[2016 Gib LR 89]

IN THE MATTER OF C (A Child)

B v. A

SUPREME COURT (Ramagge Prescott, J.): March 10th, 2016

Family Law—children—abduction by parent—Gibraltar court may hear application for return of child to Gibraltar only if child habitually resident here by Children Act 2009, s.3(1) and Council Regulation (EC) No. 2201/2003, art. 8(1)—requires integration into family and social environment but young child's environment shared with caregiver—Regulation may not apply internationally between Gibraltar and UK but given effect by Children Act 2009, s.3(1)

The applicant applied for a specific issues order seeking the return of his child to Gibraltar.

The applicant and the respondent had been in a cohabiting relationship between 2009 and 2015 and they had a young child, who was autistic. The relationship broke down and, in July 2015, the respondent took the child to the United Kingdom.

In October 2015, the applicant made a report to the Royal Gibraltar Police alleging that his son had been abducted and, on November 23rd, he issued proceedings in Gibraltar seeking an order for his return. A few weeks earlier, on November 5th, the respondent had made applications for various orders relating to parental responsibility at a court in the United Kingdom.

Relying on art. 8(1) of Council Regulation (EC) No. 2201/2003, which provided that matters of parental responsibility were to be decided by the courts of the state in which the child was "habitually resident" when proceedings were instituted, the respondent submitted, *inter alia*, that the Supreme Court had no jurisdiction to resolve the application because (a) she had taken her son to the United Kingdom with the applicant's consent in response to his throwing them out of their home in Gibraltar; and (b) whether or not the removal was consensual, the child was habitually resident in the United Kingdom, rather than Gibraltar, when she instituted proceedings in England on November 5th, as shown by the facts that (i) she and her son had a home of their own in the United Kingdom and he slept in his own bedroom, whereas previously he had always slept with her; (ii) she received state benefits for both of them; (iii) he was registered with a G.P. and a medical trust; (iv) he attended pre-school every day; (v) he was receiving excellent care and support for his autism; (vi) he had

settled and made friends; and (vii) he stayed with his maternal grandmother once a week and most of his extended family lived in the United Kingdom.

The applicant submitted that the Supreme Court had jurisdiction to resolve his application because (a) the child had been removed from Gibraltar without his consent; (b) he could not have acquired habitual residence in the United Kingdom because his removal had been wrongful; and (c) even if he had been consensually removed, he had not acquired habitual residence in the United Kingdom by November 5th.

Held, refusing the application:

(1) The removal of the child from Gibraltar to the United Kingdom in July 2015 was consensual and, by November 5th, 2015, he had acquired habitual residence in the United Kingdom, with the result that the Supreme Court had no jurisdiction to resolve the application. The burden was on the respondent to show that the applicant had consented to the removal of the child from Gibraltar but, as the parties presented conflicting evidence, the court was required to decide which account was the most likely. Since there were significant inconsistencies in the applicant's evidence, the respondent's account would be accepted on the balance of probabilities (paras. 21–25).

(2) The child was habitually resident in the United Kingdom, rather than in Gibraltar, on November 5th, 2015 for the purposes of art. 8(1) of the Regulation, and the court would therefore declare that it lacked jurisdiction to resolve the father's application under art. 17. It was possible that EU law did not apply as between the United Kingdom and Gibraltar since Gibraltar was a European territory for whose external relations the United Kingdom was responsible, but this was irrelevant because Gibraltar had enacted domestic legislation giving effect to the Regulation, including the Children Act 2009, s.3(1). The test for habitual residence was whether, by November 5th, 2015, the child had integrated into a family and social environment in the United Kingdom (although, given his young age, his social and family environment was shared with the person on whom he was dependent, *i.e.* his mother). This test was satisfied based on the factors presented by the respondent (paras. 26–31).

Cases cited:

(1) *B* v. *B*, [2014] Fam. Law 1225; [2014] EWHC 1804 (Fam), applied.
(2) *MS* v. *PS*, [2015] EWHC 2880 (Fam), applied.
(3) *Mercredi* v. *Chaffe (Case C-497/10 PPU)*, [2012] Fam. 22; [2011] 3 W.L.R. 1229; [2010] ECR I-14309; [2011] I.L. Pr. 23; [2011] 1 FLR 1293; [2011] Fam. Law 351, applied.
(4) *R. (Gibraltar Betting & Gaming Assn. Ltd.)* v. *H.M. Revenue & Customs Commrs.*, [2016] S.T.C. 151; [2015] L.L.R. 829; [2015] EWHC 1863 (Admin), referred to.

