mr Edge says it is unusual for the Dubai court to have endorsed this agreement without it mentioning guardianship. His own interpretation, based in part on the Arabic words used in the original agreement, is that the agreement provides for joint guardianship. If he is wrong, then he advises that there is a gap within the agreement and that the PSL would be applied such that the father would be sole guardian. Interestingly, DD's correspondence, for example about the children's change of school in 2023, suggests that he has regarded himself as sole guardian.

25. As to the opportunity for the mother to apply permanently to relocate the children to England, were they to have been returned to Dubai, Mr Edge advised the Court:

> "… the Dubai court could hear and determine such an application. The Dubai court would need to consider any agreement and what was in the best interests of the children although the Father as guardian under the provisions of the PSL has a veto subject to an order of the court."

He told the Court that if the Divorce Agreement does provide for joint guardianship, then whilst each parent, as guardian, would have a veto on relocation, it is uncertain how much weight the Dubai court would give to such a veto. Usually a guardian's veto is difficult to override. If, however, the father is the sole guardian, then the court would only overrule that refusal "in the most exceptional circumstances." He told the Court that he was aware of one such case in which the father had beaten the mother causing her very serious injuries. It is quite clear in the present case that DD would not consent to relocation and there are no circumstances of the kind that have led the Dubai courts to overruling a guardian's refusal. The doubt about whether this is a case of joint guardianship or of the father being sole guardian makes it uncertain exactly how the Shari'a court would interpret the agreement. As Lord Justice Peter Jackson remarked in *Re S (Children: Parentage and Jurisdiction)* [2023] EWCA Civ 897, " It is a misfortune for any family to find itself involved in litigation that raises a genuine point of law". Here, it seems to me, the uncertainty as to interpretation means that on a relocation application by the mother, the father's veto would either carry significant weight just as would the veto of the mother on relocation to the country of the father's birth, if the father so applied, or be overruled only in exceptional circumstances.

26. Mr Evans referred Mr Edge to the difficulties the mother has had in enforcing the financial elements of the Divorce Agreement. Mr Edge advised that effective access to the Dubai court is very difficult for litigants in person and that a lawyer is required if the litigant wants to achieve a positive result. Lawyers who deal with English speaking clients in the Dubai courts will charge a sum equivalent to £5,000 "just to open the papers". The timescale for determination of an application to relocate would be approximately three to six months.

27. According to Mr Edge, the Dubai court would not recognise domestic abuse in the form of coercion and control, only in the form of violence.

CC's Mental Health

28. CC has a history of mental health difficulties including post-natal depression requiring anti-depressants in 2014, a prescription of sertraline at various times, a prolonged course of psychotherapy in which she discussed difficulties in her marriage, treatment for a diagnosed panic disorder, complaints of anxiety attacks, and in April 2024 diagnosis of mixed anxiety and depressive disorder with a further prescription of sertraline.

29. On behalf of CC it is submitted that a forced return to Dubai leaving her in very uncertain and precarious circumstances in that country would jeopardise her mental stability, with consequential detriment to the children's welfare.

Cafcass Report

30. Ms Baker was directed to prepare a report addressing the children's ascertainable wishes and feelings in respect of a return to the UAE, the children's maturity, and whether it is their welfare interests to be summarily returned to the UAE for the longer term decisions to be made about their welfare in the courts in the UAE. I am sure that the direction was in standard terms for such a case but it does seem to me that answering the third question is essentially the function of the Court. With respect to Ms Baker, who is an experienced and very helpful family court adviser within the Cafcass High Court team, there were a number of matters that the Court considers relevant to the welfare interests of the children to be summarily returned which she did not address. Furthermore, she interpreted the expert evidence of Mr Edge differently from how I understand it, as set out above. Ms Baker did not have the advantage that the Court enjoyed of hearing from Mr Edge in person and asking questions of him.

31. Ms Baker spoke with both parents and met the children in early November 2024 and again, at the Court's further direction, in late January 2025. In some ways, the wishes and feelings of both children as expressed in November are summed up in a note to the Judge written by BB: "I want to keep my family happy and I really like Dubai." In November, AA too said he liked Dubai and would like to live there but with the families as they used to be. The children were not unhappy in England or at their schools. They had positive things to say about living in England. They came across as articulate, balanced, and mature children who loved both parents and wanted to remain loyal to each of them.

