

ENGLAND AND WALES / JUDGMENT

FB v KS

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IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Neutral Citation Number: [2025] EWHC 827 (Fam) Case No: FD25P00003 Royal Courts of Justice Strand, London, WC2A 2LL 4 April 2025
Before : Victoria Butler-Cole KC sitting as a deputy judge of the High Court

- ----- Between : FB
- and – KS Applicant Respondent
- ----- Mr Mani Singh Basi instructed by Rayden Solicitors for the applicant Ms Katherine Dunseath instructed by Michelmores LLP. for the respondent
Hearing dates: 25-27 March 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 4 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court. Ms Butler-Cole KC:

Introduction

1. This application concerns a little girl called H who is 18 months old and who has dual nationality - British and Filipino. The applicant is H's mother, FB, who is a Filipino citizen. The respondent is H's father, KS, who is a British citizen. On 4 December 2024, the family came to England for a short holiday. On 7 and 8 December, there were altercations between the parents which ultimately led to FB returning to the Philippines alone. On 3 January 2025, FB applied under the court's inherent jurisdiction for a summary determination of H's welfare interests and an order requiring her swift return to the Philippines. KS resists that application and contends that it is in H's best interests to remain living in England, not just while longer term decisions about her future are made, but indefinitely. He alleges a history of domestic abuse by FB which he says puts H at future risk of harm if she returns to the care of her mother. He sought a fact-finding hearing in respect of his allegations, which was opposed by the applicant.

2. On 16 January 2025, Sir Jonathan Cohen made an order providing for the filing of witness statements, obtaining police disclosure in respect of the incidents on 7 and 8 December 2024, and instructing a single joint expert to provide an opinion on the relevant law in the Philippines. The matter was listed for three days before me as a final hearing, with the question of whether any oral evidence would be heard in respect of allegations of domestic abuse made by KS deferred to the start of the hearing. An application on behalf of KS to obtain a report from Cafcass was refused.
3. At this hearing, I have read the court bundles, documents filed late by KS which were admitted in evidence, skeleton arguments of each party, and relevant caselaw, and have heard oral evidence from the applicant and the respondent. I heard oral submissions on the final day of the hearing and reserved judgment. At the hearing, the applicant was represented by Mr Basi and the respondent by Ms Dunseath. A representative of the Philippine Embassy also attending the hearing remotely as an observer, with the agreement of both parties.

Legal framework

4. The legal framework that applies to the application is not in dispute between the parties: my task is to determine what is in H's best interests and in deciding that question, I should take account of all relevant factors without being constrained by presumptions or policy intentions. I have considered in particular the following appellate judgments: *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40, and *Re NY (A Child)* [2019] UKSC 49.
5. The key elements both cases were distilled by Cobb J in *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412, starting with *Re J*:
 - 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] “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]
- 6. And continuing with Re NY:
 - 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]). 7. In considering whether to hold a fact-finding hearing, I bore in mind the following from *Re A and B (Children : Summary Return: Non-Convention State)* [2022] EWCA Civ 1664
- i) ii) Where allegations of domestic abuse are made, the court is not obliged to conduct a fact-finding hearing in every case, but should decide on the facts of the particular case “in respect of all relevant matters, but in particular in respect of the matters set out in s 1(3) of the CA 1989 and any allegations of domestic abuse, whether, in order sufficiently to identify what the child's welfare requires, the court should conduct an inquiry into any or all of those matters and, if so, how extensive that inquiry should be.” [71] In making that decision, para 16 of PD12J applies, which requires the court to ask the question ‘whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse’ including to provide a basis for an accurate assessment of risk or before considering any final welfare-based order in relation to child arrangements. 8. I also reviewed the decision in *In re H-N; In re H; In re B-B; In re T*; Practice Note [2022] 1 WLR 2681, in particular the following guidance at [37]:
- (i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD 12J, para 5). (ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD 12J, para 16) which is, in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children. (iii) Careful consideration must be given to PD 12J, para 17 as to whether it is “necessary” to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved. (iv) Under PD 12J, para 17(h) the court has to consider whether a separate fact- finding hearing is “necessary and proportionate”. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in *The Road Ahead*.¹ Fact-finding 9. I determined at the outset of the hearing that limited oral evidence was necessary and proportionate. Both FB and KS have alleged physical, verbal and emotional abuse against each other. While I have ample evidence of abusive language in the WhatsApp and other text messages both parties have produced, there was a dispute about the allegations of physical violence. FB referred in her statements to having had ‘arguments that on occasion became physical on both our parts’, also saying ‘It is possible that I have hurt [KS]’ during arguments, but also denied causing the injuries evidenced by KS, and denied assaulting him in December 2024. KS denied ever