Legislation construed:

Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition of judgments in matrimonial matters and matters of parental responsibility (O.J. 2003, L. 338), art. 8(1): The relevant terms of this paragraph are set out at para. 9.

art. 17: The relevant terms of this article are set out at para. 32.

J. Rodriguez for the applicant;
K. Moran for the respondent;
M. Llamas, Q.C., *Attorney-General* as *amicus curiae*.

1 **RAMAGGE PRESCOTT, J.:** This is an application which was issued on November 23rd, 2015 for a specific issues order, a contact order or, in the alternative, a shared residency order in respect of the child of the family ("C").

Chronology and background

2 In 2008, the respondent ("A") moved to Gibraltar from the United Kingdom. The applicant ("B") and A began a relationship in early 2009. They are unmarried. There is one surviving child of the union, C, who was born in Gibraltar.

3 Unhappy differences arose between the parties on or around February 2015 and, as a result, A left Gibraltar with C on March 3rd, 2015 and travelled to her parents' home in the United Kingdom. For B, it is said that A took C from the jurisdiction without his consent.

4 On March 24th, 2015, A filed an *ex parte* application in the Portsmouth Family Court for a prohibited steps order and child arrangements order. On March 31st, 2015, B filed an application for a specific issues order in the Supreme Court of Gibraltar; that application was never served on A and was effectively abandoned.

5 In May 2015, A returned to Gibraltar with C in order to attempt a reconciliation. Attempts at this failed, and she and the child returned to the United Kingdom on July 24th, 2015, allegedly without B's consent. In late October 2015, B made a report of child abduction to the Royal Gibraltar Police ("RGP"), who made contact with A in the United Kingdom. On November 5th, 2015, A filed an application in the Portsmouth Family Court for a prohibited steps order and a child arrangements order. On November 6th, 2015, the court ordered that B be prohibited from removing the child from the care and control of A, and listed the matter for a directions hearing on November 23rd, 2015. At the hearing of November 23rd, 2015, the court acknowledged that B would be making an application to the Gibraltar courts for the return of C to Gibraltar, and adjourned the matter to January 7th, 2016. On November 23rd, 2015, B issued an

application in the Supreme Court of Gibraltar for, *inter alia*, a specific issues order seeking the return of the child to Gibraltar.

6 The matter first came before the Supreme Court of Gibraltar on December 2nd, 2015 and was adjourned to December 17th, 2015. At the hearing on December 17th, 2015, the court noted that the International Child Abduction Act 2010 incorporating the Hague Convention on the Civil Aspects of International Child Abduction was not yet in force in Gibraltar and, in its absence, the question arose as to the applicability of EU law (through the medium of EU Regulations) between a Member State and a European territory for whose external relations that same Member State was responsible. Her Majesty's Attorney-General was invited to intervene as *amicus curiae* and I am grateful to him for his guidance. The learned Attorney-General urged the court not to determine the question given that Charles, J. in *R. (Gibraltar Betting & Gaming Assn. Ltd.)* v. *H.M. Revenue & Customs Commrs.* ("*GBGA 2*") (4) had referred the matter to the European Court of Justice, given its high constitutional importance and the difficult questions of European law which it raises.

7 I agree with the learned Attorney-General that the complex point of law raised by *GBGA 2* does not require resolution in the present case because, even if EU law does not apply as between the United Kingdom and Gibraltar, it is still open to either or both jurisdictions to enact, as a matter of policy, domestic legislation which gives effect to EU law. It is clear that Gibraltar has done just that in relation to the Brussels II Regulation—Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility ("the Regulation").

8 The relevant domestic legislation provides as follows:

(a) Section 4(3) of the Matrimonial Causes Act 1962 defines the term "Member State" for the purposes of the Regulation as meaning "all Member States with the exception of Denmark and a reference to Member State shall be deemed to include Gibraltar."

