Neutral Citation: [2015] IEHC 214

THE HIGH COURT

[Record No:2014/9536P]

IN THE MATTER OF RPD (A MINOR) BORN ON THE 25th OF OCTOBER 2014 AND IN THE MATTER OF THE CHILD CARE ACT 1991 (AS AMENDED) AND IN THE MATTER OF COUNCIL REGULATION (EC) NO. 2201/2003 OF 27th NOVEMBER 2003 CONCERNING JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY AND IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT

BETWEEN:

CHILD AND FAMILY AGENCY

PLAINTIFF

AND

J.D

DEFENDANT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 26th day of March, 2015.

1. The plaintiff's case is that the infant "R", being a minor born to the defendant on the 25th day of October 2014 in this jurisdiction, has a particular connection with the United Kingdom within the meaning of Article 15(3) of Council Regulation (EC) No 2201/2003 of the 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (the Brussels II bis Regulation).

2. It is the contention of the plaintiff that the Courts of England and Wales are better placed to hear any further proceedings concerning the placing of "R" into public care within the meaning of Article 15 of the Brussels II bis Regulation. Moreover, the plaintiff submits that it is in the best interests of "R" that any further proceedings concerning the placing of "R" into public care, be heard before the Courts of England and Wales within the meaning of the Childcare Act 1991 (as amended), and within the meaning of Article 15 of the Brussels II bis Regulation.

3. The plaintiff relies on evidence in the form of a pre-birth assessment report dated the 9th September, 2014.

4. It is not denied that the defendant had informed social workers on several occasions that she travelled from the United Kingdom to Ireland in order to frustrate the intimated intention of the U.K social services to take her unborn child into care.

5. The defendant has a diagnosis of anti-social personality disorder, with a history of physical abuse towards her older child, who was in turn, taken into care. On a previous occasion, the defendant had expressed a wish to kill the aforesaid child, who is now the subject of a full care order in England. In addition, the defendant has suffered from enduring mental health difficulties, and on several occasions, she has attempted to commit suicide.

6. The defendant submitted to the Court that she arrived in Ireland on the 29th September, 2014, and has continued to reside in this jurisdiction since that date. The defendant highlighted that there are no ongoing proceedings in being before the Courts of England and Wales, and that there is no open social work file regarding her activities in the jurisdiction of the United Kingdom.

7. The defendant claims that on the 10th October, 2014, she indicated to the social work department at Portiuncula Hospital, Ballinasloe that she was expecting to give birth to her child on Tuesday the 14th October, 2014. The defendant claims to have told social workers in Ireland that she had travelled from the U.K. to this jurisdiction so that she could give birth to her child in Ireland, and would have an opportunity to have a relationship with the said child.

8. On the 28th October, 2014, Judge Conal Gibbons of the District Court refused an application for an emergency care order on the basis that the evidence presented by the social worker in Ireland was hearsay evidence. This evidence evidently consisted of reports from professionals in the United Kingdom. On the 30th October, 2014, this order was appealed, and an emergency care order was granted by Judge Donagh McDonagh in the Circuit Court.

9. The infant "R" was cared for by the defendant until he was removed from her care on the 1st November, 2014. The aforementioned care order has been extended and is due before the District Court on the 24th March, 2015.

10. The defendant has had ongoing access with "R" since November 2014 for three hours, four days a week. The defendant breast-fed her infant until the end of December 2014. She did gain employment in this jurisdiction, but to facilitate access with "R", the defendant gave up a job as she could not achieve a reduction in her working hours.

11. Countering the contention of the plaintiff that the infant "S", the older child of the defendant, was removed from her due to physical abuse, it was submitted by defendant that she herself sought help from social services in England at the time "S" was taken into care as she felt she could not properly care for him. This is set out in the defendant's affidavit (at para.6).

12. Between September 2010 and September 2011 as set out in para. 18 of the pre-birth assessment, the defendant underwent depot injections to get assistance for her medical condition. The defendant's position is that such action does not amount to a lack of acknowledgment of her difficulties.

13. The defendant submits that since "S" was taken into care, she has completed two parenting courses with a local Council. The defendant completed these courses in 2011 and 2012 respectively as set out in her affidavit (at para.19).

14. Regarding the allegations of a history of alcohol and drug misuse that spanned before and across her pregnancy, the defendant,

through her counsel, contends that she did not consume significant alcohol during her pregnancy. Moreover, the defendant denies that there was drug misuse during her pregnancy and contends that she did not consume any non-prescription drug since 2010. This position is set out in defendant's affidavit (at para.14).

