Neutral Citation Number: [2026] EWCA Civ 971

Case No: CA-2026-001581

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Mr David Rees KC sitting as a Deputy High Court Judge
FD26P00192

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2026

Before :

LORD JUSTICE COULSON
LORD JUSTICE BAKER
and
LADY JUSTICE WHIPPLE

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HG (ABDUCTION: APPLICATION TO SET ASIDE RETURN ORDER)

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Ruth Cabeza and Alana Hughes (instructed by **Free Family Representation and Advocacy Project**) for the **Appellant**
Mark Jarman KC and Graham Crosthwaite (instructed by **Wilson Solicitors LLP**) for the **Respondent**

Hearing date: 21 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE BAKER:

1. This is an appeal against a judge's refusal to set aside or stay his earlier order for the return of a child to Texas under the 1980 Hague Child Abduction Convention.

Background

2. The following summary of the background is substantially taken from the original judgment delivered on 3 June 2026 in which the judge gave his reasons for making the return order. The judgment is reported as *Re HG (A Child) (Abduction: Consent, Acquiescence, Art 13b)* [2026] EWHC 1385 (Fam).

3. The father is an Indian national who holds a United States Green Card entitling him to live and work in that country. He currently lives and works in Texas. The mother is a British national and a qualified doctor. The parties met through a dating app in 2023, and later that year the father travelled to the UK where they underwent a religious marriage ceremony (Nikah), following which the mother travelled to the USA, staying for around a month. The mother returned to the UK but after being granted a US visa moved to the USA. In April 2024, the parties returned together to the UK for a short period where they underwent a civil marriage. They then returned to the USA, and the mother applied for a US Green Card which would give her permanent residency in the USA.

4. In August 2024, the mother gave birth to the child, a boy hereafter referred to as HG. As he was born in the United States, he is a US Citizen and has dual US and British nationality. Passports have been issued for him by both countries.

5. In November 2024, an argument occurred in which the father squeezed the mother's ear. The details are disputed but the mother called the police who arrested the father and detained him overnight. He was released the next morning, which led to a further argument and a further call by the mother to the police, but no further action was taken.

6. Towards the end of 2024, the father obtained a job in Texas and the family moved there in February 2025.

7. The mother found it difficult to settle in the US. It was her case before the judge that she was suffering from post-partum depression. She told the father that she wished to travel to the UK with HG. The father agreed, although the terms of the agreement were sharply disputed between the parties in the proceedings. On 15 March 2025, the mother and HG flew to the UK and went to stay with the maternal grandparents. On 6 April 2025, the mother told the father that she did not want to return to the USA.

8. The details of what passed between them are set out more fully in the judgment of 3 June 2026 and need only be summarised briefly here. Over the next few months after April 2025, the parties discussed what to do. At that stage they both still considered themselves to be in a relationship with each other. The father sought to persuade the mother to return to the USA, but he was open to moving to the UK himself. At one point, the father agreed to move here, although there was a dispute between the parties as to the terms on which he agreed to do so. Meanwhile, the father visited the UK and the family went on holiday together.

9. The discussions continued during the autumn of 2025. In this period the father applied for a spousal visa to stay in the UK. In December 2025, he visited the UK again and the family went on holiday again. During this visit, the mother became pregnant. The baby is due on 4 September 2026.

10. In January 2026, however, the position changed. On 15 January 2026, lawyers acting for the father sent the mother a letter threatening proceedings under the 1980 Convention for the return of HG to the USA. The father visited the UK again at the end of January and on this occasion there was an argument which led to the police being called, although no action was taken.

11. On 11 February 2026, the father filed an application for the return of the child. He argued that the mother had unlawfully retained HG in the UK on 15 April 2025 at a point when he was habitually resident in the US.

