THE HIGH COURT
FAMILY LAW

[2013/40FJ]

IN THE MATTER OF THE JURISDICTION OF COURTS AND ENFORCEMENT OF JUDGMENTS ACT 1998 COUNCIL REGULATION (EC) NO. 44/2001

BETWEEN

C. G.

APPLICANT

AND
B. G.

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 16th day of January, 2019

1. This judgment relates to two motions. The first in time was issued by C. G. (the "applicant"), the former husband of B. G. (the "respondent"), and which he issued on 11th July, 2018 (the "Applicant's Motion"). The second motion in time was issued by the respondent on 25th October, 2018 (the "Respondent's Motion"). The motions were heard by the Court on 19th and 20th December, 2018. Both motions, taken together, constitute the latest development in a saga of litigation that began soon after the birth of their daughter, A., in 2008. A. was born in that year in another European country which I shall hereafter refer to as "EUC". In November, 2008, the respondent issued divorce proceedings in EUC. Since then, there have been three court rulings in EUC concerning the parental authority, access and accommodation rights relating to A., a ruling of this Court on 13th August, 2013, pursuant to an application made by the applicant under the Hague Convention and Council Regulation (EC) No 2201/2003 ("Brussels II Bis"), an appeal from the decision of this Court to the Supreme Court, which in turn referred three questions to the European Court of Justice (the "ECJ") which delivered its decision on the questions referred to it on 9th October, 2014. Following upon that decision, the Supreme Court delivered its judgment in the appeal of the applicant against the decision of this Court on 6th February, 2015, whereby it upheld the decision of this Court, (*G v. G* [2015] IESC 12). The decision of the Supreme Court sets out in some considerable detail the history of the litigation leading up to the date of that decision, and it is not necessary to do so again for the purposes of these motions. The effect of this decision was that the removal by the respondent of A. to this jurisdiction on 12th July, 2012, was found to be lawful and further that A. had been habitually resident in this country from 12th July, 2012, and accordingly the application of the applicant to return A. to EUC was refused. The effect of this decision was to put an end to any possibility that the courts in this jurisdiction would order the return of A. to EUC and on 31st July, 2017, the parties entered into a settlement which was made on order of this Court (the "Consent Order"). One might have hoped that after so much litigation, over such a protracted period that that settlement would have put an end to the matters in dispute between the parties, at least insofar as A. is concerned, but regrettably the dispute between the parties over access to A. has erupted again, although the context is now very different.

2. The applicant is a practising lawyer in EUC. Previously he had representation in this jurisdiction, but having incurred considerable expense here (€25,000) he chose to represent himself in relation to these motions. Notwithstanding that the applicant has an excellent command of English, this gave rise to some procedural irregularities and a degree of procedural confusion, but nonetheless the principal issues raised by the applicant were clear. In his motion, the applicant claims that the respondent refuses to obey the terms of the Consent Order by preventing the applicant from having access to A. in EUC, and the applicant seeks an order for the committal of the respondent on the basis that she has acted in breach of the Consent Order. In his grounding affidavit dated 23rd July, 2017, the applicant states the following as regards non-compliance by the respondent with the Consent Order:-

> "First, [the respondent] said she lost [A.'s] passport, which is a [EUC] passport, and at the same time wrote to the [EUC] embassy that she refuses another [EUC] passport be delivered to A.
>
> Second, last Christmas I went to the garda station for my access to A.: a policeman phoned to [the respondent] to ask her this access.
>
> [The respondent] refused this access and the policeman made a report (pulse no. 14653356).
>
> Third, [the respondent] and [A.] emailed to me and my sister that [A.] does not want and will not go to [EUC] during these August holidays.
>
> I served to [the respondent] the true copy of the Order with penal endorsement of 31st July, 2017.
>
> So I request:
>
> - For a committal order for the execution of the High Court Order dated 31st July, 2017 (2013/40/FJ),
>
> - for an order dispensing with the consent of [the respondent] to the issue of a [EUC] passport for A.;
>
> - for an order vacating the High Court Order dated 31st day of July, 2017, and dismissing [the respondent] of her appeal against the High Court judgment dated 18th day of December, 2013 (2013/40/FJ)."

3. In a separate affidavit of service dated 11th day of July, 2018, the applicant avers that he served a true copy of the Consent Order, with penal endorsement endorsed, on the respondent on 26th June, 2018.