physically assaulting FB.

10. KS's written evidence included allegations of physical assaults over a period of 2 years, together with photographs of injuries. Although the parents are no longer in a relationship nor living together, on behalf of KS, Ms Dunseath confirmed that he contends that FB's inability to control her temper continues to put H at risk of direct harm in any event. FB did not make a corresponding allegation against KS: she said they had had a toxic relationship, but did not suggest that this meant KS posed a risk to H in other circumstances. The contention made by KS is directly relevant to assessing the risk of future harm to H, and therefore to her welfare interests. While it is possible, to an extent, to gauge the nature of a relationship from contemporaneous text messages, they are a limited part of the picture and risked not being sufficient to determine this critical question. I therefore permitted oral evidence from each parent, limited to the following issues:
 - a. Whether either parent was physically violent to the other on 7-8 December 2024.
 - b. Whether either parent was physically violent to the other previously during their relationship, including in particular whether FB had repeatedly physically assaulted KS.
 - c. Whether FB has a violent temper which puts H at risk of harm from her. Background and factual findings
11. H's parents met through an online dating app in 2019 when KS was visiting the Philippines. They continued a long-distance relationship once he returned to England, and in August 2022 he went back to the Philippines and moved in with FB, her son from another relationship, G, who is now aged 16 and her parents. KS worked remotely for his family's business. FB works mainly from home as a manager in a call centre. H was born in September 2023. In August 2024 FB, KS, G and H moved to live as a family in a rental property, having signed a lease for two years.
12. I am asked to make findings as to the existence and nature of domestic abuse within the parents' relationship. It will be evident from what follows that I have tended to prefer KS's evidence over that of FB on this matter, and that I consider FB has not been truthful in certain material parts of her evidence. I have reminded myself that even if a witness lies about one matter, it does not automatically follow that they have been generally untruthful, and that the reasons why people lie can be relevant in assessing their credibility.
13. KS says that FB was controlling and had 'a real issue with me having any female friends, colleagues or acquaintances...if she believes that I have looked at or interacted with another woman, she becomes extremely angry and is domestically violent to me, both physically and verbally'. He also says that she would become angry and abusive if she felt he was not paying her sufficient respect or doing what she asked. This is borne out by contemporaneous messages and photos of injuries sustained by KS in 2023 and 2024. For example: i) ii) iii) In March 2023, FB sent a tirade of expletive-laden messages to KS because he had been looking at football scores on his phone instead of 'checking on me or what I need'. When confronted

with these messages in oral evidence, FB's response was to say that she was pregnant at the time. On 14 November 2023, KS covertly recorded an argument in which FB is abusive to him because he has communicated directly online with a woman who was trying to book one of FB's rental properties. The transcript of the recording shows that H was present and at points awake and crying. In the course of the fight, KS asks her to stop punching him, and FB says 'No. I will fucking punch you when I want to, [KS]...the only person I want to punch is you.' I have borne in mind when considering the transcript that only KS was aware that the argument was being recorded. FB does not take any issue with its accuracy or with it being considered by the court. She apologised for her behaviour on that occasion, but denied that the transcript demonstrates that she is unable to control her temper. She denied noticing KS's injuries at the time, even though the photos he took show a number of bright red scratches on his arm and a large yellow bruise across his eye. In June 2024, FB became very angry because KS had sent an entirely innocuous message to a female work colleague. She suggested in oral evidence that she was actually cross because he was spending too much time on his phone, but the contemporaneous messages clearly show that she was angry because she thought KS had given the work colleague too much praise. She told KS he would regret it, and there are photos of his bruises and scratches that correspond with the timing of this argument.