15. In relation to the contention of the plaintiff that there were unfavourable outcomes whereby three independent psychiatrists conducted assessments, the defendants contends that she attended a psychiatrist, Dr. Hill from August 2010 to September 2014. In her affidavit, Catherine Walsh, social worker, does not indicate that there has been any direct contact between the plaintiff and Dr Hill. However, it is pointed out by the defendant that the *guardian ad litem's* report describes her conversation with Dr. Hill and that his position was that he had never been requested to do a report but that Dr. Mortimer's report which dated from 2010 was the only assessment he had which outlined her ability to parent. As a result, he felt obliged to rely on this report (5.9 of the social work report).

16. The defendant, through her counsel, rejected the proposition that having a personality disorder meant that she could not act as a parent. However, she accepts that she will require supports to ensure the safety of her child, and is amenable to the involvement of social workers to provide this support in this jurisdiction.

17. The defendant categorically denied any manipulativness or lack of engagement and/or disguised compliance with care professionals.

18. The defendant admitted her own failings in the past regarding her parental functions, but feels that the allegation that she is unable to put her children's needs first cannot be evaluated in the absence of an updated psychiatric report.

19. The defendant claims to have engaged with her social worker in this jurisdiction and the allegation of lack of engagement as alleged by the plaintiff is denied on her behalf.

20. It was highlighted to the Court that "R's" putative father does not hold parental responsibility, and he is not involved in the infant's life at present.

21. Counsel for the defence highlighted various positive factors identified in the pre-birth assessment. These factors included a positive outlook around the birth of "R" with appropriate arrangements in place for the said child on his birth. In addition, the pre-birth assessment highlighted a willingness on the part of the defendant to work with social workers and professionals. Moreover, the defendant expressed a willingness to engage in the assessment process, with support from family members and a willingness to work with mental health services, with aspirations of having no reported incidents of self-harm and having the capacity to maintain a long-term tenancy in this jurisdiction. These factors coupled with the capacity to provide basic care and appropriate stimulation for "R" along with showing emotional warmth towards "S" when in her care, were deemed significant positive factors that were not referred to by the plaintiff in its application to this Court.

22. Counsel for the defendant outlined to the Court that "S" had been in care for four years, and that during that time, the defendant had completed a foundation degree in architectural art and interior design at a U.K University. The defendant graduated in September 2011.

23. In addition, the defendant had attended a twelve week course in respect of mental health, volunteering with a local action group.

24. In January 2014, the defendant completed courses regarding drug awareness and drug abuse, and an introduction to mental health and substance misuse in a U.K College.

25. This Court notes that the defendant completed two sets of parenting courses with a local Council in 2011 and 2012, and a mediquip course in first-aid with the same Council in 2014.

26. The defendant accepts that she has a significant forensic history, but argues that her history of involvement with U.K. professionals does not in any way preclude the involvement of Irish professionals. The defendant claims that updated assessments will be required in this case, and these assessments could be done as easily and effectively in this jurisdiction as opposed to the United Kingdom.

27. The defendant expresses the concern that the relevant Council has already made its decision regarding "R's" future, and the pre-birth assessment was referred to in support of that proposition. The defendant's primary motivation for coming to Ireland was based on her concern that the U.K authorities would arrange for the adoption of her child.

The law

28. Counsel for the plaintiff sets out that article 15(1) of the Brussels II bis Regulation provides that, by way of exception to the general rule that jurisdiction derives from habitual residence:

> "By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:
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> (a.) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
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> (b.) request a court of another Member State to assume jurisdiction in accordance with paragraph 5."

29. The plaintiff submits that the provisions of article 15 of the Regulation has been considered by the Supreme Court in *HSE v. MW & GL* [2013] 2 I.L.R.M. 225, and more recently by the Court of Appeal of England and Wales In *Re T (a child) (Care Proceedings: Request to Assume Jurisdiction)* [2013] EWCA Civ 895 [2014] Fam 130. In the latter case, the Court of Appeal of England and Wales endorsed the approach taken by Munby J. (as he then was) in *B v. B* (Brussels II revisited: Article 15) [2009] 1 F.L.R 517, and adopted Munby J's three "cardinal questions" for consideration of article 15 proceedings (at para. 35 of the judgment of Munby J.):

> "...as Article 15(1) makes clear that there are three questions to be considered by the court…in deciding whether to exercise its powers under Article 15(1):
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> (i) First, it must determine whether the child has, within the meaning of Article 15(3), "a particular connection" with

the relevant other member State…Given the various matters set out in Article 15(3) as bearing on this question, that is, in essence, a simple question of fact. For example, is the other Member State the former habitual residence of the child (See Article 15(3)(b)) or the place of the child's nationality (see Article 15 (3))?