The Consent Order

4. The principal terms of the Consent Order are as follows:-

> 1. That the primary residence of A. shall be with the respondent in Ireland;
>
> 2. that the applicant shall have access to A., in EUC, in August each year on such dates as are agreed between the parties, with the respondent to collect A. at the end of the access and return with her to Ireland;
>
> 3. that the applicant have access with A. in EUC from 27th December to 5th January each year;
>
> 4. that the applicant have access to A. in EUC from 17th March to 25th March each year;

5. that A. be returned to this jurisdiction, into the custody of the respondent, no later than the dates above mentioned…;

6. the parties to make application in EUC, to the relevant courts, vacating orders previously made in EUC in respect of A. and making orders in the same terms as to residence and access as are provided in the Consent Order;

7. that the parties will make application to the courts in EUC discontinuing all enforcement proceedings, and to the extent legally possible, all criminal proceedings, if any, between the applicant and the respondent in respect of A. in that jurisdiction and, to the extent legally possibly, vacating all orders previously made in EUC in those proceedings.

Respondent's Application

5. By her application, the respondent seeks to vary the Consent Order, in particular the terms of that order providing for access by the applicant to A., to the extent that access should be restricted to electronic access through Skype and/or Facetime calls and also through email and letters. The reasons for such stringent curtailment as to access are set forth in the grounding affidavit of the respondent of 24th October, 2018, and may be summarised as follows:-

(i) The respondent claims that the applicant has failed to take the steps necessary to vacate existing orders in EUC, and to replace those orders with mirror orders to those provided for in the Consent Order. The respondent says that she herself took steps to do this through her lawyers in EUC, but was unable to do so owing to the requirement to obtain an "Article 39" Certificate, being the Certificate required by Article 39 of Brussels II Bis. On the other hand, she had discovered (and exhibited) a letter sent by a judge in EUC to the applicant inquiring as to the intentions of the applicant in light of the settlement between the parties as reflected in the Consent Order, and the respondent was concerned that orders within EUC remain extant, thereby preventing the respondent from returning to EUC with A., in case those orders might require A. to remain in EUC. As we will see later in this judgment, those fears were well-grounded because it appears that the investigating judge in EUC was willing to discontinue the investigation and, in effect, close the file because of the settlement between the parties, but the applicant would not give him authority to do so.

(ii) The respondent relies on events that she claims that occurred in the month following the Consent Order when A. travelled to EUC to visit the applicant, as provided for in that Order, and the impact of those events upon A. The respondent was present for some of this access at the request of the applicant, owing to business commitments of the applicant. According to the respondent, the behaviour of the applicant deteriorated during her time in EUC, to the point that on one afternoon "he lost all control and screamed and shouted" at both the respondent and A. The respondent also said that the applicant left the respondent and A. for three days, stranded on an isolated holiday camp with no transport and inadequate provisions.

(iii) The respondent further relies on events that she claims occurred in November 2017. She relates how she made an application to the District Court in this jurisdiction in relation to maintenance, which was scheduled for hearing on 15th November, 2017. She says that the applicant did not avail of midterm break access the previous month, as provided for in the Consent Order. For his part however the applicant says that this was by arrangement with the respondent, since he was required to attend the District Court the following month, in connection with the respondent's application for maintenance and he could not take additional time out of work so as to be in this jurisdiction in both months. He says therefore that he agreed with the respondent that he would exercise what was to be his midterm access to A. (in October, 2017) in November, 2017 instead. In her grounding affidavit however, the respondent says that when exercising this access, she and A. were subjected to violent and abusive behaviour on the part of the applicant on the street, as a result of which the respondent applied for and obtained a protection order (*ex parte*) on 21st November, 2018. The respondent avers in her grounding affidavit that this protection order "continued until July, 2018 and this deponent is making inquiries as to the current status of the protection order and the application before the District Court." However, at the hearing of these motions, the applicant said that he returned to Ireland in June, 2018 for the full *inter partes* hearing of the respondent's application for a protection order, and that the application was dismissed by the District Judge. This was not disputed by the applicant at the hearing of these motions and it is difficult to understand how she could have averred in October, 2018 that she was making inquiries as to the status of the protection order.

(iv) The respondent avers that in November, 2017, she and A. were subjected to violent and abusive behaviour from the applicant on the street in the town where she resides, and that it was this behaviour that caused her to apply for a protection order. During the course of her evidence at the hearing of these motions the applicant expanded on these events and I will address that evidence and that of the applicant in regard to the same, presently. She also avers that following those events, the applicant was parked for two to three hours outside the respondent's home, but remained in the car. She then concludes this part of her affidavit evidence by stating that due to the general conduct of the applicant, and in particular his conduct in EUC in August, 2017, and in Ireland in November, 2017, she and A. are in fear of the applicant.

