THE HIGH COURT

[2017/13 HLC]

IN THE MATTER OF THE CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT 1991

AND IN THE MATTER OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

AND IN THE MATTER OF COUNCIL REGULATION 2201/2003/EC

AND IN THE MATTER OF S.S.B., A CHILD

M.D.A.B

APPLICANT

AND

L.S.

RESPONDENT

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 26th day of July, 2017

1. This is a case in which the applicant father seeks an order for the return of his infant daughter to the jurisdiction of England and Wales pursuant to Article 12 of the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter 'the Hague Convention'), the EC Regulation 2201/2003, and the Child Abduction and Enforcement of Custody Orders Act, 1991.

2. The sole issue in the case is whether the child was wrongfully retained by the mother in Ireland within the meaning of Articles 3 and 12 of the Hague Convention. It was indicated by counsel that if the Court so found, the mother would voluntarily bring the child to England. Key to the determination of whether there was a wrongful retention is the question of the habitual residence of the child. This arises in a context where the mother, an Irish national, travelled with the child from England (where the parents were originally living) to the United States (where the father was conducting postdoctoral research), and then travelled again six months later (alone with the child) to Ireland, where she has remained since May, 2016. It is contended on behalf of the applicant father that the child had and continued at all times to have a habitual residence in England. It is contended on behalf of the mother that the English habitual residence had been lost by the time the father made his application for return.

3. It should be said at the outset that the parents, although they separated shortly after the birth of their child, have at all times discussed the child and mother's travel arrangements with each other, and there is no dispute that the father agreed to the mother and child coming to Ireland in May, 2016. The only factual issue to be determined in that regard is whether the mother intended to stay in Ireland long-term with the child (either at the time of her arrival in Ireland or subsequently) *and*, if so, whether the father appreciated that this was the situation. This is not a case where one parent has taken a child out of a jurisdiction to Ireland without the knowledge or consent of the other, or where there is any kind of subterfuge on the part of the removing/retaining parent.

4. It is not in dispute that the married father had custody rights and was exercising them within the meaning of the Convention. The sole issue, by the consent of the parties, was that relating to the habitual residence of the child.

Facts and Chronology

5. It is always difficult to reconstruct, from the subjective memories of parties who are now in dispute, an objective narrative of events in their lives. I will therefore start by setting out a chronology based on the facts which are not in dispute, which includes excerpts from certain exhibits which were laid before the court, such as email and 'WhatsApp' communications. I will then address in a later section the evidence of the parties which describes their intentions and beliefs at different times, together with their comments on the exhibits. An email communication, for example, may appear to be plain on its face as to a particular matter, but this apparent meaning may become less certain if there were telephone conversations around that time which put a slightly different context on the email. Nonetheless, the written contemporaneous record is of considerable weight in reconstructing past events and states of mind.

The birth of the child S in London

6. The applicant father is a Brazilian national and the respondent mother an Irish national. She was born and reared in Ireland and lived here until 2001, and again from 2007 until 2009. The parties were married on the 1st April, 2011. During the course of their relationship, they spent some time living in Germany and Brazil as well as London. They moved to London in early 2012 as a married couple. At the time of the birth of their daughter, S, they were living in London in the apartment owned by Ms. S, which she had purchased before she met Mr. D.A.B.S. She had a full-time job prior to the birth of her child, but took maternity leave from that job in connection with the birth of S. Mr. D.A.B.S. is an academic researcher and lecturer, who was engaged in postdoctoral research at the time of S's birth.

7. The child, S, was born on the 22nd March, 2015. Soon after the birth of S, in April, 2015, the applicant and respondent decided to separate. The father moved out of the apartment and lived in premises owned by a friend. By agreement between them, he paid maintenance on a monthly basis by electronic transfer into her bank account, in an amount in line with the guidelines set out by the UK Child Support Agency. Access to S was also agreed between them on an informal basis. It was not in dispute that it was envisaged by both of them that both parents would have input with regard to all important decisions concerning S. Mr. D.A.B.S. gave evidence that they agreed on 50/50 custody, but I do not think that can be taken as a reference to *physical* custody as, shortly after her birth, he travelled to the United States for his research, and the child has always lived physically with her mother since her birth.

Travel to the United States

8. Mr. D.A.B.S. and Ms. S moved (on different dates) to California in the United States as described below. One issue in the case is whether the child's habitual residence in England and Wales was lost at this time, and it is therefore necessary to look at the circumstances in some detail.

9. Mr. D.A.B.S. was conducting postdoctoral research in a university in the United States between 2013 and 2015. Subsequent to that, he was conducting postdoctoral research in the University of California, Davis from 2015 to 2016. Because of this, he spent two

months in the United States in 2014, six months in 2015, and six months in 2016. For present purposes, we are particularly concerned with events after the birth of S (22nd March, 2015).

10. On the 14th April, 2015, less than one month after the birth of S, Mr. D.A.B.S. travelled to the United States for his postdoctoral research. He travelled on a J1 visa which had an expiry date of l 31st December 2016.

11. By email dated the 30th April, 2015, when he was in California and Ms. S was still in London, Mr. D.A.B.S. said "I need to know what your plans are…" and said that he was signing a lease on a one-bedroom apartment but could potentially switch to a two-bedroom apartment. Ms. S replied: 'To be honest, it's too early for me to make any decision. I'm staying in London for the time being until I feel more confident to decide if I will change that. I think it's important that [S] and I have a safe and secure home of our own for the moment. Please go ahead with your own lease. I would like to come to California in the future but right now the future is not clear and I don't want to make any big decisions right now. Will keep you posted if anything changes.' At this stage, the baby was approximately one month old.

12. Ms. S stayed in London with the baby until November, 2015. It appears that Mr. D.A.B.S. did not return to London during this period of April to November, 2015.

13. On the 17th November, 2015, when the baby was approximately 8 months old, Ms. S travelled to California with her. She did not go to the city in California where Mr. D.A.B.S. lived, but instead went to live with her brother who had (or was renting) a different city. The apartment she owned in London was rented out to a tenant on a one-year lease until 27th November, 2016.

14. The visa on which she travelled to the United States is described as 'J-2 Dependent' and refers to the United Kingdom as her 'Legal Permanent Residence Country Code'. The printed visa states that the maximum validation period is 1 year.