12. The mother conceded that immediately prior to HG's departure to the UK in March 2025 he was habitually resident in the USA and that both parents were exercising rights of custody in relation to him. But she advanced several defences to the application:

    (1) that there has not been a wrongful retention because the father agreed to the mother and HG having an open-ended trip to the UK;

    (2) alternatively, that as at the date of any retention, which the mother asserted to be 15 January 2026 (the date of the father's letter before action), HG was habitually resident in England and Wales;

    (3) pursuant to Article 13(a), that the father consented to HG being retained by the mother in England and Wales, alternatively that he has acquiesced in this state of affairs;

    (4) pursuant to Article 13(b), that there is a grave risk that a return to the USA would expose HG to physical or psychological harm or otherwise place him in an intolerable situation.

Return Order

13. In his first judgment, the judge rejected all four defences. For the purposes of this appeal, it is only necessary to consider his reasons for dismissing the defence under Article 13(b).

14. There were three strands to the defence:

    (1) that a return would cause a deterioration in the mother's mental state so as to impact her ability to parent HG;

    (2) that there was a risk that the mother may not be permitted to re-enter the USA, with the consequence that she might be separated from HG;

    (3) that the father had subjected the mother to physical abuse and used police call outs as a means of intimidating the mother and her family.

15. In this appeal, the focus has been on the first strand. In order to support her case on this ground, the mother obtained permission to instruct Dr Tom McClintock, a consultant forensic psychiatrist, to prepare an assessment of her. Dr McClintock met and examined the mother on 30 April 2026, when she was about 23 weeks pregnant. In answer to the question "Please comment on the psychiatric impact, if any, on the mother if the child is returned to the United States and she were to accompany the child", Dr McClintock said in his report:

> "[The mother] does not wish to return to the United States where she feels there would be a lack of support for her and what is likely to be two children. However, she is not currently suffering from a mental health condition and given that she does not appear to have suffered from a definite mental health condition during her adult years, it is not impossible, but unlikely, that her mental state would deteriorate to such an extent that she would be diagnosed with a formal mental illness. She will, however, find this move to be very stressful."

In answer to a further question "Specifically, please comment on what effect, if any, such a return might have on her parenting ability?", he wrote:

> "I have expressed the view that whilst it is not impossible, it is unlikely that [the mother] would develop a formal mental illness on return to the United States. If this occurred, she would be able to access treatment to deal with her symptoms and it would be highly unlikely that she would deteriorate to such an extent that there would be a significant impact on her ability to care for one or two children."

16. No request was made for Dr McClintock to give oral evidence. On the basis of his report, the judge concluded that with regard to the mother's mental health there was no basis for him to find that there was a "grave risk" that a return would expose HG to physical or psychological harm or otherwise place him in an intolerable situation on this ground. He reached the same conclusion on the other strands of the mother's Article 13(b) defence.

17. The judge therefore made an order that HG be summarily returned to Texas "forthwith and by no later than 11.59 (UK time) on 24 June 2026". He further ordered that the mother should take the child to the USA in accordance with that order and that the father should pay for the mother's and the child's flights. The order also included a number of undertakings given by the father, described as "giving binding and enforceable obligations in this jurisdiction" with the intention that they should also be binding and enforceable in the USA. The undertakings included matters frequently covered by undertakings appended to return orders. They included not to institute or voluntarily support any proceedings arising out of the removal or retention of the child, to pay certain sums to the mother, starting with the sum of $7,500 by 16 June 2026, and to pay full health insurance in the USA for the mother, HG and the unborn child upon its birth for six months after their arrival in the USA. It is clear that all parties, at that stage, were working on the common assumption that if HG was to be returned to the USA, he would be taken there by his mother and once there would remain in her care.

18. At the end of the hearing, the mother's then counsel applied for permission to appeal, which was refused.

19. There has been no appeal to this Court against the order of 3 June 2026.

Application for set aside or stay

20. On 17 June, the mother, acting in person, filed an application for the return order to be set aside or varied. In her notice of application, she confirmed that she did not seek to reargue the findings made at the final hearing and was not pursuing an appeal. Her application was based on an alleged deterioration in her health.