(v) The respondent expresses one other concern in relation to the applicant's conduct in her affidavit, and that is that the applicant has sought to obtain an EUC passport for A. The applicant accepts that he made this application in light of the fact he had been informed by A. (by email) that her passport had been lost.

6. The applicant delivered a second affidavit dated 17th October, 2018, in support of his application, as well as an affidavit of 14th November, 2018, by way of replying affidavit to that of the respondent in respect of her application. In his affidavit of 17th October, 2018, he accuses the respondent of being motivated by a desire to deprive him (the applicant) and his family of A. He goes on to make a number of accusations and allegations concerning the motivation and character of the respondent, and to exhibit certain documentation which he considers is supportive of his opinions in this regard, but it serves no useful purpose to repeat these allegations in this decision. The issue raised by the applicant in this affidavit that is of most concern to this Court is the allegation that the respondent has deliberately engaged in a process of alienating A. from the society of her father, and specifically, in the words of the applicant, has engaged in parental alienation syndrome. The applicant says that, in the best of interests of A., having regard to the length of time which she had been living in Ireland with the respondent, he had agreed to the Consent Order in July, 2017, but in light of a number of matters that have since occurred he is now requesting this Court to set aside the Consent Order and instead to award the applicant custody of A. from this point onwards. The matters upon which the applicant relies in support of this application are:-

(i) The respondent has refused to allow the applicant access to A. since August, 2017;

(ii) since the loss of A.'s EUC passport, the respondent has prevented the issue of another replacement EUC passport to A. and;

(iii) the respondent obtained a protection order, *ex parte*, which had the effect of prohibiting the applicant from exercising his right of access to A.

(iv) The applicant also relies upon a number of historical events which are really not relevant for present purposes, save insofar as they may support his contention that the respondent has engaged in conduct intended to alienate A. from the applicant. The most significant complaint in this regard is the undisputed fact that on two occasions, firstly in EUC when A. was aged three, and secondly in Ireland when A. was aged five, the respondent reported to the authorities in EUC and in this jurisdiction that the applicant had sexually abused A. These allegations were investigated and dismissed in each country, the authorities in each case having found no basis to support the same.

7. In his replying affidavit of 14th November, 2018, the applicant denied the allegations made by the respondent in relation to the time spent by A. in EUC with the applicant in August, 2017. He claims that this holiday went very well. He explains that it was necessary for him to call for the assistance of the respondent and the respondent came to stay. He claims that even then things were going well until the respondent discovered that the applicant had a new life partner. He says the respondent then became agitated and lost her temper when the applicant had to leave the holiday camp for a few days owing to urgent demands of work.

8. The applicant then goes on to deal with the incident that occurred when he attended in Ireland in November, 2017 to respond to the maintenance application of the respondent in the District Court. His characterisation of these events is that the respondent would not leave the applicant alone with A. and when he, the applicant insisted on this, the respondent attempted to leave with A. and there then ensued a scene which resulted in the gardaí being called.

9. The applicant avers that he attended in the District Court for the inter partes application for a protection order on 20th June, 2018 and again on 18th July, 2018, when the application was dismissed. He claims that the District Judge expressed astonishment that the respondent refused to allow A. to be present alone with the applicant when exercising his access in November, 2017.

10. In relation to A.'s passport, the applicant avers that he was first informed, by e mail of 9th October, 2017 from A. herself, that she had lost her passport when using it as a prop in a school play. However, the applicant exhibits correspondence from the EUC embassy in this jurisdiction dated 14th September, 2017, from which it is apparent that the respondent had previously had correspondence with that embassy requesting that a new passport should not be issued to A. without her approval. On the basis of this correspondence, the applicant, in effect, submits that the loss of A.'s passport is a contrivance designed to prevent from travelling to EUC.

11. In relation to the proceedings in EUC about which an examining magistrate had made inquiries of the applicant, whereby he effectively effectively asked the applicant to withdraw his complaint in light of the Consent Order, the applicant says that he did not wish to do so because if he withdrew the complaint it would "nullify the criminal offences committed by [the respondent]". Instead, he wanted these complaints to expire. He says that the only reason that he did not want to withdraw these complaints is because the respondent would not grant him access to A. as provided for in the Consent Order.

The oral evidence of the parties

12. Each of the parties gave oral testimony in addition to their evidence on affidavit. Unsurprisingly, there are differences between them as to what occurred when A. was in EUC on holidays with the applicant in August, 2017, and in particular as to what occurred when they were joined by the respondent. It is impossible for this Court to reconcile the differences in these accounts and there is little to be gained by attempting to summarise here the accounts given by each of the parties as to what occurred in EUC in August, 2017, or indeed what occurred here in Ireland in November, 2017. For reasons that will become apparent, it is unnecessary for the Court to arrive at any conclusions in relation to these events. What is clear however is that the parties had heated arguments amongst themselves in the presence of A, which must have been very unpleasant and disturbing, if not frightening for A.