14. I find, on the balance of probabilities, that in 2023 and 2024, FB caused physical injuries to KS during arguments with him, and that these arguments were largely caused by her unreasonable approach to his behaviour. Her suggestion that the injuries were self-inflicted is not credible, and I note that in her oral evidence she did not seriously suggest that they were, instead simply denying she had ever seen KS with the injuries. This denial was similarly unconvincing, in light of her evidence that she and KS had seen each other every day since H was born.
15. It should be recognised that earlier in the relationship, probably before 2023, there is evidence that KS was also verbally abusive to FB in his messages to her, and that he had his own problems with controlling his emotions. For example:
 - a. There are multiple messages where KS swears and uses abusive language towards FB.
 - b. There are multiple messages in which KS threatens to take his own life by throwing himself off a cliff.
 - c. KS says things like "I know I need to stop getting mad and taking it out on you when you are giving me hell"; "I will do everything I can to stop when these happen and I will get my emotions under control"; and "I will recognise the start of things and shout at myself in my head DO NOT LET THIS ESCALATE, CONTROL YOUR EMOTIONS, SHE WILL LEAVE IF YOU DON'T CONTROL THIS"
16. FB also says that on one occasion, KS self-harmed by hitting himself in the face. KS says this is a misunderstanding and that he merely 'face-palmed' himself in response to frustration about FB's demanding behaviour. But the contemporaneous messages show KS saying he

‘tore his neck’, suggesting that it was something more dramatic. In short, I am satisfied on the balance of probabilities that in the early stages of the relationship, KS was emotionally abusive to FB (and she to him), and also that he struggled to control his emotions. KS also admitted that he had reinstated contact with FB after she had tried to end the relationship, using different messaging platforms to try to contact her after she had blocked him.

17. In November 2024, KS learned that his father had cancer, and he arranged a two-week holiday to England with FB and H so he could spend time with his family. A few days after the family arrived in England on 4 December 2024, problems arose. It is evident from contemporaneous messages that FB was jealous of KS being near his brother’s female partner E, as she sent a peculiar message saying “Did u kiss J [KS’s niece] while the mum was holding her” and when KS replied in the negative, she said “U better not get close”. In oral evidence she said he was ‘acting strange’ towards E. KS says that FB also objected when he complimented E for making lunch for the family, and that this resulted in an argument between him and FB. FB accepts there was an argument but said in her first statement that it was about KS meeting a family friend. I prefer KS’s account, which is consistent with the historical evidence of FB becoming angry when he interacted with other women, even in entirely innocuous ways. FB says that during this argument, which took place in their bedroom, she said she wanted to leave and go and stay with a friend in London, and that while she was trying to get her passport from a bag that KS was holding away from her, she ‘accidentally scratched and slapped him’ and that he pushed her away from him, causing her to fall backwards onto the bed. She then says in her first statement that once the argument was resolved, and KS apologised, she agreed not to leave. Having read KS’s account of the argument in his statement, which included allegations that FB had assaulted him by ‘slapping, kicking and punching me. She was also hitting me on the wrist with her phone as well as digging her nails into my throat whilst strangling me’, FB wrote in her second statement that KS had ‘violently pushed me onto the bed’ and tried to take her phone off her. KS denies pushing FB but recalls that at one point she tried to stand up while he was kneeling at her feet begging for forgiveness, and was not able to because of where he was situated, and so had to sit back down. KS thinks the argument went on for about 4 hours, from 6pm until they went to sleep; FB thought it was one to two hours. Either way, it was a substantial period of time.
18. I find on the balance of probabilities that there was an argument on 7 December; that FB did physically assault KS; that the argument and KS’s attempts to placate her went on for more than 2 hours; and that there were likely periods of time when H was awake in her crib in the same room as her parents. While KS’s account before me is more elaborate than that recorded by the police officers who attended the home the next day and spoke to him, it is largely consistent with the historic evidence as to FB’s behaviour when angry with him, and it is consistent with the injuries that the police officers and KS’s family saw the next day. I reject the suggestion put to KS that this incident could not have happened as others in the household would have heard it. KS was clear that his father and L were in the living room, which was some distance away, with a number of closed doors in between.