15. As matters transpired, Ms. S stayed in California from November, 2015 to May, 2016, a period of some six months. Mr. D.A.B.S. says that during this period he travelled from Davis to Los Angeles (approximately 600 km) every second weekend in order to see S. Ms. S disputes the frequency of the visits and says that he visited S on a total of 5 occasions during the period and lists the dates. Thus, there is some dispute as to the extent to which Mr. D.A.B.S. visited S during this period of approximately 6 months, but nothing appears to turn on that.

16. By email dated the 20th January, 2016, Ms. S sent him an email saying: "I've been thinking quite a bit over the holidays about where [S] and I are going to live for the foreseeable future. How I will support her. I want to discuss that with you before any papers are served or signed. I agree that we should make some time while you are here this weekend…". I am not sure what papers are being referred to but again I do not think anything turns on that.

17. Ms. S left the United States with S on the 24th May, 2016. Her return flight had been booked for October, 2016, but this was changed by her to the earlier May date.

The mother and child travel to Ireland

18. In May, 2016, Ms. S travelled to Ireland with the baby, who was then approximately 14 months old, and has been living in this jurisdiction since then. She flew from Los Angeles via London to Dublin, but she did not enter England in any sense other than that. She has been living at her father's house since her arrival in Ireland.

19. By email dated the 18th May, 2016, Mr. D.A.B.S. referred to a number of permanent work positions he had been offered in a variety of locations: London, the Netherlands, France and Brazil. He said: "With these options in mind *I need to know where you plan to be living for the foreseeable future. If London is your destination [the job in London] becomes the best offer.* If it's indeed, Dublin, [another job offer] or [another job offer] (financially) are better. If I have to fly to Dublin to see my daughter it doesn't make much difference flying from Amsterdam instead of London." (emphasis added) There is no email reply to this; instead there is a reference to their having a telephone conversation about it at the weekend.

20. By email dated the 23rd May, 2016, five days later, Mr. D.A.B.S. wrote to Ms. S's father in Ireland inquiring about her plans. He referred to his job offers (set out above) and referred to one as being 'particularly appealing as I could be close to [S] should [L.S] return to London*. She tells me that she worked out her expenses with you and that she cannot live in London, even with me taking care of [S]'s child care*. The offer in London only makes sense if [S] is living there, but *my understanding from [L.S.] is that this is not in the cards for her as she cannot afford living in London, despite having a job there*. I have to accept or reject the offer from [the London position]in three days. I don't quite understand how she arrived at this conclusion, given that she's been receiving child support, and that I'm happy to pay for [S's] child care. Do let me know if there's anything I'm missing from this equation". (emphasis added)

The Father travels to England

21. Mr. D.A.B.S.'s academic posting ended in the summer of 2016 and he flew to London on the 12th August, 2016. Shortly after that, he took up a permanent position at a third level institution in London.

22. By email dated the 12th August, 2016, he sent an electronic communication saying: 'Got to London today and I'm staying at [a friend's] till I get my own place. Tomorrow I'm flat hunting around Holloway, but I'm looking for a short lease. *If you come back to London* I'll obviously have to move closer to where you'll be living with [S], or else I won't be able to help much with the logistics. We can discuss that *if and when you decide to come back'.* (emphasis added)

23. On the 1st September, 2016, Ms. S travelled to England to attend a friend's birthday party and stayed with friends. Mr. D.A.B.S. spent time with S during that trip. Ms. S. returned to Ireland on the 8th September, 2016.

24. Mr. D.A.B.S. visited S in Ireland in September, 2016 for one day.

25. An exchange of emails on the 7th November, 2016 shows that Ms. S had informed Mr. D.A.B.S. that she had an interview to prepare for, and he wished her luck with the interview. It is not apparent from the email whether this was a temporary or a long-term position.

26. On the 28th November, 2016, the one-year lease of Ms.S's apartment in London, granted to a tenant when she had gone to the United States, came to an end. The apartment was then rented to a neighbour's family from 28th November, 2016 until 17th March,

2017.

27. On the 21st December, 2016, Ms. S travelled for a second time to England to spend Christmas with family members, and stayed in London for three nights so that Mr. D.A.B.S. could spend time with S. The baby stayed overnight with him for two nights. Ms. S says this is the only time the baby has stayed overnight with him on her own, and she herself stayed the first night out of three, to help S to settle in with her father.

28. For the month of January, 2017, she brought the baby to Brazil to visit Mr. D.A.B.S.' family. They flew from Dublin on the 31st December, 2016 and returned on the 31st January, 2017. The trip was paid for by Mr. D.A.B.S.' parents.

29. On the 3rd February, 2017, Ms. S sent Mr. D.A.B.S. an email she had received from a prospective landlord in relation to her renting of an apartment in Dublin from February, 2017 onwards. She said she thought it was unusual that he was willing to rent without meeting the person and was not using an agent, and wanted Mr. D.A.B.S' opinion on it. She said 'the last thing I want is to get ripped off'. Mr. D.A.B.S. replied by email, warning her that it was 'certainly a scam' and to 'steer clear of it', and that she should never send money to someone she had not met in person. There was no expression of surprise from him at the fact that she was inquiring about renting an apartment in Dublin.

30. On the 17th February, 2017, a 'WhatsApp' discussion commenced between them about S. I cannot make out the dates of the later messages, but it is clear that the discussion continued over a number of weeks. Mr. D.A.B.S. said that he was thinking about flying to Dublin to bring S to London and keep her there for 7 days. He was thinking he could do that in mid-March. He suggested that 'we could do that once or twice every month so she gets some quality time with her father'. Ms. S responded that she was delighted that he wanted to spend time with S and that she would have to talk to the play school that S was attending to see how that would fit in with them. She said "It was hard to get this space for [S]. She's been on the list for months". And 'Let me think about it for a while, there's a lot of things to consider.' There were some further discussions about the logistics of his proposed arrrangement, and when he pressed her further, because he wanted to book flights, Ms. S said: "Pretty busy myself this week, I'm trying to get my flat rented, find a place for [S] and I. That's my priority….When I get an appointment with the school I will let you know. Until then leave it with me. I can't work to your timeframe it's too rushed all the time". He then suggested flying on February 24th instead and bringing her back February 28th. She replied that he should not book anything at the moment and that S was still very young and there was a lot to consider and she would get back to him when she had spoken with the school. He replied that "she has to stay with me at least one week every month" and "we need to arrange these trips from March onwards", and that the school was irrelevant. On another date, he pressed her again because the date 23rd March was "looming close". She said that she had emailed him. This date was probably the 26th February, because an email of that date was sent by her.