21. In support of her application, she filed a letter dated 16 June from Dr Wendy Smethurst, Consultant Perinatal Psychiatrist at North East London NHS Foundation Trust. In the letter, Dr Smethurst wrote:

> "[The mother] is recently known to our service having been referred to us on the 29th May from her midwife at Princess Alexandra Hospital, where her pregnancy is booked. The referral highlighted her history and current presentation of significant depression and anxiety, with a prior history of suicidal ideation associated with depression. This is her second pregnancy, and is associated with stressful relational issues with father of baby. She has been assessed by our team lead, who recommended urgent assessment by myself.
>
> Her current clinical presentation includes regular palpitations and panic attacks leaving her unable to eat and drink, alongside episodic hypertension and tachycardia. Additionally, she is getting some dizzy spells, abdominal pain and intermittent increases in blood sugar, leading to concern for gestational diabetes. She is low in mood and struggling to do normal activities of daily living, often staying in bed, causing her and her family much concern. She is under close monitoring from the midwives, obstetric team and our own team. She has started on sertraline 50mg, for which I will be reviewing with her on Friday 19th June with a view to increasing this as tolerated and needed.
>
> Notably, the physical sequelae of her psychological distress has resulted in a recent presentation to Accident and Emergency, where she was assessed for palpitations, shortness of breath, and episodic hypertension — symptoms directly attributable to acute psychological stress. This presentation underscores the severity of her current mental state and its significant physiological impact.
>
> There is additional concern regarding fetal wellbeing. Maternal psychological distress, particularly when accompanied by episodic hypertension and physiological stress responses, carries recognised risks to the developing fetus. Her current gestation further compounds these risks. Air travel in the third trimester

> carries well-documented hazards including significantly elevated VTE risk, in-flight cardiovascular stress from reduced cabin pressure, and proximity to the period of highest risk for obstetric emergencies such as preterm labour.
>
> In my clinical opinion, air travel at this time poses a significant risk to her mental and physical health and to the wellbeing of her unborn child. I strongly advise that she does not undertake air travel until her mental state has stabilised and she has been formally reassessed and cleared to fly, by both her psychiatric and obstetric teams."

22. In addition, the mother filed a letter dated 15 June 2026 from Dr Kirsty Gray, a consultant physician at a same day emergency clinic, who had examined the mother that day and diagnosed depression and anxiety, intermittent hypertension, fatigue, palpitations and anaemia and also said that air travel was not medically advisable at this time.

23. The mother's application was heard on 19 June by the same judge who had made the order dated 3 June. The mother represented herself. The father was represented by the same counsel who had appeared at the earlier hearing.

24. There is no transcript of his judgment yet available and we have been invited to work from a note prepared by counsel, approved by the judge. In his second judgment, the judge recited that part of his earlier judgment in which he quoted the relevant passages from Dr McClintock's report and his own conclusion that in light of that evidence there was no basis for finding that on the basis of the mother's health problems there was a grave risk that returning HG to the USA would expose him to physical or psychological harm or otherwise place him in an intolerable situation. He summarised the letters from Dr Gray and Dr Smethurst. In summarising Dr Smethurst's letter, he noted that "the mention of past suicidal ideation referred to in this letter was not something reported to Dr McClintock when he assessed the mother … on 30 April 2026, so only a matter of weeks before the referral to Dr Smethurst". He summarised arguments put forward on behalf of the father, including that the referral to Dr Smethurst's unit took place on 29 May 2026, before the hearing on 2 and 3 June 2026; that the mother's then representatives had not sought to cross-examine Dr McClintock; that the mother as a doctor knew what symptoms to report; and that British Airways, with whom the mother had booked tickets, insist on a letter confirming that a pregnant woman is fit to fly whereas US airlines do not.