13. Whatever exactly occurred in August and November, 2017, it appears that the applicant has had access to A. previously over the years and that the respondent accommodated this access freely, even allowing the applicant to stay in the household with the respondent and A. while visiting Ireland. It is somewhat ironic therefore that matters should have deteriorated rather than improved following upon the Consent Order.

14. Although, as I have said above, it is very difficult, from the competing accounts of the parties, for this Court to arrive at any conclusions regarding the events that ocurred in August and November, 2017, it is possible to identify a number of issues of fact about which there can be no dispute .

15. First, there is the Consent Order itself of 31st July, 2017, which could not be more clear in its terms.

16. Secondly, A. holidayed in EUC with the applicant in August, 2017, in accordance with the terms of the Consent Order. At the request of the applicant, the respondent attended for the third week of this holiday to assist the applicant. At the end of this holiday, the applicant and the respondent had a row in front of A. The applicant maintains that A. had a good holiday and enjoyed herself; the respondent said that she did not, although the respondent's views in this regard are based on what she says was relayed to her by A.

17. Thirdly, when these motions were initially before me, I directed the procurement of a report, pursuant to s. 47 of the Family Law Act 1995, for the purpose of assisting in the determination of the motions (which report I refer to in more detail below). The authors of the report met with and discussed with A., inter alia, her relationship with her parents and more specifically the events of August and November, 2017, as A. remembered those events. A. reported some unhappiness about the holiday in August, which I summarise at para. 35 below. However, it must also be observed that it is clear from the terms of the report that, during the course of this interview, A. was very worried that she might be returned to EUC, and this may have coloured how she chose to describe the holiday. Indeed, it appears A. may have thought that the purpose of the interview was to consider the possibility of her being returned to live with her father in EUC, and it is not clear how she came to think this.

18. In the course of September, 2017, the respondent had communications with EUC embassy in Dublin in the course of which she directed that no new passport should be issued in respect of A. without her consent. At this point however, A.'s passport was not missing and so it is difficult to understand the necessity for this correspondence. It was not until the following month that A. emailed the applicant, in October, 2017 to say that she had lost her EUC passport, which she said she had taken to school to use as a prop in a school play.

19. The applicant did not exercise his right of access to A. during the mid-term break in October, 2017. He claims that it was agreed between the parties that he would do so instead the following month, November, 2017, when he was required to attend the District Court in this country in connection with a maintenance application of the respondent.

20. In the course of exercising this access in November, 2017, a row erupted, in public, between the applicant and the respondent. Each blames the other for this row. The result of the row was that the applicant did not get to have access to A., as planned, and the respondent immediately applied to the District Court for a protection order, on an *ex parte* basis, which she obtained.

21. The respondent says that she had brought to this meeting passport form for signature by the applicant, so that the parties could apply for an Irish passport for A. Because of the row, these forms were not signed. The applicant does not deny that this is so.

22. On 29th November, 2017, the applicant wrote to the respondent (by email) informing the respondent that he had booked tickets to come to this country on 26th December, and to depart with A. on 27th December, returning on 5th January, in accordance with the Consent Order. He inquired if A. would have a passport available for this purpose. This email also dealt with issues as to maintenance payments. While the respondent replied to issues concerning maintenance payments, she made no reply in connection with the proposed access. In the course of her evidence, she explained this simply by saying that A. did not have a passport, and she added:"there was also the protection order", by which I took her to mean that the applicant was restrained from exercising his right of access to A. by reason of the protection order, which, strictly speaking ,was not correct.

23. At around this time, the applicant issued civil proceedings in EUC against the respondent. The precise date of the proceedings is not known to me, but the investigating judge, in a letter to the applicant dated 25th May, 2018, says that he received a letter filing the proceedings on 4th December, 2017. In view of the Consent Order, the applicant was invited, on 25th May, 2018, by the investigating judge, to discontinue these proceedings, but he declined to do so. In his evidence, the applicant said it was his preference to let the proceedings expire rather than to withdraw the same, which would have different implications, favourable to the respondent.

24. The applicant took no steps to obtain "mirror orders" in EUC, reflecting the terms of the Consent Order. The respondent gave evidence that she did try to do so, but was unable to obtain one of the documents required to do so. In any case, as a lawyer in EUC, the applicant would have been far better positioned than the respondent to secure the requirements of the Consent Order in this respect..