(b) The Civil Jurisdiction and Judgments Act 1993 deals, *inter alia*, with arrangements between the United Kingdom and Gibraltar. Section 39(1) provides: "Gibraltar and the United Kingdom shall be treated as if each were a separate Regulation State for all purposes connected to the operation of . . . Regulation 2201/2003." Sub-section (2) provides:

> "A court of law shall have regard to, but shall not be bound by, the principles laid down by and any relevant decision of the European Court in determining any question as to the meaning or effect of any provision of the Regulation for the purposes of this section."

(c) Section 3(1) of the Children Act 2009 specifically incorporates the Regulation as follows: "Subject to Council Regulation (EC) No. 2201/

2003, a court shall have jurisdiction under this Act if the applicant or the respondent or any of the respondents or the child to whom the application relates resides in Gibraltar."

Regulation (EC) No. 2201/2003

9 The starting point which sets out the principles of general jurisdiction is art. 8(1) of the Regulation which provides: "The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised." Article 16 provides that:

> "A court shall be deemed to be seised:
>
> (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; or
>
> (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court."

10 Article 8(2) makes art. 8(1) subject to the provisions of arts. 9, 10 and 12. Article 9 makes provision for the Member State of origin in a lawful removal to retain jurisdiction for a period of three months following the move for the purpose of addressing access rights. The relevant parts of art. 10 provide:

> "In the case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:
>
> (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention . . ."

Article 12 is not relevant to the present case.

Issues

11 For A, it is said that C was taken to the United Kingdom with B's consent, and has acquired a new habitual residence there, so that jurisdiction lies naturally with the United Kingdom, and that, even if the court finds that the removal was wrongful, C has, notwithstanding, acquired a

new habitual residence and the Gibraltar court therefore has no jurisdiction. Further, it is said that to return C to Gibraltar would expose him to the risk of harm.

12 For B, it is submitted that the child was removed without his consent, that the child cannot have acquired a new habitual residence where the removal was wrongful, and that, in any event, he has not acquired a new habitual residence.

The issue of consent

13 A left Gibraltar for the United Kingdom on two occasions, and in respect of both B alleges she left without his consent. The first departure was on March 3rd, 2015 and the second on July 24th, 2015. There is evidence before me in relation to the circumstances surrounding both departures; however, I do not propose to rehearse the circumstances surrounding the first departure of March 3rd, 2015, nor do I make a determination in respect of that first departure, because on May 6th, 2015, A returned to Gibraltar with C in order to attempt a reconciliation, and she remained here for approximately two months until July 24th, 2015. That latter date must be the material date upon which I must decide whether B consented to his son's departure. That said, I shall say this about the first departure by way of background only. There were discussions at the time between A and B about A moving to the United Kingdom with C. A voice recording has been played to the court in which B can be heard giving A his permission to leave with C. There was also a written document which A prepared for B to sign giving his consent to A leaving with C. B never signed this document.

14 It is not in dispute that after A and C returned to the family home in May, relations were strained and arguments were not uncommon. Some of the arguments were evidently vociferous because, on May 21st, 2015, they led to an anonymous call to Social Services, which subsequently arranged interviews with the parties in order to commence an assessment. A in her evidence describes feeling nervous about everything and having to walk on eggshells. She describes B as being snappy and often losing his temper, and she states that B called the police on numerous occasions to have her removed from the family home. B highlights only one incident when he called the police and this was on July 23rd, 2015, when A became very angry when B brought his friend ("D") to the family home in order to confront A about his (B's) belief that she had made a pass at D. A does not refer to the police being called in respect of this incident, but both are agreed that it was as a result of this incident that A ultimately left the house. B and A both present differing accounts of the departure; I shall deal with each in turn.

15 In his first affidavit of November 23rd, 2015, having discussed the visit of D on July 23rd, 2015, B says this:

> "I therefore felt that I needed time to think about our relationship and I asked her to give me a little breathing space. She was the one to say that she would stay with her grandparents or her aunt. My biggest regret is that I let [C] go with her which was a grave mistake on my part. I was so affected by the situation that the respondent's friend ['F'] came down to speak to me and I believe I told [F] that the respondent should not come down to the flat. The respondent left the flat at around 9 p.m. and I received a call from her about an hour later during which she asked me whether I would accept her back at the flat. Regretfully I declined as we were both hurting each other at this point and did not want [C] affected by this in any way."