25. The judge then referred to a reported decision of Dexter Dias KC (as he then was) sitting as a deputy High Court judge, reported as *ST v QR* [2022] EWHC 2133 (Fam), and the decision of this Court in *Re B (A child) (Abduction: Article 13(b))* [2020] EWCA Civ 1057 [2021] 1 FLR 721 (considered below) in which the relevant legal principles were set out. He then set out his reasons for refusing the application in the following terms:

> "19. The bar is high to set aside return order. I have to be satisfied that there is, and it is for M to show, a foundational failure; that the facts [on] which the decision is based have so change[d] that it cannot stand.

20. I am not satisfied that this has been established.

21. M's mental health issues were squarely before the court at the final hearing and there was an unchallenged report on M by Dr McClintock which had been directed by the court to enable these issues to be resolved. I am very surprised I was not told that M had been referred to a specialist perinatal mental health clinic at that hearing. The decisions I made on 3 June were made with the benefit of the report from an independent psychiatrist who had considered this matter carefully and his conclusions, as I have indicated, were that M would find the move very stressful. So the fact that the move was likely to be very stressful was something I had already taken into account. The physical consequences of that stress formed no part of M's case at the hearing. She was represented on that occasion and it is obvious that we were all aware that she was pregnant. There was no suggestion that she would not be able to physically return to the USA if a return order was made. Indeed she sought a four week period to effect the return, although I ultimately ordered three weeks.

22. I have considered carefully what has been said in both of the letters produced by M. It seems to me there is some force, but I go no higher than that, in Mr Crosthwaite's point that M as an experienced doctor knows what symptoms to report. However, it does seem to me that Dr Smethurst's letter (and the weight that I give to it) is significantly undermined by the fact that she has been presented with a medical history by M which does not accord with the history that she presented to Dr McClintock only a few weeks earlier. I view Dr Smethurst's overall assessment of M's metal state (and its likely effect on her physical health) in that context.

23. I also take into account that it remains [a] possibility for M to undertake the journey by rebooking on a United States airline which will permit her to fly.

24. While I recognise that a return will be very difficult for M, I am not satisfied that this is case where the high bar that there must be a fundamental change in circumstance which undermines the basis of the original order has been made out. I am therefore not going to set my order aside. Nor for the same reasons will I stay it. I am not satisfied there has been a significant change in circumstances at present and, if a stay is granted, this will give rise to a further change in circumstances which will may an impact on the ability to enforce the return order in the future."

Proceedings in this Court

26. On 21 June, the mother, still at that stage acting in person, filed a notice of appeal against the order made two days earlier. On 22 June, Moylan LJ stayed the return order pending determination of the application for permission to appeal. On 7 July, he granted permission to appeal and extended the stay until the appeal was determined. By that stage, the mother had filed an application to rely on fresh evidence. Moylan LJ listed that application for determination at the hearing of the appeal.

27. That hearing was fixed for 21 July. By that date, the mother was 34 weeks pregnant.

28. A few days before the hearing, the mother was able to obtain pro bono representation. Her case at the appeal hearing was presented by Ms Ruth Cabeza leading Ms Alana Hughes instructed by the Free Family Representation and Advocacy Project. On behalf of the father, Mr Mark Jarman KC came into lead Mr Graham Crosthwaite. I am grateful to all counsel for their assistance and realistic approach to the issues.

29. Ms Cabeza reframed the mother's arguments into three amended grounds of appeal:

    (1) The judge's finding that the test for setting aside the return order had not been established was perverse because the evidence established that compliance with the order would require her to undertake travel which two treating consultants had advised was unsafe and would present a risk to her and her unborn child.

    (2) The judge failed to have regard to the fact that stress can be a significant cause of hypertension which poses significant risks for a pregnant woman and her unborn child; that Dr McClintock is a psychiatrist and not a perinatal specialist, and that in rejecting the new medical evidence the judge failed to take into account the fact that the mother's health had deteriorated since the hearing on 2 and 3 June.

    (3) The judge failed to provide any analysis of the evidence or the factors which he identified in paragraphs 21 to 23 of the judgment.