32. In late January 2025, the children's views had altered to a degree. AA said that "if we go back [DD]'s always going to let me down. And it will be another big change and I feel that I will have to settle down and I feel like I have a lot more friends here now and if I go back I feel like I will just have to do everything again." He said that he

could not trust his father's promises. His ideal solution would be for his father to come to live in England however he would not be upset if he had to go back to Dubai. If his mother would return to Dubai with him that would "tip the balance for AA (to 51%) in favour of him wanting to live there too. In late January, BB said that over Christmas he had been "feeling differently than before … now I have more family here and friends and I like it more … and my dad has disappointed me a couple of times over Christmas." Ms Baker was concerned about the change of view and pressed BB a little. She asked him again what he really and truly wanted and he said, "To stay in England with my friends and my family and not to go to Dubai. Well, I would like to go to Dubai for a holiday and stuff like that, but I would still like to live in England."

33. Ms Baker reported that AA was of a maturity commensurate with his age and that BB was mature for his age. She told me that there was no hostility towards or denigration of either parent – indeed the reverse – but that they were conflicted by divided loyalties. Neither child wanted to upset either parent.

34. Ms Baker rightly emphasised the disruption to the children's lives caused by CC's decision to retain them in England in February 2024. This will have caused them confusion, uncertainty, and anxiety including about the future of their relationship with their father.

35. In her written review of Mr Edge's report, Ms Baker did not address the difficulty CC might face were she to apply to relocate with the children to England and how the Dubai court would deal with such an application. That is a central issue for this Court to consider. Ms Baker did not address the father's email communications with the boys, the mother's history of mental health problems, her allegations of controlling behaviour by the father, the mother's circumstances on return to Dubai, nor the geographical division of the family in 2020-21. Ms Baker recorded that if the children were to return to Dubai and CC returned too, "the arrangements that were formerly in place could continue."

36. Ms Baker urged the parents to engage in mediation but if resolution was not possible via that mechanism

> "then my assessment is that it would be in the children's welfare interests to return to Dubai for longer-term interests to be made about their welfare by the courts there. The children themselves hold positive memories of life in Dubai and I consider that although this would be a further change, returning to a country, home, school and community that is familiar would negate some of the challenging aspects of a return. This court would need to be assured that [CC] can re-establish a life in Dubai that is not reliant on [DD] and that she can travel in and out as she chooses without fear of being arrested or any other issue."

Legal Framework

37. I rely on the analysis of the legal principles set out by Cobb J in *J v J (Return to Non-Hague Convention County)* [2021] EWHC 2412:

"[34] It is clear law that the court in this jurisdiction will determine an application for a summary return of a child to a non-Hague Convention country by reference to the child's best interests. My attention has been drawn to what Lord Wilson (in *Re NY* at [30]) and Baroness Hale (in *Re J* at [26]) both described as the "classic" observations, the "*locus classicus*", of Buckley LJ in his judgment in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, (obviously a pre-*1980 Hague Convention* decision but with evidently enduring relevance and standing). He said this:

> p.264F: "To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country than that he should spend in this country the period which must necessarily elapse before all the evidence can be assembled for adjudication here. Anyone who has had experience of the exercise of this delicate jurisdiction knows what complications can result from a child developing roots in new soil, and what conflicts this can occasion in the child's own life. Such roots can grow rapidly. An order that the child should be returned forthwith to the country from which he has been removed in the expectation that any dispute about his custody will be satisfactorily resolved in the courts of that country may well be regarded as being in the best interests of the child."
> p.265A-B: "… judges have more than once reprobated the acts of "kidnappers" in cases of this kind. I do not in any way dissent from those strictures, but it would, in my judgment, be wrong to suppose that in making orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account, but, whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration."

…

[37] I was then taken to the current definitive statement of the law pronounced by the House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40. I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

i) "… any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];
ii) "There is no warrant, either in statute or authority, for the principles of The *Hague Convention* to be extended to countries which are not parties to it" [22];
iii) "…in all non-*Convention* cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];
iv) "… the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases." [26];
v) "Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child" [28];
vi) "… focus has to be on the individual child in the particular circumstances of the case" [29];
vii) "… the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever" [32];
viii) "One important variable … is 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. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this" [33];
ix) "Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests" [34];
x) "In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents 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" [39];
xi) "The effect of the decision upon the child's primary carer must also be relevant, although again not decisive." [40]

Baroness Hale summarised her views …

> "These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. But they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here." [41]

[38] I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent jurisdiction in what are accepted to be very different circumstances to those obtaining here. Mr Khan argued that I should give (as the judgment suggests) "some consideration" ([55]) to the eight linked questions posed by Lord Wilson in that case:

> i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);
> ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);
> iii) In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in *section 1(3)* of the *1989 Act*; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);
> iv) In a case where domestic abuse is alleged, the court should consider whether in the light of *Practice Direction 12J*, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);
> v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);
> vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;
> vii) The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";
> viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63])."