31. The email sent by Ms. S on the 26th February says:

> "I've thought a lot about your proposed arrangement and we both agree it's important for [S] to have a good relationship with you, her Dad. I'm sure we both have [S]'s best interest at heart and that whatever arrangement is decided upon should be what's best for her as an almost 2 year old. The general consensus received from the various institutions that I contacted is that [S] is still very young to be travelling away one week every month (12 flights in 6 months). At this age her emotional development is paramount. The creche's advice is that changing her routine every month is disruptive for her settling. (The monthly fee would still need to be paid when she is not there.).
>
> …
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> Taking all of the above into account my suggestion is to alternate visits between Dublin and London. Starting with the first visit to Dublin and bi monthly to London until September when you start your classes. We can see how it goes then. As I've already mentioned before you can visit [S] in Dublin as often as you wish, within reason. I understand this may not be ideal for you, however this is about [S] and what's best for her. We must always keep her at the forefront of any decisions. A gradual approach to this new arrangement will give her the chance to adjust. I think it wouldn't be a bad idea to arrange mediation for us. It is an opportunity to put in place an agreement that respects both of us as parents and helps in negotiating our new agreement. Let me know if you would be up for that and I will organise. Her birthday is on the 22nd. If you would like to come on the 20th, 21st or 22nd the two of you could spend her birthday together, just the two of you. That would be nice for her, and I have a nice place that you could stay."

32. On the 27th February, 2017, a maintenance summons issued from the Dublin Metropolitan District Court on behalf of Ms. S. There had been no reference to the issue of maintenance in the email of the day before. Nor had there been any reference to going to court; on the contrary, the email contained a suggestion of mediation.

33. It seems likely that around this time, there were some telephone contact, because the content of the next email exchange does not 'fit' with the preceding emails. By email dated 28th February, 2017, Ms. S said that she could not understand why he would withdraw financial support for S; that maintenance was to benefit her life and should not be dependent on whether he agreed with Ms. S about access. She said that he had opened the door to litigation and that she was deeply saddened that he had forced her down the legal route. A *later* email from Mr. D.A.B.S. on the same date said S needed to spend time with her father, which meant that she "needs to be in London, not in somebody else's house in Dublin. She has a home in London, the city of her birth, which is my home". He said that they could either agree to implement what they had previously agreed or "settle that legally". He said that he had only asked for the child to spend one week with him from March to July and that "that's not what I'll be requesting once I file for custody".

34. Mr. D.A.B.S. received the maintenance summons issued by the Dublin District Court on the 4th of March, 2017.

35. On the 6th March, he sent an email saying that he had never said he would withdraw support which he had paid "religiously" even when not employed, and that he had said our arrangements had to be revisited "since you have broken with our arrangements on the child's custody". She replied that this was not the issue; and that the contribution of maintenance was to benefit the child's life, and should not be dependent on whether he agreed with her about access. She ended: "Therefore I have asked the court to agree our maintenance arrangement in writing, so that it is clear and transparent".

36. On the 7th March, 2017, Mr. D.A.B.S. completed an application form requesting the return of the child under the Hague Convention. This was transmitted to this jurisdiction by letter dated the 28th March, 2017.

37. In March, 2017, Ms S travelled to London to arrange further rental of her apartment with a letting agent.

38. On the 6th April, 2017, Ms. S advised her employer that she would not be returning to her position in London. In her affidavit, she has averred that her career break was due to end on the 27th May, 2017.

39. The present proceedings were commenced by the issue of a special summons on the 19th April, 2017. On the 24th April, 2017, Ms. S was served with the summons.

40. After the usual exchange of affidavits and submissions, the matter came on for hearing on the 7th July, 2017.

41. Ms S's apartment in London is currently rented to tenants.

42. Mr. D.A.B.S. pointed out that the infant S was registered with a GP in London, but Ms. S pointed out that she is also registered with GPs in Dublin and California. This is not surprising for an infant and nothing, in my view, turns on this.

Evidence of the parties
43. The following is merely a sample, but I hope a representative sample, of the oral evidence given by the parties.

The Narrative of Mr. D.A.B.S.

44. Mr. D.A.B.S.' position was that the child's habitual residence never ceased to be England and Wales. As regards the travel to the United States, he said that Ms. S always had a fascination with the idea of living in California, which was why he chose to go there for some of his post-doctoral research. He said that while he was living in California, all his leases were under six months, because he was always planning to move back to London. He said that Ms. S was changing her mind quite often about matters and, for example, changed her mind both about her arrival date in the United States and her departure date. He said that the situation whereby he lived in one city and she lived in another, and he travelled 600km to see his daughter, was a "fragile situation, to put it mildly", and that he never held much expectation that she would stay until the expiry date of her visa. He said they discussed where she would go "countless times" but that he was getting "different answers" from Ms. S. The gist of her responses at that time was that she did not know, that her life was very uncertain, and she was preoccupied minding a small baby. He said he always thought she was coming back to London. He said it was not until the exchanges in February/March 2017 that he started to wonder "what's going on here", especially when she started talking about renting an apartment. He said "I really didn't know what to make of it". He said that when he received the maintenance summons he was very shocked and "almost collapsed in the street", particularly as he had never missed any maintenance payment, which he had been paying under their informal agreement. In cross-examination, when it was put to him, inter alia, that it was inconsistent with his assertion that he was always planning to return to England that he was looking for jobs all around the world including France, the Netherlands, and Singapore, he said that he applied for many jobs in different places because it was important to have competing offers, but that the 'lion's share' of positions he applied for were in England. When it was put to him that the email of May, 2016 showed that he did not believe at that time that she was planning to live in London, he said there was a difference between living in London short-term and living in London long-term, and that he thought she would be returning to live in London long-term. He said that he had no objection to them living in Ireland while Ms. S was on leave from work, but that he had not consented to S moving permanently. When asked about his understanding of Ms. S's maternity leave, he was somewhat vague as to the precise arrangements as regards what periods involved full pay/less pay/unpaid leave, but he said he believed that all forms of leave would come to an end in April, 2017. It was put to him that if he believed this, it was inconsistent with that belief that he was sending messages in February/March, 2017 seeking to put in place monthly arrangements for seeing his child; to this he answered that he did not think Ms. S was necessarily going to resume her job straight away. When it was put to him that these proceedings had essentially arisen out of a dispute about access, which had arisen in February/March, 2017 because Ms. S had not consented to his suggested arrangements regarding a March visit by S, he said that this was not the case and that this was "the straw that broke the camel's back"; that there were a lot of components, and he could not make sense of what was going on, including her seeking to rent an apartment in Dublin. As regards the email concerning Ms. S doing an interview, he said that he thought she had told him she was looking for a temporary job. He accepted that when he said that he had accommodation in London at all times, the reality was that he had a key to a friend's apartment.

