

THE HIGH COURT

[2013 13 HLC]

FAMILY LAW

IN THE MATTER OF ARTICLE 11(6) OF COUNCIL REGULATION (EC) 2201/2003 AND IN THE MATTER OF FOREIGN PROCEEDINGS ENTITLED 'REFNO. 20086 OF 25/6/10 PROCEEDINGS TO ENFORCE THE HAGUE CONVENTION OF INTERNATIONAL CHILD ABDUCTION UNDER ACT NO. 64/1994 CONCERNING I E D, A CHILD'

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AS CENTRAL AUTHORITY

APPLICANT

AND

C D AND D S

RESPONDENTS

JUDGMENT of Ms. Justice Finlay Geoghegan delivered on the 20th day of March 2013

1. The Minister for Justice and Equality, as Central Authority for Ireland, has issued an originating notice of motion pursuant to Article 11(7) of Council Regulation (EC) 2201/2003 and O. 133, r. 11(1) of the Rules of the Superior Courts grounded on the affidavit of Sandra Smith, a Principal Officer in the Department of Justice and Equality.

2. The applicant has made an *ex parte* application for directions in relation to service and the notification of the persons named as respondents (the father and mother of the child named in the title) for the purposes of compliance with Articles 11(6) and (7) of the Regulation and the further steps, if any, to be taken.

3. It appears from the affidavit of Ms. Smith that, initially, in June 2010, and followed up in October 2010, the applicant, as Central Authority for Ireland, received from the Central Authority for Italy, documents which included a judgment of non-return of the child named in the title given by an Italian court in May 2010. There was, during the balance of 2010 and into 2011, further correspondence between the Central Authorities. In the course of that, it became clear that the father of the child had sought to have proceedings transferred to Romania.

4. In July 2011, the Central Authority for Ireland wrote to the father, then resident in Ireland, and informed him that the Central Authority must, pursuant to Articles 11(6) and (7) of the Regulations, inform the Irish High Court of the Italian court's decision, that this would be done by the issue of a notice of motion and that the respondent would be given an opportunity of making submissions in response thereto.

5. In the grounding affidavit to the present application, Ms. Smith has exhibited the response received from the father in which he asked the Central Authority that it would acknowledge his intention "not to proceed with my complaint lodged, against my former wife for abducting my minor daughter . . ." He also requested that the Central Authority notify the High Court with his intention "to close the case of . . ."

6. No further step appears to have been taken by or on behalf of the Central Authority until the issue of the originating notice of motion herein in March 2013.

7. The child the subject matter of the proceedings before the courts of Italy was born in May 1996 and is now 16 years old. Pursuant to Article 4 of the Hague Convention, it ceased to apply to the child once she attained 16 years.

8. In my judgment, on the facts of this application, no further steps need now be taken by the Central Authority in relation to the non-return order by the Italian courts in the foreign proceedings named in the title hereto. My reasons for this decision are, firstly, the notification given by the Central Authority to the father who was the only parent resident in this jurisdiction of its intention to make an application to the High Court pursuant to Article 11(6) and (7) of the Regulation during which he would be given an opportunity to make submissions to the Court, and the indication from the father that he did not wish to make submissions, and that the High Court should close the case, and secondly, having regard to the now age of the child.

9. Accordingly, the direction which I propose giving is a direction that the Central Authority need not now take any further steps in relation to the originating notice of motion issued herein and an Order that the said motion be struck out.

10. In giving this decision, I do not in any way wish to indicate that the Central Authority is not obliged, where it receives an order of non-return and other relevant documents pursuant to Article 11(6) of the Regulation, to immediately take the appropriate steps to bring the matter before an Irish Court in accordance with O. 133, r. 11 of the Rules of the Superior Courts. Those steps appear to be:

- (i) To ascertain from the parent with whom the Central Authority is in contact or other appropriate person whether, as a matter of probability, there are any proceedings in being before a Court in Ireland concerning the custody or access of the child or children the subject matter of the foreign proceedings.
- (ii) If it appears that, as a matter of probability, such proceedings are in being, to obtain the identity of the Court before which the proceedings are pending and, if feasible, the record number and title of the proceedings.
- (iii) To then promptly transmit to the Principal Registrar of the High Court pursuant to O. 133, r. 11(3) of the Rules of the

Superior Courts the order for non-return and other documents received pursuant to Article 11(6) of the Regulation, together with the details of the proceedings pending before a Court in Ireland.

(iv) If it appears to the Central Authority upon enquiry made that there are, as a matter of probability, no proceedings pending before a Court in Ireland concerning custody or access of the child or children the subject matter of the non-return order, to forthwith issue an originating notice of motion in the High Court pursuant to O. 133, r. 11(1) with the title specified therein and naming the Minister for Justice and Equality, as Central Authority, as the applicant and the parties to the foreign proceedings as the respondents.

(v) The originating notice of motion should be issued in the HLC List in the High Court grounded upon affidavit setting out the basis of the belief that there are no proceedings pending before a court in Ireland and other relevant facts, and exhibiting the non-return order and other documents received pursuant to Article 11(6) of the Regulation. Upon issue, and prior to service thereof, an *ex parte* application for directions should be made to the judge taking the HLC List.

11. In the interests of the children the subject matter of the foreign proceedings, all of the above steps should be taken promptly.