25. On 15th December, 2017, the respondent sent an email to the applicant informing him that it had come to her attention, through the EUC embassy, that the applicant had applied for a passport for A., without the approval or signature of the respondent. In this email, the respondent said that A. did not want to go to visit the applicant in EUC for Christmas because of his "bad unpredictable behaviour" and his "temper tantrums". She said that she wished to make it clear, on behalf of A., that A. did not wish to go to EUC for Christmas and that it would be "totally immoral and unjust to coerce [A.] into travelling against her will. Such an action would no doubt leave her in a state of fear and anxiety". In other words, the respondent made it clear that contrary to the Consent Order she would not facilitate travel by A. to the applicant in EUC for Christmas 2017, on the grounds that A., did not wish to visit the applicant in EUC and that it would not be in her best interests to do so in the circumstances.

26. The applicant travelled to this country on 26th December, 2017, for the purpose of bringing A. to EUC for post Christmas holidays with the applicant, in accordance with the Consent Order. Because of the protection order however, he went to the local garda station to ask for their assistance. The respondent declined to make A. available to travel to EUC. The respondent said in her oral testimony that this was because A. had neither an Irish passport nor an EUC passport at this time, and in any case it was against A.'s wishes.

27. Prior to this, on 20th December, 2017, the respondent had emailed the applicant stating that as he had failed to respect the Consent Order, he left her with no option but not to have the order mirrored in EUC. In this email she went on to say that the applicant's behaviour and attitude made the Consent Order unmanageable. The clear implication of this email is that the respondent no longer considered the Consent Order operative, owing to the actions of the applicant.

28. The applicant has had only email correspondence with A. since he last met with her in this country in November, 2017. That correspondence could only be described as being upsetting in character. For example, on 4th January, 2018, A. emailed the applicant to say that she did not wish to speak to him, that she did not wish to receive any presents from the applicant (or his father or sister, A.'s paternal grandfather and aunt respectively) and that she has had her best Christmas ever because the applicant was not involved. Later in the year, following upon her birthday on 14th July, A. emailed the applicant to say that she did not wish to go on holidays to EUC in August and she did not want any presents from him. Notwithstanding the upsetting nature of these e mails however, the applicant responded by e mail affectionately to A.

29. The applicant served copy of the Consent Order, with penal endorsement, on the respondent, on 26th June, 2018.

30. In July, 2018, the protection order, previously granted *ex parte*, was vacated by the District Court following an *inter partes* hearing.

31. It is clear from all of the above that, by December, 2017, the arrangements to which the parties had agreed on 31st July, 2017 had become inoperable. Far from taking any steps to mirror the Consent Order in EUC, the applicant either initiated or continued proceedings against the respondent in that jurisdiction, while at the same time attempting to exercise rights of access as agreed and set out in the Consent Order. For her part, the respondent took the view that A. should not be obliged to travel to EUC in accordance with the Consent Order, if she did not wish to do so. However, the appropriate course for either or both of the parties to have taken at this time would have been to re-enter the proceedings with a view to varying the terms of the Consent Order on the basis of the events that occurred between August and November, 2017. Paragraph (XI) of the Consent Order expressly gave the parties liberty to apply to the court.

32. In the course of his evidence, the applicant said that, while he had originally had a good relationship with A. something was now "broken". As recently as Easter, 2017, the entire family went to Euro Disney and relations with A. were good. The applicant is deeply upset that A. never calls him "Daddy" and he believes that the respondent has done everything possible to break the bond between the applicant and A. Moreover, the applicant said that he does not think it is possible for him to have a proper relationship with A. in Ireland, because he is not "in his element" in this country.

Section 47 report

33. As mentioned earlier, when this matter first came before me I directed the preparation of a s. 47 report, which was made available

to me for the full hearing of these applications. The report was prepared by Dr. Mairéad Ní Eidhin and Ms. Carmel Jennings of Caidreamh, Family and Practitioner assessment and therapeutic services (whom I shall hereafter refer to together as the "Assessors"). For the purposes of preparing the report, they met with the applicant, the respondent and A. Dr. Ní Eidhin also gave evidence at the hearing of these applications.

34. The Assessors noted that both the applicant and the respondent wanted to bring up a great deal of their past negative interactions and history and needed, in the words of the report, "significant redirection to the subject of their daughter [A.] during their time with this team. Thus, it is difficult for this team to imagine how they can completely keep such negativity from [A.] when they meet or when there is any discussion about one of them with [A.]." They also noted that the applicant stated to them it was not his intention to remove A. to EUC should he be granted custody, indicating an ability on his part to priorities A.'s needs. They also noted that in the past the respondent has welcomed the applicant into her home to facilitate contact with A., and they expressed the hope that this positivity might yet be used again.