B denied that he threw A out that night. That said, when he was describing A's return to the family home on the following morning, he said: "By that stage I wasn't thinking straight or I wouldn't have asked her to leave." It is implicit in that statement that B did in fact ask A to leave. Thereafter, B described how, the following morning (July 24th) when A returned, she packed "all of [C's] clothes, almost everything, 4 suitcases" and how he gave them a lift in his car to her aunt's house. Earlier in his evidence, B explained that he asked A to leave instead of leaving himself because, unlike him, she had relatives who could offer her shelter. He explained it had been his intention to have moved out himself in the next couple of days and he asked A to give him a couple of days to do that. His evidence was that he had asked his mother if he could live with her but she had refused. Whilst it is believable that B's mother may have refused her son permission to live with her long term, I find it highly unlikely that she would have prevented him from staying with her for a day or two on a short-term basis whilst matters at home calmed down. If B did ask A to give him a couple of days to leave the house, or was sincere about leaving the house within a couple of days, it makes no sense to me that he would have assisted A's departure from the house on the morning of July 24th by helping her away with the child and four suitcases. That she should, with his knowledge and help, leave the house with the child and four suitcases evidences a departure which has elements of the permanent attached to it and which is not indicative of B's intention to himself vacate the house in the next day or two.

16 A's evidence was that, after the confrontation with D on July 23rd, 2015, B threw her out of the house; he was angry and convinced she had been unfaithful to him. This much is confirmed by B who stated: "I had just found out that the person I loved most was trying to be unfaithful towards me." A's evidence was that B had brought D and his girlfriend into their home, in the presence of C, to accuse and attack her and that he was furious with her. She said:

> "He went ballistic and said to get out that he didn't want me in his property any more . . . he called my mum and she begged him to let me stay, he said no . . . I put on a pair of shorts and went with [C] in the pram, I went to the police station and told them I'd been made homeless . . . I was walking around with [C] in the pram looking for somewhere to stay that night . . . even my friend [F] asked him to let me stay for one night, but he said he wanted me out . . . the next day I made ['E'] of Social Services aware of this and she said she'd find me a place in the women's refuge, I called my mum and she said 'No, you're not to stay in the women's refuge' . . . I wanted to get some of [C]'s clothes and when I was in the flat he grabbed me by the throat and I called the police from my auntie's house and they said I would have to go to the police station."

The reference in A's evidence to F is consistent with the evidence of B, and is an indicator that B did not want A in the family home.

17 A makes reference in her evidence to the involvement of her mother. In her second affidavit of February 1st, 2016, she states:

> "[H]e then flew off the handle and started shouting and swearing at me. He told me to 'get out of the house, you slut.' He called me a 'slag' and a 'disgrace' and told me to go back to my mum in England . . . During this argument I contacted my mum in England who spoke to [B]. She tried to reason with him but he told her to book flights home for [C] and I as he didn't want us there anymore. When she implored him to think about [C]'s welfare, he simply said that I could take him with me. On July 23rd, 2015 at 18:57 the applicant sent a text message to my mother ['G'] saying '[G] please tell [A] to get out now' . . . By this point he was making it very clear that he just wanted us to leave."

18 B accepts he sent the text message to G, but his evidence was that his intention in doing so was only that A should leave the house and not Gibraltar. In my view, given the fact that A and C had left for the United Kingdom once before, after the relationship had broken down, coupled with the fact that B knew that A's parents lived in the United Kingdom and that she had nowhere permanent to move into in Gibraltar, despite B's assertions now, the intention he professes to have had is not one he is likely to have held at the time. If he did not mean for them to return to the United Kingdom, he is, at the very least, likely to have been aware that his actions would be construed in that way. The text message, which, it is not disputed, was sent at 18:57, is put into further context by the affidavit evidence of G. I treat this evidence with a degree of caution because it was not tested under cross-examination, but neither was its admission into evidence opposed. At para. 10 of her affidavit of February 1st, 2016, G explains that A rang her up in July (it is not disputed that it was on July

23rd, 2015) at about 11.30 p.m. explaining that B had turned her and C out of the family home. At paras. 11 and 12 she goes on to say:

> "11. I spoke with [B] to see if I could try and mediate between them and he told me words to the effect of 'just book the flights for her and [C]. I don't want her here and I don't care anymore.'
>
> 12. I implored him to think about [C]. I asked that he let them stay the night, with the respondent and [C] in the main bedroom and the applicant in a separate room, but he said to me 'no way I want them gone now. Just book them the flights, book them now.'"