    On that basis, Ms Cabeza invited this Court to allow the appeal and set aside the return order. In the alternative, she asked us to stay the return order until after the baby is born.

30. The fresh evidence on which the mother sought to rely at the appeal hearing consisted of various medical records, of which two were of particular relevance. Prior to the hearing, the father's representatives had indicated that they opposed the application to adduce fresh evidence. We therefore told the parties at the start of the hearing that we had read the material *de bene esse* and would determine the application to adduce it in the course of our judgments. In the event, both counsel referred to the two documents in the course of the submissions. The evidence in the two documents goes to the mother's current medical condition which is plainly of relevance to our decision on this appeal. For my part, without going through the analysis of the factors in *Ladd v Marshall* [1954] 1 WLR 1489 in any detail, I conclude that the interests of justice require us to consider it.

31. The first document was a report dated 12 June 2026 from Ms Thandiwe Khumalo, a Perinatal Clinical Lead at North East London NHS Foundation Trust, where she is a member of Dr Smethurst's team. It was Ms Khumalo who assessed the mother on 5 June after she was referred by the midwifery team. She reported that the mother told her she had been taking 50mg of sertraline for five weeks, not on prescription but

supplied by her mother to whom it had been prescribed. In her description of the mental state examination of the mother, Ms Khumalo stated:

> "She subjectively described her mood as low she conveyed that sometimes she has suicidal thoughts and just want to die however she will wait until she has a baby and will give it to the mother."

32. The second document was a further letter from Dr Smethurst dated 1 July 2026 reporting on a consultation with the mother (online via Teams) on 26 June. This letter is considerably longer than the letter adduced before the judge. The first part recited the mother's account of her background, including her version of the dispute with the father over HG. As to her current health, Dr Smethurst recorded the mother's account of regular palpitations and panic attacks, with episodic hypertension and tachycardia, dizzy spells, abdominal pain and intermittent increases in blood sugar, "which had been concerning for gestational diabetes". Dr Smethurst reported that the mother currently "denies current acute suicidality or thoughts of harm to others" but "reports feeling helpless and hopeless, and worries for hers and the children's safety if she were to be forced to move back to USA". She added:

> "Whilst she admits that she would never harm herself whilst pregnant or harm her children; she admits that she would likely end her life if her children were taken away from her."

Dr Smethurst's mental state examination found no evidence of psychotic symptoms or acute suicidality.

33. Dr Smethurst then set out her impression. She said she was "hugely concerned" about the mother's wellbeing, and that of her child and unborn child. She described the mother as "a vulnerable person with mental health issues who was being "forced" to return to the US. She continued:

> "The complexity of navigating her current social stressors alongside late pregnancy whilst raising her elder child without paternal support whilst fighting an international child abduction claim is an enormous load, and one that has understandably led to significant deterioration in her mental state with her presentation with significant depression with comorbid anxiety with associated physical sequelae of anxiety as well as clear biological symptoms of depression; all likely contributing to her worsening physical symptoms in pregnancy.
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> Notably, the physical sequelae of her psychological distress has resulted in two recent presentations to Accident and Emergency, where she was assessed for palpitations, shortness of breath, and episodic hypertension — symptoms directly attributable to acute psychological stress. This presentation underscores the severity of her current mental state and its significant physiological impact.
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> …

> The postnatal period represents a recognized period of significantly elevated risk for relapse of psychiatric illness. Women with pre-existing conditions including depression and psychosocial stressors are at a substantially heightened risk of psychiatric deterioration during the perinatal period and require environmental stability as a cornerstone of their clinical management."

34. Dr Smethurst finally prescribed a treatment plan which included prescribing sertraline at an increased dose of 100mg.