35. However, they found that A. was very distressed at the thought of being taken to EUC by the applicant. They discussed with A. her time in EUC in August 2017 and found that some of A.'s account of events was contradictory, although overall it was negative, and consistent with how the respondent claims A. described the holidays to the respondent. A. described how she found the seawater to be very cold and that she was forced to go into the sea even though the waves were very big. She also reported to the Assessors that she stayed in an apartment with the applicant and his sister, A.'s aunt, and that this apartment was messy and dirty. A. said she was also told by her grandfather how to hold her cutlery correctly and resented being told how to do so.

36. When asked by the Assessors to describe herself, her mother and her father, A. described herself as being clever, nice and creative, her mother as being kind, loving and caring, and her father as being mean, argumentative and quick-tempered. A. relayed that she did not enjoy her holiday in EUC with the applicant and she was unable to say anything positive at all about her father. It is very clear from this report and the oral testimony of Dr. Ní Eidhin that to the extent that A. has any relationship at all with the applicant, it is a poor relationship. The Assessors note that A. perceives her father as being unfriendly, harsh, punitive and distant. The Assessors emphasise that this is not to say that these perceptions of A. of the applicant are true, but nonetheless that is the current perception A. has of her father..

37. It appears from the report of the Assessors that some of the negative views that A. has of the applicant may have been expressed out of a fear that the purpose of the report was to consider whether or not A. should reside with applicant in EUC. The Assessors note that it is unclear why A. formed the opinion that this might be the purpose of the report, and the Assessors discussed this with the respondent who was unable to explain why A. might have thought that this was so. The respondent said to the Assessors that she explained to A. that the purpose of the report was to provide an opinion on A.'s welfare. In any case, it would appear from the report of the Assessors that it is likely that this fear that A. had when meeting with the Assessors may have caused her to express an overly negative opinion of the applicant.

38. On the other hand, even if that is so, it is very clear that A. has a very negative opinion of the applicant. This opinion stems from her own direct experiences with the applicant, as well as witnessing aggression between the applicant and the respondent and a lack of communication as between the applicant and A. A. expressed disappointment that the applicant did not communicate more with her by telephone, but at the same time informed the Assessors that she is glad that he does not do so because previously she has been made to feel bad by telephone conversations with her father. A. informed the Assessors that she does not try to contact her father on Father's Day and does not believe that her father deserves a birthday card or present and that she tries to forget her father's birthday. Nor does she wish to receive birthday gifts or Christmas gifts from her father.

39. The Assessors noted that A. appeared to see herself and her mother as being part of the same unit. She referred to "we" and "us" when "I" would have been more appropriate. This suggested to the Assessors that A may see herself and the respondent as having a similar relationship with the applicant, which inevitably leads her having a negative relationship with the applicant. The assessors are of the opinion that children should have separate boundaries from the parent with whom they reside around the relationship with the non-resident parent, and that in the opinion of the assessors, it is the job of the "resident" parent to ensure that this is so. A. also seems to have gathered from the respondent that it is A's choice as to whether or not she meets with her father, and while this may have been said to give comfort to A., it is inappropriate because it gives too much responsibility to a child of her age.

40. The Assessors make a series of recommendations designed to address this difficult state of affairs, and with a view to establishing a good and lasting relationship between A. and the applicant over a period of time. These recommendations involve positive actions being taken by both the applicant and the respondent. However, the Assessors make it clear that re-starting access by the applicant to A. requires professional support. They recommend that in the first instance, A. should see a psychologist or psychotherapist to explore her relationship with her father and with a view to establishing trust with that professional, who would then be responsible for recommencing direct access by the applicant at an appropriate time. That person would also continue to be present, at least, for a number of access visits by the applicant, in order to be supportive of A. in these initial and delicate stages of re-establishing the relationship. The Assessors specifically asked A. if she had the option of meeting the applicant on her own, or with such a professional person, which she would choose and she said that she would choose to meet the applicant in the presence of such a professional.

Parental Alienation

41. The applicant is convinced that the respondent has engaged in a campaign of parental alienation, which has brought about A.'s negative view of the applicant. This is a very serious allegation to make. If it were true, it would mean that the respondent was deliberately undermining any relationship that A. might have with the applicant, which could only be to the detriment of A.'s welfare. If a court were to conclude that a parent was engaging in such conduct, a court would have a duty, in the interests of the child, to take all such steps as might be appropriate to redress the alienation.