(ii) Secondly, it must determine whether the court of the other Member State "would be better placed to hear the case, or a specific part thereof". This involves an exercise in evaluation, to be undertaken in the light of all the circumstances of the particular case

(iii) Thirdly, it must determine if a transfer to the other court "is in the best interests of the child". This again involves an evaluation undertaken in the light of all the circumstances of the particular child."

30. In relation to the first question, article 15(3) of the Regulation sets out the criteria by which a child can establish a particular connection with a member state. Article 15(3) states as follows:

> "3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:
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> (a) has become the habitual residence of the child after the court referred to in paragraph 1 is seised.
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> (b) is the former habitual residence of the child; or
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> (c) is the place of the child's nationality; or
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> (d) is the habitual residence of a holder of parental responsibility; or
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> (e) is the place where the property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property."

31. It is submitted by the plaintiff that under article 15(3)(c) of the Regulation, a particular connection is established through the fact of "R's" British nationality.

32. The defendant was born in Bradford, England on the 15th November, 1972. Therefore, the defendant is a British citizen and comes within the ambit of the category of British citizens born in the United Kingdom who are known as British citizens otherwise than by descent. In turn, it seems that the plaintiff's position is that "R" is a British citizen by decent by operation of s.2(1)(a) of the British Nationality Act 1981.

33. In *HSE v. MW & GL* [2013] 2 I.L.R.M. 225, a British mother presented at an Irish hospital heavily pregnant, and subsequently delivered a child who was born in Ireland. In the High Court, Birmingham J. found that because the British mother was at the time of the birth a British citizen otherwise than by descent, the infant was automatically a British citizen. It was accepted by the Court that a "particular connection" was therefore established with the United Kingdom for the purposes of article 15(3)(c), notwithstanding that such a child might also be entitled to Irish citizenship. Birmingham J held (at pg.232 at para.8-9);

> "8. So far as (article 15(3)) (c) is concerned, the court has been provided with an affidavit of laws from Mr. Laurie Fransman Q.C. His opinion makes clear that L.W. was born a British citizen by descent by operation of s. 2(1)(a) of the British Nationality Act 1981. Acquisition under this provision is ex-lege, that is to say it occurs automatically by operation of law and is not dependent on the making of any application or other condition. However, it is appropriate to record that in addition to being a British citizen that L.W. is also entitled to Irish citizenship by virtue of the Irish Nationality and Citizenship Act 2004 as she is a child born in Ireland to a mother and father who are British citizens. 9.My attention has been drawn to the fact that subparagraph (c) refers to "the place of the child's nationality". It is said that one possible interpretation would be that the paragraph only applies to a child that has a single nationality. However, in my view, such an interpretation would be quite artificial and would be inconsistent with the reality of life in the EU with its guarantee of free movement of persons moving between States and children being born, who in many cases will have more than one nationality. Accordingly I am satisfied that a particular connection is established by virtue of Article 15(3)(c). In any event, the second named defendant's habitual place of residence is England and so a particular connection is also established by virtue of Article 15(3)(d)".

On this issue, the Supreme Court upheld the decision of Birmingham J. In relation, to the High Court's findings of "particular connection" for the purposes of article 15(3) of the Regulation, MacMenamin J. (held at pg 249-250, paras. 24-25):

> "24. Article 15(3)(c) refers to the question of the child's nationality; Article 15(3)(d) refers to the habitual residence of a holder of parental responsibility. The trial judge referred first to Article 15(3)(c). The High Court was provided with an affidavit of laws from Queens Counsel. Issues of foreign law are issues of fact in our courts. L.W.'s mother and father are both British citizens. Counsel's opinion was to the effect that L.W. was a British citizen by descent by operation of s. 2(1)(a) of the British Nationality Act 1981. Citizenship acquisition under this provision is ex-lege, that is to say, it occurs automatically by operation of law, and is not dependent on the making of any application or other condition. The learned trial judge went on to find that in addition to being a British citizen, L.W. was also entitled to Irish citizenship by virtue of the Irish Nationality and Citizenship Act 2004, as she was a child born in Ireland to a mother and father who are British citizens. This was not disputed.
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> 25. There was obviously a factual issue to be determined here. The High Court judge held that an interpretation that Article 15(3)(c) which only refers to a situation where a child had a single nationality, would be artificial, and would be inconsistent with the reality of life in the European Union where free movement of persons moving between States is guaranteed; and where children may be born to mothers who themselves, in many cases, may have more than one nationality. The judge found as a fact that a particular connection was established by virtue of Article 15(3)(c). The effect of this is that the child, by virtue of her nationality came within the terms of the Regulation. He also pointed out that an additional factor in the equation was the child's father's habitual place of residence was England and so, there was also a particular connection also established by virtue of Article 15(3)(d). In my view, the learned trial judge was correct in reaching these conclusions."