45. In re-examination, he said that as regards the email to Ms. S's father on the 23rd May, 2016, he thought that she considered London too expensive at that time because she was not working, but that the situation would be different when her leave was finished and he thought she would be coming back to London after that.

The narrative of Ms. S.

46. Ms S gave evidence that she had always wanted to go the United States. They had discussed moving there nearly two years before child S was born. She really wanted to live there and was excited about going there. Then the marriage broke down. She had a traumatic birth, and was then dealing with a new-born baby and a marriage breakdown. She stayed in London where she felt safe and had her family nearby. She thinks she decided in August or September, 2015 to go to the United States. On affidavit, she had said that she made the decision to go to the United States to facilitate and encourage the relationship between Mr. D.A.B.S. and S and as she was finding it financially difficult to live on her own with S in England.

47. She said that she had a normal life as a mother with an infant in California, going to parent groups, local libraries, and other activities. She said she had always wanted to live there, and that she had tried to book her return flight to coincide with the outer limit of her visa, December 2016, but the airline would not allow her to book later than October 2016, so she booked that as a return date instead. She said that she understood that, potentially, her visa could be extended for five years.

48. She said that her decision to leave the United States came about because Mr. D.A.B.S. was applying for employment positions in various other places, and she then knew that her visa, which was dependent upon his, was not going to be extended. She did not have an income and she needed to make a plan for herself and S. She said that she did not know where Mr. D.A.B.S. was going to end up living, because he would choose a position relevant to his field of expertise and that could be anywhere in the world. She said they discussed what she would do and that she told him she was going back to Ireland. He had "no issue" with that, there was "no problem". She said that she told him not to base his decision on what job to take because she would not be able to afford to move to London, and that she wanted to move to Ireland to have the support of her family. She said there was no discussion about her going back to London at the end of her career break. As far as she was concerned, Mr. D.A.B.S. was in agreement with her decision to live in Ireland and the first she heard of any issue around it was the summons in the present proceedings.

49. As matters transpired, she stayed in the United States for six months approximately, from November, 2015 to May, 2016. She averred that while in Los Angeles, she made the decision to return to live in Ireland and that Mr. D.A.B.S. was fully aware of and in agreement with whatever decision she made in relation to her place of residence with S. She said that they had discussed "our future plans" and "he agreed that it was up to me to decide whether to reside in England or Ireland with S".

50. As regards the 'WhatsApp' exchanges in February/March, 2017 regarding S visiting Mr. D.A.B.S. in London once a month, she said that while she had no problem with S spending time with her father and welcomed their relationship, and indeed viewed it as S's right, her concern was about the number of flights for a small child who requires routine in her life, and also about how S would react to being taken on an airplane the first time (in March, 2017) without her mother when she had not seen her father since Christmas.

51. As regards the timing of the issue of the maintenance summons, which took place the day *before* the email exchange in which, arguably, Mr. D.A.B.S., threatened to withdraw maintenance if he did not have access to S in accordance with their arrangement, Ms. S said that there also had been "conversations" about maintenance in which she had said that the two should not be related. She wanted it "set out in writing" so it would be clear that the maintenance would not stop if they disagreed over access.

52. In cross-examination, she accepted that the plans to go and live as a family in California had been made when they were together as a couple. She accepted that the time of the marriage break-up and ensuing months were a time of transition, "a very difficult time", as she described it. She accepted that the visa was for a limited period of time, but said that she hoped to stay there as long as she possibly could. Her brother had been the same, and was now a permanent resident there. She said that she did not seek out her own accommodation because her brother had a beautiful house and it made sense, financially, for her to stay with him. When asked about the email of May, 2016, when Mr. D.A.B.S. was inquiring about her intentions after she had arrived in Ireland, she said that "I don't know what he was thinking at the time", and she did not remember a conversation about how long she would stay in Ireland but he certainly knew she had tickets for Ireland and was going to her family. She said that she was not aware that she "needed permission" as to where she was going to live and that "it was just a general agreement that it was fine, wherever I wanted to live". She did not explicitly ask him if she could move permanently to Ireland. She said that S has an English passport, and that she did not have an Irish passport because Mr. D.A.B.S. would not sign the application form for one. When asked about whether she had sought accommodation in Ireland, she said that she was not entitled to social housing here because of owning an apartment in London, and that it was cheaper for her to live with her father in light of the Irish housing crisis. She was very firm that she had not been considering a house in London with a view to moving back there, and said that if she were going back to London, she would live in her own apartment. She said that there was a phone conversation between them in which she had said not to base his decision on what job to take on her returning to England because "that is not happening". She said that she did not agree that he could have thought that her moving to Ireland was a transitional arrangement. She said, although they did have communication problems, she did not think they could have been at cross-purposes in relation to that. She could not afford to live in England, she did not want to live in England, she had family in Ireland, and she wanted to get a job in Ireland.

Relevant Authorities

53. It is well established that the burden of proof is on the applicant in a case of this nature to prove on the balance of probabilities that the habitual residence of the child in question was, at the time of the removal or retention, the jurisdiction of the requesting State.

54. The question of how a Court is to determine habitual residence for the purpose of the Hague Convention and Council Regulation 2201/2003 has been discussed in numerous authorities. They make it clear that habitual residence is conceptually quite separate from the legal concept of domicile and is very fact-specific. As Fennelly J. said in *PAS v. AFS* [2004] IESC 95 , [2005] 1 I.L.R.M. 306, 316 :-

> "The Convention deliberately left the notion of habitual residence undefined. The courts of the contracting states have to be free to apply to it to the facts, having considered all the circumstances of the case. Human situations are infinitely variable."