38. I add the remainder of [39] of the judgment of Baroness Hale in *Re J*,

> "If those courts have no choice but to do as the father wishes, so that the mother cannot ask them to decide with an open mind, whether the child will be better off living here or there, then our courts must ask themselves whether it will be in the interests of the child to enable that dispute to be heard. The absence of a relocation jurisdiction must do more than give the judge pause … it may be a decisive factor. On the other hand, if it appears that the mother would not be able to make a good case for relocation, that factor might not be

> decisive. There are also bound to be many cases where the connection of the child and all the family with the other country is so strong that any difference between the legal systems here and there should carry little weight."

39. In *Re A and B (Children) (Summary Return: Non-Convention State)* [2022] EWCA Civ 1664, Moylan LJ said:

> "In summary, the court's decision is a welfare determination and must give paramount consideration to the welfare of each child as required by section 1(1) of the CA 1989. The court has to decide the extent to which it needs to investigate the facts of the case, including by holding a fact-finding hearing, in order properly to determine what order is in a child's best interests. The court needs to consider all relevant factors, including PD 12J, when determining whether a summary determination is sufficient and what order to make."

Analysis

40. The children's welfare is my paramount consideration and I have regard to the welfare checklist at s.1(3) of the Children Act 1989. I have to decide whether to order summary return such that the children's welfare will be decided in Dubai, or whether a welfare enquiry and assessment should be made whilst the children remain in this jurisdiction.

41. Both parties completed C1A "Allegations of Harm and Domestic Violence" forms with their applications. CC has raised allegations of controlling and coercive behaviour against DD but elected not to seek findings of fact on specific allegations. Had she done so, it is likely that the court would have found it unnecessary to conduct a finding of fact exercise. CC has not withdrawn her allegations and perhaps they may need determination in another forum. DD himself has suggested that CC has alienated the children against him. In his closing submissions DD accused CC of repeated, controlling behaviour. Again, I have not been asked to make a finding of fact in those respects. It seems to me that I must take into account all the evidence when applying the legal principles set out above. That includes the allegations and denials. In this case it is not necessary to make determinations.

42. Mr Evans submitted that the children were habitually resident in England by the time DD made his application for summary return. The application dated 1 July appears to have been issued on 9 July and was sealed on 12 July 2024. I shall consider habitual residence as of 1 July 2024. Mr Evans conceded in closing submissions that even if the children were habitually resident in England at that date, the court would still have the power to order their summary return. However, the acquisition of habitual residence by the time the summary return application was made would weigh against making such an order. With respect I do not think it helpful to further burden decisions about summary return to a non-Convention State with a requirement to determine habitual residence, certainly not habitual residence at the time of the issue

of the application. There is no doubt about this Court's jurisdiction to make a summary return order. What matters is the children's best interests as they are now.

43. I begin by considering the children's connections with each country. AA was born in England and spent all but the first three years of his life here. He has now lived here for a further year. He lived in Dubai from the age of nearly 3 until he was 10. BB lived all his life in Dubai until February 2024. Their mother is English and their father European. They have no maternal or paternal family members in Dubai although DD's partner and her children live there. They have British and European passports but they are not citizens of the UAE and do not hold UAE passports. They have no immigration status in Dubai. They are natural English speakers and went to English speaking schools in Dubai. In 2020 their father wanted them to relocate to the European country of his birth and he spent well over a year in that country, separated from the children whilst they remained in Dubai. The paternal family live in the country of DD's birth, the maternal family in England. The boys now have close ties with their maternal family here and they are well integrated into school life and the wider social environment in the county where they live.