Law

35. There is no dispute about the legal principles applicable on an application to set aside a return order under the 1980 Convention. The High Court has an inherent power to set aside a return order under the 1980 Convention where there has been a fundamental change of circumstances which undermined the basis on which the original order was made: *Re W (Abduction: Setting Aside Return Order)* [2018] EWCA Civ 1904 [2019] 1 FLR 400. Following that decision, the Family Procedure Rules 2010 were amended by the introduction of rule 12.52A, in effect from 6 April 2020, which establishes the procedure to be followed on such applications. Under paragraph (5) of the rule, "where the court decides to set aside a return order, it shall give directions for a rehearing or make such other orders as may be appropriate to dispose of the application".

36. In *Re B (A Child) (Abduction: Article 13(B))* [2020] EWCA Civ 1057 [2021] 1 FLR 721, Moylan LJ, with whom the other members of the Court agreed, said (at paragraph 89):

> "I suggest [this] process… should be applied when the court is dealing with an application to set aside 1980 Convention orders:
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> (a) the court will first decide whether to permit any reconsideration;
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> (b) if it does, it will decide the extent of any further evidence;
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> (c) the court will next decide whether to set aside the existing order;
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> (d) if the order is set aside, the court will redetermine the substantive application."

At paragraph 91, he added the following observation:

> "I would further emphasise that, because of the high threshold, the number of cases which merit any application to set aside are likely to be few in number. The court will clearly be astute to prevent what, in essence, are attempts to re-argue a case which has already been determined or attempts to frustrate the court's previous determination by taking steps designed to support or create an alleged change of circumstances."

37. Both parties agree that in the present case on 19 June 2026 they and the court were at stage (c) in the four-stage process identified in *Re B*.

38. Section 49(3) of the Senior Courts Act 1981 provides:

> "Nothing in the Act shall affect the power to the Court of Appeal or the High Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings."

As Mr Jarman observed, this provision preserved the inherent power to order a stay said to be exercised from the earlier times (*Metropolitan Bank v Pooley* (1884-1885) LR 10 App Cas 210 at 220-221 per Lord Blackburn).

Submissions

39. In his skeleton argument, Mr Jarman strongly defended the judge's decision. He reminded the Court of the well-established principle that substantial weight must be attached to the trial judge's evaluative conclusions and there is a high hurdle before it will overturn or interfere with them: *Volpi v Volpi* [2022] EWCA Civ 464. He submitted that the mother had failed to demonstrate that the judge was wrong to refuse to set aside or stay the return order and was simply challenging the weight which the judge has given to the evidence. In the circumstances, the decision of the judge cannot be said to be wrong. In this case, the judge was extremely familiar with the case having delivered the first judgment only sixteen days earlier. The stress and anxiety which the mother was experiencing was unsurprising given the order made on 3 June. Such a position is stressful for any party who is the subject of a summary return against their wishes. But the difficulties which the mother and HG would face had been addressed by the protective measures put in place in the undertakings attached to the order of 3 June. The judge was entitled to treat the two letters produced from Dr Smethurst and Dr Gray with a degree of circumspection, given that the mother failed to mention during the course of the final hearing on 2 and 3 June that there had been any referral to the Perinatal Parent Infant Mental Health Service a few days earlier. The mother's history of mental health problems, including specific references to suicidal ideation and depression, was completely inconsistent with the history given to Dr McClintock just four weeks previously. At the final hearing, submissions were made about the date for the return and at no point did the mother or her legal representatives suggest that she would unfit to fly before 24 June 2026, the date fixed by the court for the return of HG. It was therefore submitted that the mother had failed to demonstrate a fundamental change of circumstances.

40. As for the judge's refusal to stay the order, Mr Jarman submitted that it was entirely within the judge's discretion. If the return order was stayed until after the birth of the parties' second child, this would then inevitably lead to another application by the mother to set aside the order. Mr Jarman pointed out that a delay until after the birth of the second child would have an impact on the immigration issues. The mother has an appointment in the US on 20 July 2026 in relation to her Green Card application, which might be at risk if she failed to attend the appointment. Furthermore, there would be consequential difficulties for a new child who would not have any status to enter the US.