34. In relation to the "better placed court" test, it is clear to this Court that the instant case is analogous to the *HSE v. MW & GL* [2013] 2 I.L.R.M. 225 in that in the current case, the defendant also has a deep history of involvement with social services in

England. Moreover, this Court notes that the Courts of England and Wales have dealt with the prior care application made in relation to the defendant's older child, and would be better placed to determine "R's" future care status and to adjudicate on the substantial factual disputes, which will arise in the course of those proceedings.

35. The argument is made on behalf of counsel for the defendant that the underlying purpose of the present application is not the transfer of proceedings concerning the infant's welfare from one jurisdiction to another, but the transfer of the child himself, in the hope or expectation that the defendant will follow from Ireland to the U.K.

36. It was submitted by counsel for the defendant that if article 15 of the Regulation was intended to provide for the transfer of children, one would have expected that such an intention would be expressed within the Regulation. Counsel for the defendant submitted that article 56 of the Regulation does provide for the placement of a child in another member state. It was submitted to the Court that if it were intended that article 15 could be used for a similar purpose, one would have expected the European Council to say so in express terms. Furthermore, the defendant submitted to this Court that she had not violated any law in exercising her right to free movement within the European Community in coming to Ireland, and to refuse the relief sought by her and to accede to this application, would be in some form contravening her right to travel under European Law. Counsel for the defendant claims that the Court's interpretation of the Brussels II bis Regulation should account for the defendant's right to travel under European Law and in support of this proposition, the Court was referred to recital (1) of the Regulation which states:

> "(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market."

37. With regard to submission of the defendant that her right to travel/free movement would be violated if this Court were to find that the Courts of England and Wales are better placed to hear the substantive care proceedings, this Court notes that the provisions of the Brussels II bis Regulation were implemented to mitigate the issues arising from free movement policy, where family breakdown and childcare proceedings were the consequence of such movement. In *HSE v. MW & GL* [2013] 2 I.L.R.M 225, the comments of MacMenamin J. on this issue are pertinent (at pg 246, para. 15-18):

> "15. I turn next to the contention that the trial judge failed to consider the law relating to the freedom of movement, or to interpret the Regulation in light of the EU law in this area. Free movement of persons across the Union is, of course, a fundamental right. It is intended as a support for the internal market. This very concept, in fact, influences the manner in which the Regulation operates.
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> 16. The existence of the EU's interest and engagement in family law can be seen from Regulation 1612/68, the case law of the CJEU, the Maastricht Treaty, and the Lisbon Treaty itself. The goal of free movement was supplemented by the transfer of Title IV into the Treaty of Amsterdam, which concerned the free movement of persons, asylum, and judicial co-operation over civil matters with cross-border implications. These policy areas are the basis of the Area of Freedom, Security and Justice within the Union following on the Tampere European Council meeting. The Regulation forms part of this competence, having been issued under Article 65 of the EC Treaty (now Article 81 of the Treaty on the Functioning of the European Union). The Regulation was adopted as a response to some of the problems arising from the free movement policy, where family breakdown and child care orders may unfortunately be consequences. The key purpose of the Regulation is to provide a secure legal environment for families and for children, against the backdrop of free movement of persons.
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> 17. It is simply not possible to juxtapose the right of free movement and the Regulation as if they were in some way in conflict. They are in fact the opposite sides of the same coin. The Regulation arises as a consequence and facilitates the right of free movement of workers and citizens. It is part of the policy which regulates free movement itself
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> 18. The Regulation was required as a result of free movement so as to harmonise rules on the jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. The Regulation applies to all Member States of the European Union, save the exception of Denmark. The Regulation has direct effect and does not require implementing legislation. It contains standardised rules which are to be applied in a uniform manner by the courts across all EU Member States, including the courts in this jurisdiction. The approach adopted by the Irish courts in the application of the provisions of the Regulation will not differ to that approach adopted by the courts in other Member States".