44. The children experienced a great deal of change in the years between 2020 and 2024. Their parents effectively separated in 2020 when the father was in the country of his birth and the mother in Dubai. One parent wanted them to move to the European country of his birth to live. On their father's return to Dubai their parents divorced and they spent time separately with each parent. In September 2023 they changed schools from one which they clearly loved to another that they enjoyed less. Their father moved house some five times in the five years prior to July 2024 and their mother three times.

45. The children were uprooted suddenly from Dubai to England in February 2024. Their father was not aware that they would remain in England. This was a unilateral decision by their mother and she was not open and honest with others about it. This would have been disorientating for the boys. They enjoyed time with their father and they were deprived of that time. They had to change schools, homes, and countries. They had to start again in making friendships.

46. Return to Dubai would be another upheaval for the children. As they themselves have said to Ms Baker they would once more have to start over. I accept that they would be able to return to the school they were attending up to February 2024 but (i) they would be living with their mother in another, temporary home, and (ii) they would be spending time with their father in another different home which he now shares with his partner and her children (when AA and BB were last in Dubai, their father was not living with his partner and her children).

47. DD has proposed significant changes to the child arrangements and financial arrangements agreed in the Divorce Agreement entered into in September 2021. Whilst the children remain in England, the terms of that agreement are not as important to their welfare as they would be were the children to return with their mother to Dubai. She has sought to enforce the Divorce Agreement through the Dubai courts. There is a significant dispute about what is owed by DD to CC under the agreement but DD clearly acknowledges a substantial debt to CC because he seeks to compromise her claim for arrears by paying her £30,000 in full and final settlement of her claim for over £90,000. He seeks an increase in the time the boys would spend

with him and to lower his ongoing maintenance commitments. I understand that the rental on the mother's home in Dubai at the time she left was about three times what the father is now offering to pay under a revised agreement. Either the mother would accept the proposed changes to the Divorce Agreement – but why would she given they are so less advantageous to her – or the parties will be involved in a legal and personal dispute.

48. Hence, Ms Baker was wrong to say that on their return to Dubai the boys would be returning to the same circumstances as when they left.

49. The mother has not had the most robust mental health over the last decade or so. Forced to return to live in Dubai against her will, and to return to very uncertain circumstances and what would very likely be a keenly contested dispute about the terms of the Divorce Agreement including financial provision for her and the children, CC would be vulnerable to a deterioration in her health. At best, the circumstances would be very stressful for her.

50. I note the mother's allegations that DD is controlling and coercive. I make no findings on those allegations but I am bound to note the contents of his written communications to her and the children, and his written and oral submissions to the Court as well as the draconian orders he initially sought. He accuses CC of control and manipulation but he has shown himself to be domineering and emotionally manipulative. I understand fully that he did not wish his children to be removed from Dubai and from him. He told me that there is no bitterness but there clearly is, and I understand why. I also understand that he would want his children to know that he did not want them to leave and that he would like them to return. However, his communications with the children have at times been very strongly worded and likely to cause them anxiety. Ms Baker told me that she thought that they unfairly placed emotional burdens on the children. These are boys who want to be loyal to both parents and DD has clearly tried to recruit them to his side in his battle with the mother.

51. In these proceedings, DD has shown no insight into his own behaviour. For example, he talks of the mother's "tyranny" and "nefarious" conduct, of her unilateral decision-making about the children, But he himself unilaterally changed their schools – something he did not deny – and he wrote to the mother saying that he was in charge, that he would decide what was in their best interests and that he was their guardian. It was evident during the hearing that DD considered that because he paid the school fees, the choice was his. So, he has made unilateral decisions himself but regards those as justified. In a similar way he seeks to change the Divorce Agreement. In relation to the debt he owes CC, he has had the financial benefit of not paying what was due under the 2021 Divorce Agreement, and of not paying any school fees or maintenance since February 2024, but is only offering to pay £30,000 now as a settlement of the debt of £90,000. It is the same offer he made in June 2023. He has treated the need to provide for a stable "soft landing" for his returning children as an opportunity to negotiate a financial deal to resolve his debt to CC.

52. I note that when he made his application herein, DD sought to restrict the mother from any unsupervised contact with the children. Although he is not now pursing that and the other draconian orders he sought, it speaks to his approach to CC that he wanted the court to prevent her seeing the children without supervision.