B's text message to G, together with G's own affidavit evidence, strengthens A's allegation that B at the time wanted them out of the house and out of Gibraltar. Although (other than to G on the telephone) B does not specifically say that he wants the child out of the house, the impression I got from the oral evidence before me was that B accepted and was cognizant of the fact that if A were to leave, C would leave with her. I therefore construe references to A being asked to leave as inclusive of C.

19 B explained that, in front of the police, A had said: "I am going to have to leave the country without my [C]" and that is why he told her to go because he thought it would be her going alone. B went on to say "and the police officer can confirm this and I have the messages." Two issues arise from this. The first is that this was never put to A while she was being cross-examined. She has therefore not been afforded the opportunity either to agree with or rebut the allegation that she said that she would have to leave without C. The second is that, although B made reference to having text messages in support of what had allegedly been said by A, they have not been exhibited to his affidavits or produced in evidence, despite there being numerous exhibits attached to his affidavits, nor has he produced or exhibited the confirmation from the police to which he makes specific reference. In the absence of that, I give little weight to this allegation.

20 According to A's evidence, she telephoned B when she arrived in the United Kingdom to inform him where she was and that they were staying with her mother. A's evidence was that B did not contact them thereafter for a couple of weeks and that after that contact was "sporadic and often infrequent . . . I would set up times for him to call and he simply failed to do so. Or he would call unarranged at a totally inappropriate time demanding to speak to [C], irrespective of whether or not it was past [C]'s bedtime."

21 It was not until late October 2015, some three months after the departure, that B contacted the RGP to report the unlawful removal of C from Gibraltar, and thereafter he did not issue proceedings in Gibraltar petitioning for the return of C until November 23rd, 2015. B's evidence

was that he did not take action before October because he believed that A would come back to Gibraltar. Other than his assertion of this belief, he provides no evidence in support, despite referring to exchanges of text messages, such as A saying "Please baby come and get me" and despite alleging that, for the first month after A left, they were having sexual relations over the phone. No messages or texts have been produced in evidence. What has been produced are phone records which show a number of missed calls from B to A. The fact that A failed to answer so many of B's calls suggests that, at that time, matters between the couple were not as B portrays, but rather as A describes, strained and uneasy.

22 *B* v. *B* (1) provides some guidance on how the court should approach the question of consent. Mostyn, J., referring to the Hague Convention, says this ([2014] Fam. Law 1225, at para. 17):

> "The authorities on the question of consent have made clear, unsurprisingly, that the evidence has to be clear and unequivocal before the court will find that such consent exists. Therefore, if there has been consent given in writing, that would obviously satisfy the test. If there has been an admission of consent, that would *ex hypothesi* satisfy the test. If there has been an oral agreement between the parties which is corroborated either by third-party evidence or by the conduct of the parties in the light thereof, that would satisfy the test. Here, we have simply a conflict of evidence so I have to ask myself whose account is more likely."

23 As in *B* v. *B*, this case essentially involves a conflict of evidence and my task is to determine which account is the most likely. It is not in dispute that the burden is on A to show that B consented.

24 B's conduct accords with consent having been given.

(i) I find that B asked A to leave the family home on the evening of July 23rd, 2015. That finding is corroborated by the text message B sent to A's mother on July 23rd at 18:57: "[G] please tell [A] to get out now." At that time on July 23rd, 2015, there is no credible evidence that B believed that A would leave without C. B never suggested that the child should remain with him. When B asked A to leave the family home, he made no attempt to secure shelter for A and C for the night, quite the contrary. When A's friend F interceded on their behalf asking that they be allowed to return for the night, B refused. Similarly, when G spoke to B on the telephone and requested that he allow A and C to return to the family home for the night, he refused. B was aware that A's parents lived in the United Kingdom, and that when the relationship had broken down once before, the preceding March, she had returned to her parents' home in the United Kingdom with C. It must therefore have been apparent to B that, upon the relationship breaking down and upon his evicting A, she would in all likelihood return to the United Kingdom with C.