19. On 8 December, there were further arguments. In the morning, FB spoke to L, the partner of KS's father, with whom they were staying, and said she wanted to leave. L saw KS's injuries, realised there had been a serious argument between the parents, and told KS to go to his mother's house to separate them from each other for a few hours. During that time, FB sent KS repeated messages, starting at 8.30am, insisting that he return immediately to his father's house. The messages were abusive: 'you're a fuckin asshole and I want this over'. She said that she was planning to leave without KS and he would never see them again, but also that she wanted him to drive them to London and telling him to 'leave now or you're going to regret all this'. She was angry that he had left them alone at his father's house, saying in oral evidence 'he just left us there and expected me to get along with everyone'. Notably, she did not say that the reason she was angry with him was because he had assaulted her the previous day. I accept KS's evidence that this was an example of a pattern of behaviour by FB, in which she would be angry with him, would make demands of him, and would threaten to leave or require him to leave if he didn't do what she asked. She would eventually calm down, and the relationship would continue, until the next fight. That is what happened. KS apologised and returned to his father's house, and they both went to lunch with friends and family as planned, taking H with them. It was suggested that KS should have let FB leave instead of insisting she stayed, but I accept KS's evidence that he didn't want to leave his family so soon after arriving and that he was hoping that things would calm down as they had in the past. I do not accept the suggestion that his refusal to facilitate her going to London was a relevant cause of the arguments, given the nature of their turbulent relationship.
20. There was a further argument later that day, apparently triggered by a disagreement about whether to go on a trip with KS's family to an aquarium. FB said again she wanted to go to London, and KS tried to persuade her not to. The argument took place in the car, which KS was driving, with FB sitting behind him with H. I accept KS's account that he tried to persuade FB to stay in the car rather than going into his father's house and having an altercation in front of his family. I accept his evidence that FB physically assaulted him with her hands and her mobile phone, leading to injuries and bruising shown in photos taken by KS some 6 days later. I find that KS did push the car door shut to stop FB from getting out, even though her foot was in the way, but I do not believe that he trapped her foot or leg in the door, or that she was otherwise injured as a result. I note that her first witness statement said that KS pushed the car door on her leg, which is consistent with his account – it was not until her second statement that she said he 'closed the door many times, even when my leg was half out of the car.' Once again, and consistently with the other evidence of arguments between the parents in 2023 and 2024, I find that FB was the person who used physical violence, while KS tried to placate her. KS accepts that he raised his voice, and I am sure that this would have been a loud, violent and frightening experience for H, who was in the back of the car with FB and would probably have been woken up by the events.