53. Thus, if the boys returned with their mother to Dubai, they would be entering a battlefield. In my judgment the father's hostility to the mother and sense of injustice, to an extent understandable because of her retention of the children in England, will lead him to seek to exercise more control over the family and even more to impose his own will. He would have the tools to do that in Dubai because of the mother's relative isolation and her dependency on him when there. In England the children are to an extent, albeit not fully, protected from that hostility and tension because their mother is contented here and is not financially dependent on DD in the way she was and would be in Dubai. Here, the boys go to a state school. In Dubai they would go to a private school dependent on the father to pay the fees. In England their mother is in work and can provide for their home through her own means. In Dubai, for an unknown period, they would be dependent on their father to pay for their home. DD has not stuck to the financial terms of the Divorce Agreement and seeks to reduce his financial commitments to CC and the boys. The circumstances for the children on return to Dubai would be very much more uncertain and turbulent than they would be were they to remain in England.

54. There have also been changes so far as DD's living arrangements are concerned. If the boys were to spend 40% or 50% of their time in the care of DD, they would now be doing so in a home shared with his partner and her children. DD told the Court that there is a bedroom there ready for the boys but the living arrangements are very different from those they previously experienced.

55. The boys expressed wishes and feelings about returning to Dubai are not easy to discern because they changed between early November 2024 and late January 2025. Furthermore, there has to be some concern that they changed after CC had spoken to or otherwise sought to influence AA and BB. Having careful regard to all the evidence I am satisfied that the boys' most recent expression of their views are credible, sincere, and must be taken into account. I note that between the two meetings with Ms Baker they had (i) spent more time at school and in this country, and (ii) had spent a lot of time over two weeks with DD during Christmas. They both said that he tended to let them down. That could be something their mother has planted in their minds, but it could be something triggered by their recent experience of him. Despite the father's claims, there is no evidence that the mother has turned the boys against him. Other than their comments about letting them down, they are positive about him. In contrast, there is evidence of the father seeking to influence the boys to take a negative view of their mother – as shown in his emails to them, set out above. The boys might well have been reluctant to say they wanted to stay in England for fear of upsetting their father. Ms Baker is an experienced adviser and she probed the children at her January meetings with them. I am satisfied that their stated wishes and feelings at that meeting were sincere and the product of their own experiences. They are not afraid of returning to Dubai, but on balance BB would prefer to stay here. AA was more uncertain. He did not want to be uprooted once again. He did not want his mother to be upset. He said that if she could return that would tip the balance but he would not have thought through the impact on his mother of a return against her wishes.

56. In her oral evidence Ms Baker accepted that if CC could not return to Dubai in circumstances where she would be independent of DD, then that would possibly tip the balance in favour of the children remaining in England for the purpose of welfare

decisions. She said that if the mother would be dependent on the father, there would be "huge implications" for the children. It is clear to me that CC would be highly dependent on DD on a return to Dubai. His own proposals are for him to arrange for her accommodation (albeit for one month only), work, financial stability, and visa, if needed. CC would need all that support as it is difficult to see who else would provide it. There is no state provision on which she could rely. She might obtain employment in due course but the effect on her mental health of the return and the circumstances of the return could be detrimental to her ability to work. As to CC's health, Ms Baker said that it was inextricably linked with the welfare of the children. She said the same of DD's health, but he would not be the main carer for the children upon return – at least not unless the mother agreed or a court ordered a change to the Divorce Agreement.

57. Mr Edge's evidence is important in relation to whether and how the Dubai court would consider the relocation of the children to England. The application before me is for summary return and I have to consider whether summary return is in the best interests of the children. An important aspect of that is how their longer term welfare needs would be addressed in Dubai and within that falls consideration of whether CC would be able to apply for relocation and if so, how the Dubai court would address such an application. Relying on Mr Edge's evidence I find that (i) CC could make an application to relocate; (ii) as either *the* guardian or *a* guardian, DD could veto relocation but that could be overridden by the court; (iii) the Dubai court would not approach the issue as one of the best interests of the children, although their best interests would be taken into account but in what Mr Edge described as being a "limited" way; (iv) it would be exceptional for the court to override the guardian's veto; (v) there may be a lower hurdle if the veto was by one of joint guardian but the approach of the Dubai court in such a case is unknown; (vi) CC would need a lawyer to make and pursue the application otherwise it would be very difficult for her to have any chance of obtaining an order; (vii) lawyers' fees would be very expensive.