(ii) According to G's affidavit evidence, B asked her, during their telephone conversation, to "book flights" for the United Kingdom. Given the text that B sent to her, I find it more likely than not that B did in fact ask G to book flights for A and C.

(iii) B's conduct after the child had been removed is also telling. He did not react immediately by reporting the matter to police, nor did he file an immediate application in court for the return of C. The first action he took was to report the matter to the RGP in October 2015, some three months after the removal. It was put to him that he reported the matter at this time because that was when he discovered that A had a boyfriend. B denies this but, in any event, that action was not followed up with the issue of proceedings in Gibraltar; that did not occur until November 23rd, 2015 after A had first issued proceedings in the United Kingdom. That B should have issued proceedings only after A did suggests a knee-jerk reaction as opposed to a genuine and prompt attempt to restore the status quo. At the very least, this tardy response is indicative of acquiescence on his part. Whilst B has explained that the reasons for his lack of prompt action were that he believed that the removal was temporary and that as a couple they were still close, upon the evidence this is not a scenario I accept as likely. Having heard the evidence of both parties, I am of the view that the relationship ended definitively when A and C left for the United Kingdom and that there was no resumption of good relations thereafter. Although B maintains there were intimate telephone conversations and texts, all that has been produced by him are catalogues of screen shots relating to calls which A "missed," and to my mind those missed calls evidence the opposite of good relations.

25 Similarly, A's conduct accords with consent having been given:

(i) Almost immediately upon her return to the United Kingdom, A contacted B by telephone to let him know that she and C had arrived in Portsmouth. That behaviour is not indicative of someone who has abducted a child.

(ii) A did not commence proceedings in the United Kingdom immediately upon her arrival. This supports her allegation that C was lawfully in her care because if, as she avers, she believed she had B's consent to remain in the United Kingdom, there would have been no reason for her to have instituted proceedings. In fact, she only did so after she had been contacted by the RGP in October 2015 and thereafter feared B might be seeking the child's return.

26 I find on a balance of probabilities that C moved lawfully from Gibraltar to the United Kingdom with his mother on July 24th, 2015. That said, art. 8 of the Regulation makes it clear that the courts of a Member State shall have jurisdiction over a child who is habitually resident in that Member State at the time the relevant court becomes seised. It is not in

dispute that the UK court was the first court to become seised and did so on November 5th, 2015. Gibraltar became seised on November 23rd, 2015. The matter which now requires determination, therefore, is whether, as at November 5th, 2015, C was habitually resident in the United Kingdom.

The issue of habitual residence

27 Guidance as to the correct approach to be adopted when determining the issue of habitual residence can be found in the case of *MS* v. *PS* (2), which summarized the earlier authorities on that point. *MS* v. *PS* was an application by a father for an order under the Hague Child Abduction Convention for the return of his son to Israel. The application was opposed by the mother who had brought the child to the United Kingdom and wished to remain there with the child. The court held, *inter alia*, that the child in that case had not integrated in the United Kingdom sufficiently to lose his habitual residence in Israel. Baker, J. summarized the test as follows ([2015] EWHC 2880 (Fam), at para. 17):

> "The next question, therefore, is whether R had by that date lost his Israeli habitual residence and/or acquired habitual residence in England and Wales. The law on habitual residence is now to be found in a decision of the Supreme Court in *A* v. *A* [2013] UKSC 60, in which the Supreme Court held that the test applicable for the determination of a child's habitual residence is as established by the European Court of Justice in the case of *Re A*, (Case C-523/07) [2010] ECR I-14309. That was confirmed by a further decision of the Supreme Court in the case of *Re L* [2013] UKSC 75. The key principles to be applied when determining a young child's habitual residence are as follows.
>
> (1) Habitual residence is a question of fact.
>
> (2) A child's habitual residence is 'the place which reflects some degree of integration by the child in a social and family environment in the country concerned.'
>
> (3) That in turn depends on a number of factors, including the reason for the family's stay in the country in question.
>
> (4) The social and family environment of an infant or young child is shared with those on whom he or she is dependent.
>
> (5) In the case of older children, the enquiry must encompass wider factors and more than the mere surface features of child's life.
>
> (6) The parental intent does play a part in relation to the intent of a parent in relation to the reasons for a child's leaving one country and going to another.