21. It was put to FB that the injuries to KS's face and arm, which were seen by other people including two police officers on 8 December, were caused by her assaults on him. She denied causing them, even when reminded that she had admitted the 'accidental' slapping and scratching of KS on 7 December. I do not accept that her physical assaults on KS were accidental, and I am entirely satisfied that they did cause him the injuries seen and documented.
22. Later in the day on 8 December, KS spoke to his father and, by telephone to his brother, about the abuse that he had experienced over the past few years from FB. I accept his evidence that he showed his brother the photos he had emailed himself on his work email as a record, and that his brother was very concerned and encouraged him to recognise that he was a victim of domestic abuse and that he could not continue with things as they were. I accept that KS's brother told him that the family could not let him return to the Philippines with FB and H, knowing what had been going on, and that he persuaded KS to let him contact the police.
23. The police arrived at the property later that evening, heard KS's account of events, saw the injuries he had sustained, and arrested FB. She did not make any comment to the police, and after being interviewed, was released and taken to a Travelodge hotel, as KS's father did not want her in his home. Subsequently, KS refused to make a statement about what had happened and said he did not want to pursue charges against FB.
24. After that, KS made it clear to FB that he was retaining H and would not let her see the child. He assisted her to bring forward her return flight to 13 December 2024 and reassured her she would be able to leave the country as the police were not pursuing the matter. Before she left, KS told her he still had feelings for her, and FB said she loved him and hoped she could be with him and H. In oral evidence FB said she had only said this because she wanted access to H, but that is not the tenor or the content of the contemporaneous messages
25. It is also apparent from the contemporaneous messages that KS told FB that she needed to undergo therapy to deal with her violent temper in order for him to feel confident she could be with H. In oral evidence she said that in fact she realised that the therapy was needed as she was the victim of domestic abuse from KS. In messages on 18 and 19 December, FB said she had started that day to try to 'fix' things so KS could return, and reassured him that she had been to a therapy session and had another one booked. In fact, she did not go to any other sessions, and in oral evidence said that she realised that the therapy was only needed because of trauma caused by KS's conduct towards her, not because she had an issue with her temper.
26. By the end of December or early January, FB realised that KS was serious about not returning without evidence that she had changed, and these proceedings were instigated.
27. Overall, I find that this was undoubtedly a dysfunctional and toxic relationship for a sustained period of time, including prior to H's birth. There were frequent arguments and both parents at times found it difficult to control their emotions and were verbally abusive to

each other. There were various points at which both of them, though most commonly FB, tried to end the relationship, but ultimately, they returned to each other. A pattern developed whereby FB would verbally and physically assault KS, triggered by frustration with him for not being sufficiently attentive to her or for interacting with other women even where there was no suggestion that KS was being unfaithful, and KS would apologise and beg for forgiveness, which would placate FB temporarily. As the relationship went on, KS stopped 'fighting back' and became accustomed to the cycle of arguing, physical assault, and reconciliation. I have no doubt that being exposed to this volatility and abuse was harmful to H. It is entirely unsurprising that when KS's family learned of what had been happening in December 2024, they did not want KS to return to the Philippines to continue the relationship, because of their concern about its effect both on him and on H.

28. What is the implication of these findings for assessing future risk to H? She has been exposed to harm from exposure to domestic abuse, and from the impaired parenting capacity that both parents will inevitably have exhibited during prolonged arguments, when neither was able to prioritise her needs. The triggers for these incidents, however were linked to the parents' dysfunctional romantic relationship, which is now over. I have very little evidence to suggest that FB is generally volatile or physically abusive to other people, or to her children. There is a text message from KS in December or January telling FB that she is "a good mother" and there is no evidence that he has raised concerns about her parenting other than in these proceedings. The examples relied on by KS in evidence to support his contention that FB posed a continuing risk of emotional harm to H even though the parents have split up were that FB had previously refused contact with her parents for a few weeks after an argument with them, had argued with other people, and had once caused a scene in a shopping mall when a vendor would not accept her cash. It may well be correct to say that FB has a short fuse or is quick to anger. But there is no evidence that she has ever taken out her anger on H, and no evidence that anyone has previously challenged her ability to look after her other child, G, who is now 16 years old. Her failure to recognise her abuse of KS is a concern, although she has accepted that there was a toxic relationship which had a negative effect on H. A material future risk of emotional harm to H, in my view, will arise if the parents were to come into direct contact with each other and to spend any time together. That could occur in either this country or the Philippines. Ms Dunseath's skeleton argument states that "the mother poses a significant risk of harm to the child". I do not agree that I can make such a finding as to risk on the basis of the evidence before me, notwithstanding my findings in respect of domestic abuse within the parents' relationship. Expert evidence
29. KS contends that his "legal rights to pursue applications in [the Philippines] are significantly prejudiced". In her report and responses to additional questions, the single joint expert, Ms Marcia-Creencia, partner in the firm of Fortun Narvasa Salazar, states that:
- a. The courts can determine disputes between parents in respect of custody and contact. Under Article 363 of the Civil Code and Article 8 of the Child and Youth Welfare Code, the child's welfare shall be paramount. Section 14 of the Rules on Custody of Minors and Writ of