55. Of particular importance in the jurisprudence concerning habitual residence are certain cases decided by the CJEU, in particular *A v. Finland*, Case C523/07, and *Mercredi v. Chaffe* (Case C497/10).

56. In *A v. Finland,* Case C523/07, where children had been living in Sweden and were then taken to Finland by their mother and stepfather for a holiday and stayed on there, in circumstances which led to the Finnish authorities to seek to put them into care, the Court said "the physical presence alone of the child in a Member State…is not sufficient to establish the habitual residence of the child" and later in its judgment continued:

> "[37] The 'habitual residence' of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.
>
> [38] In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.
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> [39] In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.
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> [40] As the Advocate General pointed out in point 44 of her Opinion, the parents' intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of the habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.
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> [41] By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State.
>
> [42] In the light of the criteria laid down in paragraphs 38 to 41 of this judgment and according to an overall assessment, it is for the national court to establish the place of the children's habitual residence."

57. In *Mercredi v. Chaffe*, Case C497/10 a two-month old baby had been taken from England to the island of Reunion by her mother, who was born on that island and was a French national. The baby's parents had been living together but in the week following the birth of that child, they separated. At the time of the child's removal to the island of Reunion, Ms Mercredi was the only person with 'rights of custody' within the meaning of Article 2(9) of the Regulation. In that context, the Court, when discussing the concept of habitual residence, said as follows:

> "It follows from all of the foregoing that the answer to the first question is that the concept of 'habitual residence', for the purposes of Articles 8 and 10 of the Regulation, must be interpreted as meaning that such residence corresponds to

the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case."

58. In *C v. M*, C-376/14 PPU, the Court re-iterated the above principles when considering the question of habitual residence in the context of a reference from Ireland for a preliminary ruling in a case where the mother had brought the child to Ireland from France after a French court of first instance had ruled in her favour. An appellate court subsequently ruled against her, although it had refused a stay of the first instance ruling pending the appeal. The court emphasised the need for the national court to take all relevant factors into account.

59. Those authorities were considered by the Court of Appeal in *DE v. EB* [2015] IECA 104. In that case, the mother was an Irish national who had lived and worked in France for some time, while the father was a French national who lived and worked in France. N was born in France and had dual nationality. When the child was six months old, in March, 2014, the family came to Ireland to introduce the child to the maternal side of the family. Between March and July, the mother and child went to Ireland a number of times, and indeed the father also visited Ireland. Unknown to the father, in March the mother sent an email to her work superior stating she was resigning, and also applied for social welfare. In April, 2014, she registered N with a general practitioner, applied to have her name added to the rent book for the house in which she was living with her father and brothers and applied for a PPS number for N. The father deposed that the consent given by him on each occasion was for the purpose of a limited visit by N to Ireland in a context that he knew the mother had to return to work in France on 11 July, 2014, but that he never gave his agreement to N staying and living in Ireland. In those circumstances, the question arose as to the relationship between a child's habitual residence and the absence of a parent's consent to a change in habitual residence.

60. In the course of her judgment, Finlay Geoghegan J., having considered and contrasted the facts of *Mercredi* and *C v. M*, said as follows:

"[32] Accordingly, in my judgement, counsel for the mother is not correct in her submission that when a national court such as the High Court is assessing "all the circumstances of fact specific to the individual case" an overriding consideration must be as to where in fact the centre of interests of the child at the relevant time lies, in particular by reference to her integration in a social and family environment in the Member State to which she has been removed and in which she is living at the relevant time for the assessment. It is rather the case that, as appears from the judgment of the CJEU in *C. v. M*, all of the relevant factors must be taken into consideration, including of course the centre of interests of the child at the relevant time and where relevant, one weighed against the other. The reasons for the child's move and conditions under which she came to be in the second Member State are also relevant factors. In a case such as the present — where both parents hold parental responsibility and each have a right to participate in a decision as to where a child should live — a consent given for a visit of limited duration or, to put it another way, the absence of a consent to a change in the habitual residence is a factor to be taken into account and weighed against other relevant factors. It does not appear to me that the judgments of the CJEU when considered collectively in the context of the relevant features of each case identify that any one or more competing factors should be given an overriding consideration. The weight to be attached to each will depend on the facts of the individual case. Differing considerations will apply depending on all the different factors identified by CJEU.

[33] It is accordingly clear from the case-law of the CJEU that *a court should properly take into account as a factor the absence of consent of one parent who holds parental responsibility to a move of the habitual or ordinary residence of the child to another Member State. It follows that the court must weigh that factor against other relevant matters of fact identified* which — as the CJEU put it in *C. v. M*. — might demonstrate a degree of integration of the child in a social and family environment in the State to which she has moved. *Those latter facts may include the intention of the other parent to settle permanently with the child* in the other Member State as manifested by steps taken and all the other potential factors identified by CJEU in paras 50–53 of *C v. M*. The question of parental authority may be of particular relevance to an assessment of the intention of the other parent who may wish to settle permanently with the child in the new Member State but may not be in a position to make that decision unilaterally if the other parent also holds parental authority.

[34] If it were otherwise it could set at nought the entire concept of wrongful retention. In all cases of alleged wrongful retention, the child will have spent time in the Member State to which it has moved. It is of the essence of wrongful retention, as distinct from wrongful removal, that the child moved lawfully from its Member State of habitual residence to another State but has not returned at the end of the period for which the permission or consent was given. Wrongful retention will only arise if at the end of the permitted period the child remains habitually resident in its State of origin. Unless a court may give appropriate weight to the conditions and permissions under which or reasons for which the child moved together with all other relevant identified factors in assessing habitual residence it is difficult to envisage wrongful retention as a concept surviving." (emphasis added)

The Court of Appeal, having balanced the various factors against each other, ultimately decided that the child's habitual residence had remained in France.