42. It is not difficult to see why the applicant might think that there has been a concerted effort on the part of the respondent to alienate A. from the applicant. To begin with, the respondent left the country with A. at the first possible opportunity that she could lawfully do so. The respondent has twice reported the applicant to the authorities, firstly in the EUC and secondly in this jurisdiction, making allegations of possible sexual abuse of A. by the applicant (these allegations were investigated and rejected). There was a curious coincidence of timing between correspondence between the respondent and the EUC embassy, in relation to the loss of A.'s passport and directions being given by the respondent to that embassy not to issue a fresh passport upon any request of the applicant, i.e. it appears that the latter occurred first in time. Then there was the fact that the respondent secured a protection order against the applicant on what at this remove appears to be grounds that would amount to no more than a very unpleasant, if also very intense, family row in a public place. Furthermore, emails sent by A. to the applicant are quite adult in character and expression. Dr. Ní Eidhin agreed with this characterisation of the e mails, but also pointed out that A herself is in fact quite mature for age, and has older siblings , which often results in younger children maturing faster. Dr. Ní Eidhin could not express any opinion one

way or another therefore if A. wrote these e mails herself , or if she did so at all, or with assistance. But taking all of the matters set out above together, one can readily see why the applicant considers that there may be a deliberate campaign of parental alienation underway on the part of the respondent.

43. On the other hand, the applicant accepted that the respondent had given him an iPhone for the purpose of having facetime communications with A. Even though he was unable to use the device, this is hardly the action of someone intent on parental alienation. Furthermore, the applicant did not deny that the respondent had accepted him previously into her own home, notwithstanding the difficulties between the parties, for the purposes of facilitating access by the applicant to A. Also, A. reported to the Assessors that the respondent is always nice to the applicant when he visits.

44. It is very difficult for this Court, at this stage, to form a definitive view on this issue, one way or another. The Court certainly could not do so without a professional opinion, and this is something that would require specific investigation by the Assessors, or by others with appropriate qualifications.While the applicant did complain to the Assessors that the respondent has deliberately acted in such a way as to alienate him from A, the Assessors formed no views on the issue, and in her evidence, Dr. Ní Eidhin said that this would require a specific assessment. However, she also said that the respondent is not currently encouraging a positive relationship between A. and the respondent because of how negatively she feels towards the applicant.

45. For now, my conclusion on the issue is that the evidence falls short of establishing that the respondent has been engaging in parental alienation. I think it is better that the focus of the court should be on the future, and giving such directions and making such orders as may help A. to build an enduring and loving relationship with the applicant. It is clear from the report of the Assessors that this will require considerable effort and co-operation between the parties. The focus of this Court, and of the parties, must be on the welfare of A. and what is in her best interests. This is a statutory imperative, imposed pusuant to s. 45 of the Child and Family Relationships Act 2015, although it would have been the approach taken by the courts prior to that act in any case.

Conclusion
46. It hardly needs to be said that it is in the best interests of all children to have the best possible relationship that they can have with their parents. Where circumstances make good relations difficult, there is a duty on both parents to put their differences aside and to promote good relations between the child and the other parent. This can only be in the best interests of all parties, but most especially the child.

47. The applicant has not seen A. since November, 2017, and that visit ended in an acrimonious row between the applicant and the respondent which quite understandably had a very negative impact on A. Such communications as have occurred between the applicant and A. in the meantime have been sparse and unhelpful. It is unsurprising that A.'s current opinion of the applicant is not good and that she expresses reluctance about spending time with him, even if this may not be his fault at all. Where fault lies for the current relationship as between A. and the applicant is not the issue; what is of concern to the Court now is what steps need to be taken now to improve that relationship with the intention of establishing or re-establishing a loving and enduring relationship between between A. and her father.

48. It is not entirely clear what the applicant wants. He is asking the Court to set aside the Consent Order and to award him custody of A., but at the same time he informed the Assessors that it would not be his intention to remove A. to EUC should he be granted custody. Yet he also says that he only wants to see A. in EUC. This is somewhat contradictory. Moreover, the applicant acknowledges that his relationship with A. is broken (his own word) , and yet he does not consider that any professional assistance is required to help re-build that relationship. He thinks he can do so merely by taking A. to EUC and spending time with her by himself in that country. It could not be more clear however that, at this moment in time, that could only be very damaging to A. and would not in any way help to restore the relationship between A. and the applicant.

49. While the applicant's position may be understandable from his point of the view, it ignores the best interests of A. It is beyond any doubt that their relationship can only be re-established by degrees and with professional assistance. It is to be hoped that when he has had a chance to reflect on this, that the applicant will accept that this is what is in the best interests of A., and that he must put his own personal preferences aside in her best interests, and indeed in his own best interests in re-building a loving and enduring relationship with A.