38. Counsel for the guardian ad litem submits that the test in relation to the "better placed court" test within the meaning of article 15 of the Regulation, has been described as intimately connected with the question of whether it is in the best interest of the child that the proceedings be transferred to a court of another member state. Counsel for the *guardian ad litem* directed the Court to *Nottingham County Council v. LM, SD & M (A Child)(by his Children's Guardian)* [2014] EWCA Civ 152, where Ryder L.J. considered the "better placed court" test for the purposes of article 15 of the regulation and held(at para 19-22):

> "19. The question of whether a court of another relevant Member State would be better placed to hear the case (or a specific part of the case) is an evaluation to be performed on all the circumstances of the case. It is intimately connected with the question of the best interests of the child, given the construction of the regulation and the logical connection between the questions. That said, the starting point for the enquiry into the second question is the principle of comity and co-operation between Member States of the European Union enshrined in the European Union Treaty which the provisions of B2R were designed to reflect and implement (see, for example [2], [21] and [23] of the preamble to B2R). In particular, the judicial and social care arrangements in Member States are to be treated by the courts in England and Wales as being equally competent: *Re K (A Child)* [2013] EWCA Civ 895 at [24] per Thorpe LJ.
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> 20. It is entirely proper to enquire into questions of fact that might inform the court's evaluation of whether a court is better placed to hear a case. Without wishing to prescribe an exhaustive list, those facts might include the availability of witnesses of fact, whether assessments can be conducted and if so by whom (i.e. not a comparative analysis of welfare perceptions and principles but, for example, whether an assessor will have to travel to another jurisdiction to undertake an assessment and whether that is a lawful and/or professionally appropriate course), and whether one court's knowledge of the case provides an advantage, for example by judicial continuity between fact finding and evaluation and so on.
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> 21.The evaluation of a child's best interests under Art 15(1) is limited in its extent to the issue of forum i.e. the best interests question asked by Art 15(1) is whether it is in the child's best interests for the case to be determined (or the specific part of the case to be determined) in another jurisdiction. In relation to the same question asked in analogous

circumstances, namely the language of Art 12(3) , whether it is in the child's best interests for a case to be determined in this country rather than elsewhere, the Supreme Court of the United Kingdom held in *Re I (A Child) (Contact Application: Jurisdiction)* 2010 1 AC 319 (per Lady Hale at [36]) that:

> "this question is quite different from the substantive question in the proceedings, which is "what outcome to these proceedings will be in the best interests of the child?" It will not depend upon a profound investigation of the child's situation and upbringing but upon the sort of considerations which come into play when deciding upon the most appropriate forum"

22. This court has previously determined that the construction of the best interests test in Art 15(1) is the same as that in Art 12(3) : *Re K* at [25] and [26] and accordingly the test to be applied to the third question is that described by Lady Hale in *Re I*. It is worth noting that in *Re K* this court rejected the proposition that best interests are an important but not a paramount consideration: per Thorpe LJ at [19] overruling Mostyn J in *Re T (A Child: Article 15 of B2R)* [2013] 2 FLR 909 at [16] to [18]. The decision in Re K is consistent with the attenuated test articulated by Lady Hale and with the preamble to the Regulation at [33], which "recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union :"

39. Counsel for the *guardian ad litem* submits that the starting point for the Court in determining whether another member state court is better placed to hear the proceedings is the principle of the comity of courts and cooperation between member states of the European Union. It was submitted by counsel for the guardian that the principle of equal competency applies in terms of the operation of the judicial or social service arrangements or childcare machinery of the other State.

40. Counsel for the *guardian ad litem* outlined that the guardian is of the view that U.K social services team will be better placed to assess a potential family placement and to organise and assist with sibling and other contact for "R". Moreover, the guardian claims that the Courts of England and Wales are better placed to rule on any or all aspects of these decisions in "R's" interests. In turn, counsel for the *guardian ad litem* highlights that the focus on equal competency of the services and Courts in England and Wales means that concerns as to whether or not further psychiatric or other assessment of the defendant would be ordered, or the range of options available to the Courts of England and Wales, are not appropriate considerations for this Court in the exercise of its discretion pursuant to article 15 of the Regulation.

41. I accept the submissions on behalf of the *guardian ad litem* that the level of previous engagement of the defendant with the Courts of England and Wales and with social services within that jurisdiction, including psychiatric services, makes it clear that the Courts of England and Wales are better placed to hear the substantive childcare proceedings. This is notwithstanding the contention of the defendant that some witnesses may have to travel to England for further child protection proceedings in respect of "R".