57. More recently, the Court of Appeal in *KW v. PW* [2016] IECA 364, a case involving the jurisdiction of Australia as well as Ireland, again examined the concept of habitual residence. Ryan P. said as follows:

"[33] It seems to me that this case illustrates a more general point that is not always stated possibly because it is too obvious, which is that it is not the decision of the parties that is important but rather the implementation of that decision. People make decisions to move from one place to another but they do not always carry them out. Even when they do, they can change their minds and move back. As long as people are free to make those decisions, their behaviour is more telling as to their settled intentions than the decisions themselves. These observations make me doubtful about the value or even the validity of decisions that declare the abandonment of previous habitual residence when a person makes the decision and carries it out. In circumstances where the person is free to decide to return without any particular hindrance other than the inconvenience of transferring, it is more logical to consider the gradual diminution of the ties to the old location and the growth of attachment to the new with consequent impact on habitual residence. These comments are in

accordance with the views expressed by Lord Wilson in In the Matter of *B (A Child)* [2016] UKSC 4. At a fundamental level, the law does not provide that habitual residence is something that springs up in an instant, such as is in effect claimed in this case. Habitual residence means what it says. It is a question of fact. I dissent from the proposition that once the parents decide to leave the original country and travel to the new country the original habitual residence is lost. Frankly, I think that is an unacceptable proposition which is based on perhaps a contract law analogy that has little practical application to the real world. And it certainly is quite foreign to the facts of this case.

[34] Suppose, notwithstanding the firmest resolution by the parents to abandon the old country and adopt the new one, that they change their minds and want to go back. Obviously, this is not a fanciful notion because everybody must know people who have done something like that. Can they not be considered to have resumed their old habitual residence rather than having abandoned it in the first place and then on return begun the process all over again? Habitual residence means where people normally live based on their residence for an appreciable time in circumstances that imply permanence of some degree. If a wage earner in a family were to be transferred in the course of his or her work from one country to another and it was the intention of the parents that the whole family would move, that would imply an element of continuity over an appreciable time – which I have called permanence of some degree, perhaps doing some violence to language – and on making the move I think the family would begin to acquire a new habitual residence. It would not happen immediately, but would be built up over time because that is what is implicit in the notion of habitual residence. It is a matter of fact. It is not a matter of law. In my example, it is entirely conceivable that the family would be unhappy in the new location and the wage earner would seek a re-transfer back home, as the family might well consider their previous location.

[35] It could also happen that parents decided not to make a firm commitment to leave the old and adopt the new country but rather to make a move to see how they got on. They might over time in the new country begin to commit to it, making their home there over time in such circumstances that they would actually acquire a new habitual residence even while they still thought that their original country was their true home. They might harbour an affectionate view and a genuine intention of going back in the fullness of time. It would be a question of fact as to what they had actually agreed, insofar as that arose for decision. Of much more materiality than their agreement or their intentions is the factual circumstances in which they are living in the new country. It is a question of fact. It is not a question of law."

61. In the same case, Hogan J. said:

"[35]. The authorities establish that young children can lose their habitual residence where the family makes a settled decision to leave one country (in this instance, Australia) in order to take up residence in another country (in this case, Ireland) and do in fact take up residence in that other country: see, e.g., *in re B (Minors: Abduction)* (No.2) [1993] 1 F.L.R. 993; *PAS v. AFS* [2004] IESC 95, [2005] 1 I.L.R.M. 306 and *AS v. CS (Child Abduction)* [2009] IESC 77, [2010] 1 I.R. 370. On the other hand, it is clear from the judgment of this Court in *DE v. EB* [2015] IECA 137 that a unilateral decision by one parent to move a child to another country without the consent of the other is a factor which militates against a finding that there had been a change of habitual residence."

62. Counsel on behalf of the applicant also drew the Court's attention to *P v. B* [1994] 3 IR 507, in which the Supreme Court emphasised that the subjective understanding of the non-removing/retaining parent was of great significance, and held that the father in that case had not understood that the mother intended to stay permanently because she had said she 'needed time'. That case concerned the defence, under Article 13 of the Convention, of consent or acquiescence and the comments regarding the burden of proof need to be read in that context, namely, that in such cases the burden of proof is on the respondent to prove on the balance of probabilities that there was consent or acquiescence. A question arises as to what the position is where the question arises not in the context of an Article 13 defence but rather as one of the factors to be considered with regard to whether there has been a change of the child's habitual residence, and where an issue arises whether one parent agreed to a change in the habitual residence. It seems to me that the burden of proof must be on the applicant, as part of showing the habitual residence was or continued to be in the requesting State, to establish on the balance of probabilities that he did not consent to a change of habitual residence.

Submissions of counsel in relation to the evidence

63. For obvious reasons, counsel on behalf of the each of the parents laid emphasis on different aspects of the facts and the evidence set out above. Counsel on behalf of the applicant accepted that the infant S, aged 25 months at the time of the issue of these proceedings, had not physically lived in England since she was 8 months old. However, he disputed that the habitual residence of the child changed or moved away from England since her physical departure from that jurisdiction. He pointed to the fact that the marriage had broken down before the parties had moved to America and argued that, therefore, any pre-existing intention to live there as a family no longer held as of the time Ms. S travelled there, and that her own stated intention for travelling there was to ensure that Mr. D.A.B.S. would see more of S. He suggested that the respondent was conflating the intentions they had with regard to the United States as a couple before their separation with what actually transpired after the marriage break-up. He said that both parents were people who had travelled a lot in their lives and this was a factor to be taken into account. He pointed out that Ms. S never looked for paid employment in California, and did not seek her own accommodation. He drew attention to the fact that her visa was on its face limited to one year and therefore she could never have stayed there on a long-term basis. She still had her apartment in London and her employment position was held open. He disputed, therefore, that S's habitual residence in England had been lost at the time of the move to the United States or at any time during her period living there. As regards the move to Ireland, he again pointed to Ms. S's employment situation, with her job in London left open, and her ongoing ownership of the London apartment, and pointed out that Ms. S was living with her father and had not secured alternative accommodation. As regards jobs she was applying for, Mr. D.A.B.S. had been of the opinion that these were temporary rather than long-term. Quite apart from the objective facts concerning these matters, counsel argued that the Court should take into account, as per *DE v. EB*, discussed earlier, the absence of one parent's consent to a change in the child's habitual residence. He drew attention in particular to the emails in May, 2016, in which Mr. D.A.B.S. was trying to ascertain Ms. S's intentions at that time, in order to help him decide what job he should choose. He did in fact take the London job, which suggested that he believed that S would be returning to London. Counsel also laid emphasis on the fact that Ms. S did not finally hand in her notice with regard to her London job until April, 2017, which state of affairs would have contributed to Mr. D.A.B.S. believing that she was returning to London. Counsel also said that his client had described a situation where Ms. S was somewhat evasive in giving answers to straight questions to him over the period of time, and then made unilateral decisions without him being involved. He said that this pattern was repeated in February, when there were exchanges over access without any reference to maintenance, and then the issue of a maintenance summons by Ms. S, on a date *before* Mr. D.A.B.S. sent an email saying that he would not pay maintenance if their access arrangement was not going to be adhered to. He argued that, in all the circumstances, the Court should reach the conclusion that S's habitual residence had not shifted from England and Wales.