habeas Corpus in Relation to Custody of Minors provides that best interests refers to “the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to his physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor.”

- b. Express provision is made for a court to consider a range of matters including any extra-judicial agreement reached by the parents in respect of custody or other arrangements, and to consider any “spousal abuse” by a person seeking custody.
- c. Article 363 further provides that “No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure.” There is therefore a statutory presumption in favour of H living with FB, albeit that it is rebuttable. H is an illegitimate child under the law of the Philippines, which means that her mother will exercise sole parental authority and custody “unless there are compelling reasons otherwise”. d.
- e. Supreme Court authority is cited which explains what sort of compelling reasons may show that a mother should not have custody of her young child (*Briones v Miguel*, 2004): Only the most compelling of reasons, such as the mother’s unfitness to exercise sole parental authority, shall justify her deprivation of parental authority and the award of custody to someone else. In the past, the following grounds have been considered ample justification to deprive a mother of custody and parental authority: neglect or abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, and affliction with a communicable disease.
- f. The effect on a child of being exposed to domestic abuse could be taken into account by the courts in the Philippines. Ms Marcia-Creencia states that “children witnessing abusive behavior towards another person can be recognized as a form of abuse if such would endanger their normal development, provided that it is sufficiently proven in court. Allegations of domestic abuse would be weighed by the courts and it would be determined based on the standard of the best interests of the child.” There is no suggestion in the expert report that shouting and physical assaults witnessed by a very young child would not be recognised as a relevant form of abuse.
- g. The Family Code provides that if a mother is found unfit to retain custody, the courts will then look to a hierarchy of alternative family members, starting with grandparents. Ms Marcia-Creencia says that notwithstanding this order of preference, an unmarried father may be awarded custody, and cites Supreme Court authority which reiterates that ultimately, the question will be decided by reference to the child’s best interests.
- h. An unmarried father may be granted ‘visitation’ rights in respect of their child. He would not have other rights associated with parental responsibility as understood in this jurisdiction.

- i. An unmarried father may relocate with the child, but would first need to have custody awarded to him by the court, on the basis of compelling reasons, as outlined above. Having obtained custody, a further court order in respect of relocation would not be required, as the parent with custody would be entitled to make that decision.
 - j. There are civil laws protecting children from abuse and enabling social services to intervene. While in the Philippines, orders akin to non-molestation orders made specifically on the basis of domestic abuse can only be obtained by women against men, and not vice versa, other forms of injunction are available to protect children. It would be open to a male victim of domestic abuse to seek damages for psychological harm, and to seek criminal prosecution of the abuser. k.
 - l. While the Philippines Constitution requires that private law cases are determined or resolved within 3 months of issue, in practice they can go on for longer, particularly if rights of appeal are exercised.
 - m. Foreign judgments can be directly enforced in the Philippines if they are final judgments.
 - n. Foreign orders granting custody of a child could be recognised and enforced in the Philippines, but the other parent would have an opportunity to oppose the application.
 - o. Foreign undertakings could be enforced in the Philippines but only if the foreign court had first “imposed the consequences of the violation and have embodied it in a final judgment or order”.
30. While it is evident from the above that the system for determining disputes between parents about their children in the Philippines is not identical to that in this jurisdiction, in my judgment, it cannot be said that there is no effective relocation jurisdiction. KS would be able to pursue an application for custody, and although there are hurdles arising as a result of his status as an unmarried father which do not exist under the Children Act 1989, there is no absolute prohibition on a person in his position from obtaining custody and therefore being able to relocate with their child. The test of ‘compelling reasons’ is not an impossible threshold to reach, and I note that KS’s own case is that FB is unfit to parent H because of the history of domestic abuse. That appears to be precisely the sort of compelling reason the courts in the Philippines would consider when forming a view as to whether the statutory presumption in favour of FB has been rebutted, having regard to H’s welfare. The expert report is clear that KS’s allegations of domestic abuse would be taken into consideration under the holistic approach to best interests.
31. It is submitted on behalf of KS that any orders or undertakings from FB in this jurisdiction would be worthless, as they could only be enforced here if H was present here (or was habitually resident here), and such enforcement would be required before the breach could be relied on in the courts of the Philippines.