50. The applicant will need to exercise patience, and put his frustrations and suspicions aside. The respondent for her part will need to encourage A. to have a positive relationship with the applicant and to avoid saying or doing anything which may cause A. to fear meeting with or communicating with the applicant. More than that, in due course, and subject to professional guidance, she may have to insist that A. engages with the applicant against A.'s own wishes. The report of the Assessors sets out a series of very practical steps that are designed to re-start a relationship between A. and the applicant. These steps are, in my view, necessary and in the best interests of A., reflecting as they do the very difficult relations now as between A. and the applicant and the applicant and the respondent. It is not in either the interests of A. or the applicant himself to try and force A., or rush her into a relationship with her father. It is very clear that this is a process that will take time and must be undertaken by degrees.

51. It must also be said however, that it is equally clear from the report of the Assessors that the restoration of a relationship between A. and the applicant can only be achieved with the cooperation of the respondent. They expressly state this in their report. She too must bear in mind that the establishment of the happiest possible relationship between the applicant and A. is in A.'s best interests. While at this juncture I am making no determination as to whether or not there has been any deliberate parental alienation engaged in by the respondent, this is something about which the Court must remain vigilant and take whatever action is appropriate and in the best interests of A., in the event that the Court at some future date considers that the respondent is engaging in parental alienation. This is something about which those professionals who may be engaged to assist the parties in the future should themselves be vigilant and in a position to report to the court, if need be, in the future.

52. Since the relationship between the applicant and A. has broken down to the extent that it has, it is in the best interests of A. that the terms of the Consent Order, insofar as they relate to access by the applicant to A., should be temporarily suspended. Access from this point forward, but for the time being only, should be on such basis as may be recommended by the professionals engaged to assist in the restoration of the relationship between the applicant and A. This is as far as it is possible to go in making orders as to access for the time being, but I will adjourn the matter to a reasonably early date in the future with a view to receiving reports from the professionals engaged and, if appropriate, to make more specific orders.

53. In relation to the remaining orders in the Consent Order, i.e. the orders requiring "mirror orders" in EUC, these, it seems to me, remain appropriate. It is clear that since the decision of the Supreme Court, following upon the decision of the ECJ, that it is the courts of this jurisdiction have seisin of the matter and the respondent should not be in fear of proceedings in EUC. Indeed, in the longer term, it may help and be of assistance to the applicant if the respondent can travel to EUC secure in the knowledge that it is

Irish court orders govern relations between the parties. Accordingly, I think it is appropriate that paras. (ix) and (x)of the Consent Order be affirmed, save only that they should not require the courts in EUC to mirror those parts of the Consent Order now suspended, so that , in effect, all that is required to do is vacate existing orders in EUC and apply for the discontinuation of any proceedings currently extant in EUC. Also, I think it is appropriate to impose upon the applicant the obligation to secure these orders in EUC with the consent of the respondent, to the extent required, not least because it should be far easier and more cost effective for him to do so as a practising lawyer in EUC.

54. In relation to the application brought by the applicant for the committal of the respondent, in the course of the proceedings I acceded to an application brought by the respondent that that application should be dismissed, because the applicant did not serve the Consent Order, with penal endorsement, until June, 2018, long after the events relied upon by the applicant for the purposes of his application for committal. I agreed with submissions of counsel for the respondent that it was not open to the applicant to rely upon alleged defaults on the part of the respondent that predated the service of the order with penal endorsement.

55. That said, it must be observed that the evidence tended to suggest that the respondent may have made a decision, some time following upon her return from EUC to this country in August, 2017, not to facilitate access by the applicant to A. in EUC. If that is correct, it hardly needs to be said that that would amount to a clear breach of the terms of the Consent Order on the part of the respondent. As I have said already, if she considered at that time that it was not in the best interests of A. to travel to EUC with the applicant, then she should have re-entered the proceedings and sought to vary the Consent Order at that point in time. However, for all the reasons that I have set out above, it clearly would not be appropriate or in the best interests of A. for me to make any orders adverse to the respondent arising out of her actions. Suffice to say, as I have already, that there is a very heavy onus on the respondent to cooperate fully into the future with whatever measures may be put in place to re-establish and nurture a good relationship between the applicant and A.

56. Of course I also noted earlier that the applicant too has acted contrary to the Consent Order, at least in spirit, by issuing a fresh complaint against the respondent in the courts of EUC, or at least by not withdrawing that complaint when invited to do so by the magistrate, and instead arranging for orders mirroring the Consent Order in EUC. Courts cannot stand idly by when parties flout their orders, and both parties now stand warned that this court will not do so should deliberate breaches of its orders occur in the future.