64. Counsel on behalf of the respondent argued that the Court should look carefully at the credibility of the applicant in view of the

manner in which his originating Hague application form had been drafted. For example, he had said in his application form that the mother and child had lived in London since 2012 with "short stays" in the U.S. where he conducted research during the past years; and that Ms. S had "returned to London"' on the 24th May, 2016, and that she had been in Ireland and the UK "intermittently" since then. It was suggested that this was disingenuous having regard to the actual facts, namely a six month stay by Ms. S in the United States; a flight stopover at Heathrow on her way back to Ireland from the United States (rather than a 'return' to England); and only two visits by her to London between the period May, 2016 and February, 2017, after her return to Ireland (not 'intermittent' presence in Ireland during that period). It was also pointed out that paragraph 4 of the special indorsement of claim stated that since May, 2016, the respondent had 'spent periods of time in Ireland' and that 'on or about 26th February, 2017, on which date the respondent was *visiting* Ireland with the said child, the respondent refused to return the child to England and Wales when requested by the applicant'. It was suggested that Mr. D.A.B.S.' credibility should be considered with care by the Court as a result of these assertions, which were misleading, having regard to the facts.

65. Counsel emphasised that the burden of proof was on the applicant to show that the child continued at all times to have a habitual residence in England and Wales, and that the issue was not whether the child had acquired a new one in the United States or Ireland but whether she continued to have one in England and Wales up until the time of the applicant's request for her return. Counsel pointed out that the evidence of Ms. S was that she had always wanted to live in the United States and that her intention in going there was not merely to spend a few months there, but rather that she hoped her visa would be extended so that she could stay there on a long-term basis. She says that they were a family in the United States, albeit a separated family. Mr. D.A.B.S. was working there, and Ms. S engaged in the normal daily life of the mother of a young child who is caring for her full-time. She did not seek paid employment because this is what she had chosen to do while the child was young. The child and her mother integrated into normal life in the United States, and the plan only changed when Mr. D.A.B.S. started looking at jobs worldwide. As regards Ms. S' travel to Ireland, she says the evidence supports the view that the applicant knew, at least after a certain point, that Ms. S planned to stay in Ireland on a long-term basis. On his own evidence, he said he thought that the outer limit from her leave from her London job was April, 2017, and yet he did not express surprise that she was looking at renting an apartment in Dublin in February, 2017, nor that she was doing job interviews: her evidence was that she had never told him she was applying for a temporary job. She had also told him it was too expensive for her to live in London *even if he paid childcare*, which suggests that he must have known she meant it would be too expensive *even if* she returned to work in London. Therefore, it was clear to him, it was argued, that she was not planning to come back to London even after April, 2017. As regards his characterisation of her refusing to let S visit him in England, there was a much simpler and less sinister explanation; this was an infant of 2 years old, who spent all her life with her mother, who had her routines and was at playschool, and had last seen her father at Christmas-time; the suggestion that he come to Dublin and take the child away to London for 1-2 weeks every month was impractical and showed little understanding of the needs of a two-year old. It was contended that his suggestion of 'evasiveness' should be regarded with considerable caution by the Court.

The Court's Assessment

66. There are various conclusions one could reach as to the child S's habitual residence at various points in time between the date of her birth (22nd March, 2015) and the date of the commencement of these proceedings (April, 2017). However, I need reach only one decision, which is whether at the time of the request for S's return to England by her father, her habitual residence was still in England at that point in time, such that a refusal to return her there constituted a 'wrongful retention'. I have come to the conclusion that at that point in time, S's habitual residence had ceased to be the jurisdiction of England and Wales.

67. It is clear from the authorities discussed above that the issue of habitual residence is very fact-specific and must take account of all the circumstances of a particular case. In reaching my conclusion, I have particular regard to the following factors. In the first instance, we are dealing in this case with an infant cared for by her mother at home, so that matters relating to her habitual residence are heavily dependent on her parents, and in particular, her mother who is her primary carer. As regards 'social integration', matters such as friends, school, hobbies and sports have not yet come into the equation, as they would do with an older child. Secondly, as regards extended family, the child's relatives on her father's side appear to be in Brazil; the Court was told that she spent a month there visiting them in January, 2017; while the child's relatives on her mother's side appear to be both in England and Ireland. Thirdly, although the parents lived in London from 2012 to 2015, they are well-travelled people who have also lived in different jurisdictions. There is not necessarily an obvious centre of gravity for them, as there may be for many couples, who have lived and worked in one place for many years. Therefore, the main focus must be on the parents' situation and intentions during the period March, 2015-March, 2017.

68. Was their time in the United States (a 16-month period from April, 2015 to August, 2016 for Mr. D.A.B.S., a 6-month period from November, 2015 to May, 2016 for Ms. S and the child S), an interlude from their London life, to which they were always expecting to return, as Mr. D.A.B.S. suggests? Or was it something more definite, the product of a plan to live there if the visa situation would ultimately permit it, as Ms. S portrayed it? In my view, the situation was probably more open-textured than either of those narratives would suggest. From Ms. S's point of view, as she described it, she had gone through a difficult birth, was dealing for the first time in her life with a new-born baby, and was coping with a marriage breakdown. She was also on leave from her permanent paid employment position. This was a time of considerable distress and transition, hardly conducive to making definite long-term decisions. Mr. D.A.B.S. was at a particular stage in his career, that of post-doctoral research, which is a springboard to permanent positions. In the short-time, he had a research position in California. But long-term, the world was, professionally speaking, his oyster. It seems to me that the question of where the parties would end up living was very much an open one during this period.