32. In my view, FB is likely to comply with orders or undertakings made in these proceedings. Although she has at times threatened in text messages that KS will never see H again, she has said in other messages and to the court in these proceedings that she wants H to have both her parents in her life and wishes to co-parent with KS. She has facilitated a relationship between her older child, G, and his father (albeit that KS says they did not have much contact with each other while he was living in the Philippines). FB understands that KS can bring proceedings in the Philippines and that any agreement reached, undertakings offered or orders made on the basis of her consent to them, would be put before the courts in that country, as would this judgment. FB has offered to give any undertaking or comply with any order the court considers appropriate. Welfare analysis
33. Before turning to the welfare analysis, I confirm that I have considered the factors identified in *Re NY* and I am satisfied that I have sufficiently up to date and comprehensive evidence to make a decision on a summary basis whether H should return to the Philippines. Although I do not have a report from Cafcass, that would not assist me in respect of H's own wishes and feelings as she is not able to express them in an informed manner due to her age. No party suggested that I should adjourn the hearing to obtain such a report, or a report from another source such as an independent social worker.
34. I have compared the respective judicial systems in England and the Philippines. While it would certainly be easier for KS to pursue his case in favour of H's permanent residence in England in the courts here, I do not consider that he is precluded from making his arguments in the Philippines or that it will be so difficult for him that it can be said that there is no effective relocation jurisdiction: the issue of custody and therefore relocation is capable of being tried in the Philippines.
35. The starting point that it is likely to be better for a child to return to her home country for disputes about her future to be decided is a factor in favour of the argument that H should go back to the Philippines. Both Mr Basi and Ms Dunseath have suggested that whatever decision I make will inevitably determine the issue on a final basis, as it will be difficult for both parents to pursue their cases in the country they do not live in. I have proceeded on the basis that such an outcome is not inevitable, as this is a summary determination not a final decision on the basis of a full welfare evaluation. I do not have evidence to suggest that the timescale for a final decision would be markedly different in either country – it is likely to take at least three months and probably longer in both jurisdictions. KS's proposal if the return order is not made is that a Cafcass report or an independent social work report is obtained, and further evidence filed before a decision is made in the local courts to KS.
36. Another factor in favour of return is that H was born in the Philippines and before her holiday to England in December, had spent her whole life there. There was no plan for the family to live in England. Although H was only 14 months old when she arrived in England, and has now been here for approaching four months, her connection to the Philippines is stronger than her connection to England. FB says, and I accept, that she was still breast-feeding H. While H was obviously eating solid food too given her age, it is a significant factor

that H was separated from her mother while still breastfeeding. KS disputed the frequency of breastfeeding but I have seen messages from FB to KS about needing to express breastmilk in December 2024, and I note that KS's own evidence was that H falls asleep at night 'on the bottle' now that he is caring for her. Both parents contend that they were her primary carers and I am prepared to accept that description, since both worked from home and shared the care of H, but as a very young child, H still received this particular form of care which only her mother could provide. Being separated from H has undoubtedly had a negative effect on FB, whose distress and desperation to see her child were clear during her oral evidence.