(7) The essential factual nature of the enquiry must not be glossed over by legal concepts."

28 The amount of time spent in the receiving state is also of relevance. In *Mercredi* v. *Chaffe* (3), the Court of Justice of the European Union noted that ([2011] 3 W.L.R. 1229, at para. 51)—

> "Before habitual residence can be transferred to the host state, it is of paramount importance that the person concerned has it in mind to establish there the permanent or habitual centre of his interests, with the intention that it should be of a lasting character. Accordingly, the duration of a stay can serve only as an indicator in the assessment of the permanence of the residence, and that assessment must be carried out in the light of all the circumstances of fact specific to the individual case."

For the purpose of this application, although C has been in the United Kingdom for some seven months now, the relevant period in respect of which I assess his habitual residence with reference to the checklist laid out in *MS* v. *PS* is the four-month period between his arrival and the issue of the proceedings in the United Kingdom. That said, it is evident that the routine and lifestyle adopted in those first four months continues up to the present day.

29 I am in no doubt that, prior to travelling to the United Kingdom on July 24th, 2015, C was habitually resident in Gibraltar, where he had been born and where he had lived with his parents. Whilst in Gibraltar, C was attending pre-school and had been evaluated by a speech and language therapist. On July 22nd, 2015, C was assessed by a consultant paediatrician and an educational psychologist. He was found to display autistic traits.

30 Once in the United Kingdom, A moved in with her parents for a short while but shortly after secured a home of her own where she lives with C. A describes how C sleeps in his own bedroom which she describes as progress, given that in the past he always slept with her. He is registered with a general practitioner and medical trust and is receiving care in relation to his autism. As from September, C began attending pre-school. A describes how she and C have established a routine: they take the bus together to his school which he attends between the hours of 12.00 p.m. and 3.00 p.m. She describes the support they receive in respect of his autism as fantastic; she describes how they are visited twice a week by someone from a support group called Outreach and how she and C attend speech therapy once a week on a Tuesday. She attends an "Early Birds Course," which is a support group for parents with young autistic children. She describes C as settled and as having made friends who come to their house for play dates. C stays at his maternal grandmother's house for a sleepover every Friday. A's mother, father, sister, aunts and uncles all live

in the United Kingdom, as do B's father, grandparents and other extended family. Since her return to the United Kingdom, A has claimed and received benefits for herself and C.

31 It is clear to me that the reason A moved to the United Kingdom with C was the breakdown of her relationship with B, and because her family origins are in the United Kingdom and because that is a place where she could live with the support she needs to look after C. I find that A is fully integrated in a family and social environment in the United Kingdom and I am satisfied that, as her dependant, C has integrated substantially into a social and family environment in the United Kingdom. All the facts point to C having integrated sufficiently in the United Kingdom to have lost his habitual residence in Gibraltar and to have become habitually resident in the United Kingdom and I so find.

32 Article 17 provides that "Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction." Pursuant to those provisions, I find that the United Kingdom has jurisdiction and declare that I have no jurisdiction in this case.

33 By way of final comment I would say this. Given my findings, I do not need to address the question of whether C would be likely to suffer harm in the event that he were returned to Gibraltar; however, my tentative view is that, provided his parents did not cohabit, he would not be at risk. It is evident from B's evidence that he loves his son deeply. He speaks of him tenderly and with great affection. I suspect that he regrets the course that events took in 2015, more particularly on July 23rd and 24th, 2015, and perhaps with retrospect might have acted differently. It is true to say that, given the turbulent state of the relationship, it is more beneficial to C's wellbeing that his parents do not cohabit. C is thriving and settled and his disability is being well catered for; he is making good progress. However, in my view, a vital part of that progress must be close and regular contact with his father. The evidence before me is that B has been a caring and hands-on father and I am of the view that it would be beneficial to C to grow up with B being an important part of his life. I urge the parties to come together and agree a regular and meaningful contact regime which will benefit C's wellbeing and development, and I urge A to do all in her power to maintain contact between father and son until C is old enough to take control of contact arrangements himself.

Orders accordingly.