58. CC's financial dependency on DD in Dubai and the evidence of Mr Edge persuades me that in practice CC would be very unlikely to have effective access to a Dubai court to consider a relocation application. Even if she did, the court would not consider that application by assessing the best interests of the children because the veto of a guardian would be of considerable weight.

59. In *Re A and B (Children: Return Order: UAE)* [2022] EWHC 2120 (Fam) I had to consider an application for summary return to Dubai (I anonymised the state but the Court of Appeal later gave a judgment naming Dubai). I rely on the evidence of Mr Edge in this case, but in that case, I had evidence from a different expert who was quite certain that there would be no chance at all of the court allowing relocation. In that case, however, I found that "the mother's application would, even applying principles that would be applied in this jurisdiction, be very likely to fail." Hence the absence of a relocation jurisdiction did not prohibit a summary return order being made. In contrast, in the present case CC would have a reasonable chance of securing a relocation order applying the law of England and Wales. If the decision whether to allow relocation from Dubai to England were based on the paramount consideration of the best interests of the children then the mother might succeed. Hence, the difficulty of pursing that application and of overcoming the father's veto become a

more important factor in the decision whether to order summary return to that jurisdiction.

60. I must also bear in mind PD 12J. Although I am not making findings of coercion and/or control against either parent, it is relevant that in this jurisdiction, applying PD 12J, coercion and controlling behaviour would be relevant to welfare decision-making about the children whereas in Dubai, according to Mr Edge, the court would not recognise or take into account such behaviour as relevant to decisions concerning the children.

Conclusion

61. This application was made five months after the children were retained by their mother in England. It is now a year since that happened. This is not a case in which a swift return can now be achieved. The children have been in England for a year. They started school here very soon after arriving. They are settled into family life and the social environment in this country. This has come about because of a unilateral decision made by the mother. In reality she could not leave Dubai with the children any other way. The father's position in these proceedings shows that he would have tried to obstruct the mother from leaving and, as discussed, the mother would have had little chance in obtaining the permission of the Dubai court to relocate with the children. Nevertheless, she uprooted the children suddenly and unilaterally. The distress caused to DD as the left behind parent is palpable. It is understandable that he regards CC's actions as unforgivable. However, the law that I have to apply when considering his application for summary return is not punitive. The purpose of a summary return is not to punish CC and neither would a decision not to summarily return the children be a vindication of her actions. My focus is on the best interests of the children.

62. For the purposes of my decision I shall assume that the mother and children would be permitted to enter and live in Dubai and that the mother would be permitted to work there. However, that is an assumption only for present purposes and the reality might be different.

63. The children have strong connections with England. They have fitted in here well. There are no language or cultural barriers. AA was born and lived the first three years of his life here. Their mother is English, they are British/European, and their maternal family all live here. It is right that they also have a strong connection with Dubai and in particular the English speaking community there. BB lived there all his life until his retention here.

64. In my judgment there is no prospect of the mother being able to return to Dubai with the children and live there in the same circumstances in which they left. The circumstances to which they would return would not afford her or the children any form of stability indeed they would be entering a period of turmoil. Even with some support from DD as he has offered, CC would be alone, without independent income, without a job or her own home, and with no savings. I recognise that I could make it a condition of return that DD pays CC a sum of money (such as the £30,000 he has offered – albeit as a settlement of a £90,000 debt) without that being said to be "in full

and final settlement" of the mother's claims and to put in place other protections such as securing and pre-paying for the tenancy of a suitable home for her and the children for say three or six months, but even in those circumstances, CC would not have any other independent means. Furthermore, I am concerned about the impact of a return on her mental health and therefore on the impact of any deterioration in her mental health on the children in her care. The return order itself would be likely to adversely affect her mental health, but even more harmful, in my judgment, would be the effect of her proximity to and dependence upon DD. His communications within these proceedings and in the bundle persuade me - without making findings of control and coercion in the relationship - that he would seek strongly to impose his will once the mother and children returned to Dubai. Even when seeking the return of the children he proposes to reduce the mother's time with them below that which she enjoyed before leaving, and to reduce his financial commitments to her and the children compared to those to which he is currently bound.

65. In my welfare evaluation I must have regard to the welfare checklist under s.1(3) Children Act 1989. I must have regard to all the circumstances including, in respect of each child,

    (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.