37. Ms Dunseath says that KS could not return to the Philippines as he would not have the protection of any civil remedies in respect of domestic abuse, but his evidence is that if H is returned, he will go back to the Philippines to see her three or four times a year, with undertakings being given by FB not to use or threaten violence towards him, and not to institute or support any criminal proceedings against him.
38. H is fortunate to have a wider family network in both England and the Philippines, including grandparents and aunts or uncles in both places. Her half-sibling G remains in the Philippines, and although it was said by KS that his interactions with H on videocalls are less enthusiastic than can be seen during calls with H's grandparents, that is nevertheless an important family relationship for H which has also been disrupted.
39. Both parents are able to travel to the other country and can afford to pay for air fares and accommodation in order to participate in future court proceedings in either place, although KS is probably more flexible in his ability to travel, as he works for his family's business and can work remotely from the Philippines, whereas FB's ability to work remotely in England has not been demonstrated.
40. Looking at the welfare checklist in s.1(3) CA 1989, in my view, the majority of the considerations fall in favour of a return order, in light of my rejection of KS's primary argument that FB poses a sufficiently high risk of emotional harm to H as a result of her inability to control her temper that it would not be safe for H to return to her care.
41. As an 18-month old child, H would no doubt wish to have a relationship with both her parents provided that was safe and did not expose her to harm, and this would include the continued care and affection of her mother, which it will be more difficult for her to have if she remains in England pending a final decision about her welfare. She would also want to spend time with her wider family in the Philippines who she has been close to since birth, living for most of her life with her grandparents and her half-sibling. She would acclimatise to a return to that familiar environment easily. Her immediate needs could be met in England by KS, and in the Philippines by FB, both also relying on family members for assistance with childcare. I do not accept KS's contention that H is doing better in England than she was in the Philippines. She has just gone through a four-month period when any child would be expected to exhibit signs of developmental progress, and I do not have any

evidence to suggest that KS had concerns about H's development or the family's living conditions in the Philippines prior to December 2024.

42. The two key elements of KS's case against return are that FB poses a real risk of emotional harm to H even though she is no longer in a relationship with KS, and that he is not properly able to pursue his case in the Philippines or to enforce orders made by this court. On the first of those, I have found that the risk of emotional harm is primarily linked to the dysfunctional relationship between KS and FB, with insufficient evidence to show a real risk of that harm continuing outside the relationship that outweighs the other welfare considerations for H. I have been careful to guard against the assumption that because KS is a male victim of domestic abuse, its effects are somehow less serious or significant. I have found that he was repeatedly subjected to serious assaults by FB during their relationship, but I have not felt able to extrapolate from that, on the evidence before me, to a material ongoing risk of emotional harm to H from seeing her mother behaving angrily or aggressively in other contexts. On the second, I have found that the relocation jurisdiction in the Philippines is adequate, even though it is not identical to the approach in England, and even though the steps required to enforce orders or judgments are not as straightforward as they may be in other countries. The difference in approach between the two jurisdictions does weigh against making a return order but I do not consider it to be a determinative consideration.
43. Drawing all the above together, while there are factors in favour of H remaining in England while a long-term decision about her future is made, overall I am satisfied that at this stage, the balance falls in favour of making a return order, together with orders against FB (made with her consent) requiring her to facilitate ongoing video contact with KS and his family, to keep KS informed of H's whereabouts, not to use or threaten violence to KS either in person or in correspondence, not to instigate or support criminal proceedings against KS in the Philippines, and to facilitate in-person contact between KS and H, including permitting trips abroad unless that is temporarily prohibited as a result of court proceedings being in progress. FB's application therefore succeeds.

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