41. Mr Jarman developed these points in oral submissions, but fairly and frankly acknowledged the current difficulties. In particular, he accepted that, although US airlines, unlike British Airways, may not insist on a medical report confirming that a woman in the third trimester is fit to travel, no airline would be willing to take on board a woman whom two medical practitioners had diagnosed as unfit to travel.

Discussion

42. The simple fact, in the end acknowledged by Mr Jarman, is that the current order for the mother to return HG to the US cannot be implemented until after she has given birth. In those circumstances, this Court was faced with two options – either to order that the child return to the US now with his father or stay the order pending the birth of the baby.

43. For my part, the first option is not realistic. Prior to the hearing, HG had not seen his father for several months. He has never been separated from his mother who is, we were told, still breastfeeding him. Approving an amended plan that he would be taken to the US by his father and separated from his mother at a stage when she is about to give birth to his new sibling would be a fundamental change in the circumstances provided for in the order. To my mind, it is at least arguable that it would give rise to a grave risk that HG would be exposed to psychological harm or otherwise placed in an intolerable situation.

44. For that reason, the only realistic option is to stay the order until after the baby is born. That is plainly apparent now in the light of Dr Smethurst's latest report but in my view it ought to have been clear at the hearing on 19 June when the court had medical reports from two doctors advising against air travel. Even if the judge was sceptical about the genesis of those medical reports, they contained the expert views of two treating clinicians that the mother was not fit to fly and, at the very least, required further exploration. I would therefore allow the appeal against the judge's refusal to stay the return order. That was a conclusion with which my Lord and my Lady agreed and at the end of the appeal hearing we informed the parties that we would be taking that course.

45. The remaining question is what to do about the application to set aside. The slightly odd position is that the return order cannot at present be implemented because the change in the mother's circumstances means that she cannot take HG to the US, but a major factor which has led to the current change in those circumstances – a deterioration in the mother's health at a late stage in her pregnancy, which has led to medical advice not to fly – is temporary and is likely to disappear after the baby is born. The circumstances will then have changed again, but it cannot be said with any confidence whether the change of circumstances at that stage will amount to a fundamental change so as to justify setting aside the return order.

46. I would therefore propose allowing the appeal against the decision not to set aside the return order and direct that the application to set aside be reconsidered at a further hearing not less than six weeks after the baby is born. In other words, stage (c) of the four-stage process identified in *Re B* will be reheard. The court will have to decide whether to set aside the return order. At that stage, the circumstances will be different. The mother will no longer be pregnant. Her health may or may not have improved. She will be caring for two children. She may or may not be willing to travel to the USA.

Further consideration may have to be given at that stage to the US immigration position of the mother and her newborn baby. The court will have to decide whether the change of circumstances at that stage is sufficiently fundamental to justify setting aside the return order. If it reaches that conclusion, it must then proceed to stage (d) of the four-stage process and redetermine the substantive application for a return order. I add, however, that the only aspect of the return order which has been challenged on the application to set aside is the rejection of the defence under Article 13(b).

47. For those reasons I would allow the appeal, remit the application to set aside the return order to be heard by another judge – who should, I think, be a full judge of the Family Division – on the first open date six weeks after the birth of the baby. The parties should discuss the listing with the Clerk of the Rules in the Family Division, perhaps arranging a provisional listing in the third week in October 2026. Consideration should be given to further directions, including for additional evidence, to be agreed by the parties or in the absence of agreement referred to a judge of the Family Division for determination on the basis of written submissions.

48. The stay of the return order dated 3 June 2026 shall be extended until the application to set aside the order has been reheard.

49. At the end of the hearing, we encouraged the parties to arrange for the father to spend time with his son in the days following the hearing, and after hearing the parties' proposals we gave an informal indication of the level of contact we considered would be appropriate and in the child's interests. I hope that those arrangements proceeded without difficulty and urge the parties to consider what further contact should take place in the next few weeks pending the next stage in these proceedings.

LADY JUSTICE WHIPPLE

50. I agree.

LORD JUSTICE COULSON

51. I also agree.