69. What is to be made of the return of Ms. S to Ireland in May, 2016: was it, as she says, a definite decision on her part to live in Ireland with S? Or was it a move to a place of mental security, where she could decide on her future over a period of time, while she was still on leave from her London job? And what did Mr. D.A.B.S. think was her intention at that time? Based on the evidence I have seen and heard, it seems to me likely that in May 2016, Ms. S was leaning towards living in Ireland on a long-term basis, but nonetheless keeping her options open, for example, by not handing in her notice in respect of her London position. However, it may be that Mr. D.A.B.S. thought the situation was even more open, and a return to London more likely, than it was in her mind. It is an important fact that he chose the London employment position, having stated in an email in May, 2016 that he would only take that position if he thought she would be coming back to live in London. It is however also the case that it appears from the same email exchange that she had told him that it was too expensive to live in London, even with a job and with him paying childcare. These two facts (him choosing a job in London on the basis that she will be living there, and her telling him that she will not be living there because it is too expensive) are difficult to reconcile with each other.

70. However, the clock does not stop ticking as of May, 2016. Time went by, and, more specifically, 9 months went by, if we take the end of the relevant period as February, 2017. Ms. S was applying for jobs in Dublin (at least by November, 2016); she was (by February, 2017) looking for an apartment, without Mr. D.A.B.S. expressing any surprise about that; S was in childcare (by February, 2017), and I note a reference to the fact that she had been on a waiting list for months before she started there; and the parents were (in February, 2017) discussing what sound like long-term arrangements for S visiting her father in London (albeit that they were disagreeing over the content of suitable visiting arrangements). I find on the balance of probabilities, without any difficulty, that Ms.

S had before February 2017 made a decision to settle in Ireland at that stage, even if she did not have this fixed intention when she arrived in Ireland.

71. The next important factual matter to be resolved is whether, *even if* by February, 2017 Ms. S had formed a definite intention to settle in Ireland with S, Mr. D.A.B.S. *was aware of this*, or whether he genuinely believed that a final decision would only be made by her in April, 2017, the date when he thought her work leave was coming to an end. If he thought it was only a temporary stay in Ireland, and had only given consent to that, this would have to be factored into the decision on habitual residence, as set out by Finlay Geoghegan J. in *DE v. EB*, discussed above.

72. In this regard, I note that Ms. S accepted that they never had any conversation in which she explicitly said that she had decided to live in Ireland with S. However, she said, this must have been obvious to him from all the circumstances, including her applying for jobs, accommodation, putting S into childcare, and talking about S travelling to London to visit him on an ongoing monthly basis. The fact that Ms. S only finally gave up her London job in April, 2017 has given me considerable pause for thought in this context; but on balance, and bearing in mind that the burden of proof appears to rest on Mr. D.A.B.S. with regard to matters relating to habitual residence, I have reached the conclusion on the totality of the evidence and the balance of probabilities that Mr. D.A.B.S. had become aware, in the months before, February, 2017 that Ms. S had made a decision to live in Ireland with S and was not objecting to it.

73. The sequence of events leading to his request for S's 'return' to England, particularly having regard to the WhatsApp and email exchanges, suggests to me not so much that Mr. D.A.B.S. suddenly realized for the first time that Ms. S had decided to stay in Ireland long-term with S, but rather that he became concerned and perhaps somewhat angry because he thought that Ms. S was starting to resile from their agreed arrangements about his access to S. He then received the maintenance summons, as far as I can see, out of the blue. This cannot have been triggered by his email of 28 February, 2017, in which he said he might have to withdraw maintenance if the access arrangement were not adhered to, because it had been issued the day before that. The two things together may have seemed to him as an all-out challenge to their informal arrangement and it seemed to him necessary to settle the matter legally. However, it seems to me that before that happened, S's habitual residence had already become the jurisdiction of Ireland.

74. I should perhaps add that in the particular circumstances of this case, I have not laid emphasis on the situation regarding the accommodation of the parties for the following reasons. Ms. S purchased an apartment in London in 2007 (before she met Mr. D.A.B.S.) and continues to own and rent it. She rented it when she was in the United States in 2015, and in Ireland in 2016. She had previously left England for a number of years before she returned to London in 2012 with Mr. D.A.B.S. An apartment in London is a useful income-generating asset, and I do not consider the fact that she owns property there necessarily indicates an intention to return to live in London. As regards the fact that she was living with her father in Ireland, she explained that she would not qualify for social housing precisely because she owned the London apartment, and that it was difficult to obtain accommodation because of the housing crisis in Ireland. In other cases, a failure to seek out alternative accommodation might be indicative of a failure to form a long-term intention to stay in the jurisdiction, but I do not think this is so in the present case, given the circumstances described. As regards the fact that she stayed with her brother in California rather than seeking her own accommodation there, again the explanation offered seems perfectly reasonable; her brother had what she described as a lovely house in a nice location, and she was a mother living alone with a small child with no income other than the maintenance provided by Mr. D.A.B.S.. Again, the failure to seek out accommodation does not seem to me to be necessarily indicative of an intention to return to London. It seems to me merely a practical solution for the situation presenting at that time into which intentions cannot usefully be read. As regards Mr. D.A.B.S., he never owned property in England and, at best, had the key to a friend's apartment in London while he was in the United States. Again, I do not think that much could be read into this. A young academic and researcher who travels a lot and does not know where he will end up with a permanent position is unlikely to acquire property in a particular jurisdiction until more certainty has been achieved. The fact that he did not own or have a long-term rental in England seems to me to be essentially a neutral factor on the issue of whether he intended to return to London or not. The fact that he was making job applications in many places other than England is much indicative, in my view, as to what was going on in his mind.

75. In all of the circumstances, I have reached the conclusion that there has been no wrongful retention of S within this jurisdiction by her mother within the meaning of Article 3 of the Hague Convention.

76. In accordance with the provisions of Article 11(6)-(8) of Regulation 2003/2201, this decision will be communicated to the English courts, and the steps envisaged by the Regulation will no doubt be taken. Accordingly, it may be that the English courts will have the 'last word' in relation to the matter of habitual residence in the present case.

77. It is perhaps regrettable that matters ended up in Court when Mr. D.A.B.S. and Ms. S had co-operated admirably for the first two years of S's life. However, it was perhaps inevitable that matters would come to a legal pass in circumstances where the original agreement between them was reached by them on an informal basis and without independent advice of any kind when S was newly born, essentially at a time of crisis in the marriage, and at a time when neither of them had experience of the changing needs of an infant or young child, nor foresight of where each of them might end up living. It is perhaps to be hoped that the spirit of co-operation will return to future arrangements between them with the passage of time and when clarity has been achieved as to matters relating to S's place of residence and Mr. D.A.B.S.' access to her.