66. BB's wishes are to remain in England. AA's wishes are more equivocal but if he were fully aware of the likely circumstances he would be living in on a return, I believe that would tip the balance for him against returning. The children have been through an upheaval in coming to live in England and they need stability now. They need their parents to try to settle their differences and not to impose even more emotional burdens on them. In my judgment a change in circumstances such as a summary return would bring about would be harmful to them. It would be further disruption to their education and their home life. They would be returned into the midst of difficult relations between their parents, the more acute because of proximity and the dependency of their mother, and they would be vulnerable to further harm if, as might very well happen, their mother suffered a deterioration in her mental health. I do not believe that their parents would be capable of fully protecting their children from emotional harm in the very difficult circumstances that would prevail in Dubai.

67. Were the children to remain here, at least whilst longer term welfare decisions were made in their best interests, they would have stability and their principal carer would be much better able to provide good parenting for them but they would suffer from restricted contact with their father. He has unrestricted indirect contact with them but that is no substitute in this case for direct contact. As it is, he has visited the children here three times, including two weeks at Christmas, and is due to visit them again very shortly. Those visits are doubtless of benefit to them and they can continue. I have not been told that there are any obstacles to frequent visits in the future. That mitigates the adverse effects of separation that the retention in England has produced although it does not altogether negate it.

68. I bear in mind the court's powers to impose conditions to allow for a "soft landing" in Dubai. The father's late proposals do not meet the mark in my judgment, but I could impose more supportive conditions. The difficulty is knowing whether they could be met and, even if they were met, whether they could prevent the dependency that Ms Baker was anxious to avoid because of its effects on the mother and children. To be clear, it is not only CCs financial dependency by itself that would be detrimental to the children, it is that she would be financially dependent on a man who has not met his obligations to her in that respect, who seeks to change a binding Divorce Agreement, and who, upon the children's return with the mother, is likely to adopt an over-bearing approach to dealings about money and time spent with the children. He would be in a position of considerable power over the mother. He has been vociferous in his condemnation of her conduct and character before this court. The mother's mental health can be fragile and, alone in Dubai, her dependency on DD would be liable to be detrimental to her health and therefore to the children's welfare.

69. The difficulties for the mother accessing the court to hear a relocation application, and the strength of the father's veto on such an application are significant factors that weigh against a summary return. It is difficult to find that it is in the best interests of the children to return to a jurisdiction so that welfare determinations can be made there, when such determinations would not be governed by their best interests. It is more difficult when their best interests might suggest different welfare outcomes than the courts of that jurisdiction would produce.

70. Weighing all the relevant evidence I have decided to refuse DD's application for summary return. I am satisfied that it is in the children's best interests, each of them, to remain in England and for longer term decisions about their welfare to be made here. I believe that my decision is in accordance with Ms Baker's position as stated at the hearing, because I have found that the condition she stated should be met in order for it to be in the best interests of the children to be returned summarily, has not been met. Furthermore, she did not take into account a number of matters relevant to the best interests determination and she did not fully take into account Mr Edge's evidence about the relocation jurisdiction in Dubai or how coercion and control might be dealt with in the Dubai court.

71. The father's application is refused. The mother has an ongoing application for a prohibited steps order to prevent the father from removing the children from her care or from this jurisdiction, and a free-standing port alert. Such orders have been made and remain effective to this hearing. The father is about to visit the children in England. The previous orders were made after the father failed or refused to give assurances that he would not remove the children. His own application and the

draconian measures he sought then are again noted. I am satisfied that it is necessary to maintain the orders for now in particular given the high emotions that this decision is likely to generate when the father visits the children next week

72. There are no other ongoing s8 applications. The father's application is under the inherent jurisdiction and is now concluded. I shall hear submissions on whether there should be a transfer of the current s8 application to the Family Court local to the children's home, or whether fresh proceedings will be needed.

73. I shall order that the PSO and Port Alert continue for another three months or further order of the court but they shall be discharged at the end of three months if there is no further order of this or any other court.

74. I handed down this written judgment, subject to corrections, at the hearing.

75. I emphasise that I am not making any long term welfare decisions, Thise are matters for another court on another day, or for agreement between the parties. I urge both parties now to be realistic and to put their children's interests first. The children's voices came through loud and clear when they spoke to Ms Baker. They do not want to be caught up in a tug of war between their parents. As the children stay in England pending any further welfare decisions, they are likely to become even more settled in this country and they will crave arrangements that allow them to spend quality time with their father as well as their mother. I hope that litigation can cease and the parents can work together to find a solution.