42. Therefore, this Court concludes that the Courts of England and Wales are best placed to determine whether the defendant can provide adequate care for "R".

43. The final issue this Court must consider is whether it is in the child's best interests for the case to be determined in another jurisdiction. This Court is of the contention that in analysing the "best interest of the infant" for the purposes of article 15 of the Regulation, the Court is to examine the "best interests" of the infant with regard the appropriate forum to hear the main care proceedings, and not to determine what outcome to the main proceedings will be in the best interest of the child.

44. In considering the "best interests" of the infant for the purposes of article 15 of the Regulation, this Court considers recital 12 and recital 13 of the Brussels II bis Regulation which state;

> "(12.) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.
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> (13.) In the interest of the child, this Regulation, allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court."

45. In the case of *Child and Family Agency v. GH and PH* (Unreported, O'Hanlon J., 5th March, 2015), this Court adopted the approach of the Supreme Court in *HSE v. MW & GL* [2013] 2 I.L.R.M 225 and the Court of Appeal of England and Wales In *Re T* [2014] Fam. 130 on the issue of examining the "best interests" of the child for the purposes of article 15 of the Regulation. In *HSE v. MW & GL* [2013] 2 I.L.R.M 225 and In *Re T* [2014] Fam. 130, both Courts explicitly stated that the remarks of Baroness Hale of Richmond in *Re I (A Child)* [2009] UKSC 10 in respect of Article 12 applied equally to Article 15. In *HSE v. MW & GL* [2013] 2 I.L.R.M 225, MacMenamin J. quoted from para.36 of the judgment of Baroness Hale of Richmond in *Re I (A Child)* [2009] UKSC 10 (at pg 247, para.19 of the judgment of MacMenamin J in *MW*);

> "The final requirement in article 12(3) is that the jurisdiction of the English courts should be in the best interests of the child. Nothing turns, in my view, on the difference between 'the best interests of the child' in article 12(3) , 'the superior interests of the child' in article 12(1) and 'the child's interest' in article 12(4). They must mean the same thing, which is that it is in the child's interests for the case to be determined in the courts of this country rather than elsewhere. This question is quite different from the substantive question in the proceedings, which is 'what outcome to these proceedings will be in the best interests of the child?' It will not depend upon a profound investigation of the child's situation and upbringing but upon the sort of considerations which come into play when deciding upon the most appropriate forum. The fact that the parties have submitted to the jurisdiction and are both habitually resident within it is clearly relevant though by no means the only factor".

MacMenamin J. continues (at pg 247, para.19):

> "These observations are as a propos to art.15 as they are to art.12 of the Regulation. The paramount issue for consideration in these applications therefore is the most appropriate forum to determine the best interests of the child".

46. It is quite clear from the authorities opened to this Court that the "best interest" test contained in article 15 is not a substantive

welfare question but rather a question of appropriate forum. Moreover, the "best interest" test and the "court better placed" test are overlapping in this jurisdiction for the purposes of article 15 of the Regulation. Such a proposition is clear from the judgment of McMenamin J. in *HSE v. MW & GL* [2013] 2 I.L.R.M 225

47. Therefore, this Court finds that it is in the best interests of this child that his eventual care status be determined in the jurisdiction of the Courts of England and Wales. The authorities in the jurisdiction of the Courts of England and Wales have an extensive history of engagement with the defendant herein.

48. This Court finds that habitual residence is entirely relevant for the issue before this Court. Although born in this jurisdiction, the infant herein is a British national and citizen. Moreover, "R" is the child of persons habitually resident in the jurisdiction of the United Kingdom. In addition, this Court finds that the defendant (the infant's mother) came to Ireland in order to avoid the relevant social services in England.

49. This Court concludes that the infant herein has a particular connection with the U.K, and in turn, the Courts of England and Wales are better placed to hear this application. Therefore, this Court finds that it is in the child's best interest to have the question of his care status determined in that jurisdiction.

50. This Court holds that the three cardinal questions posed by article 15 may all be answered in the affirmative in this matter, and therefore grants the order sought in terms of the notice of motion herein.

51. This Court holds that the plaintiff is entitled to the relief sought and will hear submissions in relation to the form of the order required.

52. This Court would like to extend its gratitude to all counsel involved in this case and is very appreciative of the extensive submissions made by all parties.