Neutral Citation: [2013] IEHC 460

THE HIGH COURT

FAMILY LAW

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

AND IN THE MATTER OF H.G. (A MINOR)

Record No. 2013/28 HLC

Between/

C.G

Applicant

-and-

M.G

Respondent

Judgment of Ms. Justice Iseult O'Malley delivered on the 13th August, 2013.

Introduction

1. The applicant and respondent are, respectively, the father and mother of the child named in the title as H.G. The child was born in France on the 14th July, 2008 and is now five years old.

2. The applicant seeks an order pursuant to Article 12 of the Hague Convention on Child Abduction for the return forthwith of H. to France and a declaration that the respondent wrongfully retains H. in this jurisdiction contrary to Article 3 of the Convention.

3. The applicant does not, in this case, allege wrongful removal of the child. However, he contends that she has been wrongly retained in Ireland by the respondent since the 5th March 2013, without the consent of the applicant and without lawful authority to do so, contrary to an order of the Court of Appeal of B-, Sixth Civil Division made on that date.

4. The respondent resists the application on two grounds: that the child H. is, and was immediately before the 5th March 2013, habitually resident in Ireland; and that she would if returned to France be at "grave risk" of psychological harm.

Factual background

5. The applicant is a French national. The respondent was born in England of Irish parents. Her mother and sister reside in County-. The parties met in France, where the respondent owned a holiday home. They began a relationship in about 2006 and were married, in France, on 24th May 2008. As noted above, the child H. was born on 14th July 2008.

6. The relationship deteriorated thereafter and the respondent submitted a petition for divorce on the 17th November, 2008. The parties were finally divorced from each other on the basis of mutual fault on the 2nd day of April, 2012.

Judgments of the French Courts

7. For the purposes of this application the court is mainly concerned with certain orders made in 2012 and 2013. To help put the matter in context, however, the earlier proceedings may be summarised as follows:

- 3rd March 2009- The Family Court Judge of the Court of A- observed that the parties agreed to the joint exercise of parental authority. The judge provisionally ordered that the child reside with the respondent whilst ordering that the applicant have contact and accommodation rights.

- 7th April 2009 -The Family Court Judge of the Court of A- ruled that the child reside with the respondent and extended the provisional measures regarding the contact and accommodation rights of the applicant.

- 20th April 2009- The respondent went to Ireland with the child. This appears to have been in breach of the order regarding access. She was summoned back to France for a hearing before the Family Court Judge of the Court of A- on 27th May 2009. She also appears to have been prosecuted for failing to present the child for access and received a one month suspended sentence.

- 11th June 2009 - The family court judge transferred the residence of the child to the applicant until the filing of expert psychiatric and psychological reports. The judge ordered that the respondent would have contact and accommodation rights at specified times. The judge also made an order prohibiting the removal of the child from the jurisdiction without the permission of both parents until a new ruling was made or for two months.

- 8th December 2009 -The Court of Appeal of B- annulled the order of 11th June 2009.

- 30th March 2010- The procedural Judge provisionally ordered the habitual residence of the child with the respondent. The judge ordered that the applicant should have contact and accommodation rights with the child in Ireland at specified times over a period of three months until the expert reports were filed. The expert reports were filed on 31st May 2010

and 22nd June 2010.

• 3rd May 2011- The Court of Appeal of B-, ruling on the appeal against the ruling of 30th March 2010 and after a consideration of the expert reports, ordered that the child reside with the applicant by 15th May 2011. The judge ordered that the respondent should have access and accommodation rights as agreed by the parties or in the absence of an agreement, every other weekend and for half the school holidays. The court noted that the applicant agreed to offer accommodation to the applicant in France so that she could exercise her rights of contact and accommodation. The court also noted that the applicant agreed to pay the costs of installing a Skype internet communication system in the respondent's residence to facilitate the maintenance of the relationship with the child. This order was complied with by the respondent, who brought the child from Ireland to France on the 22nd May, 2011. The applicant appears to have returned the child to the respondent after a short period of time.

• August 2011 - The respondent again returned to France with the child and the residence of the child was transferred to the applicant.

• 12th October 2011- The procedural Judge dismissed the respondent's request for a transfer of residence and for alternate residence. The judge also dismissed the respondent's request for a "social inquiry" and ordered that in addition to the contact and accommodation rights already in place, the respondent could see the child at further specified times on the condition that she provide evidence of having a home in France.

• 22nd March 2012- The respondent went to a police station to report indecent assault by the applicant on the child. The inquiry was not taken any further. The respondent categorically denied the accusations and filed a complaint with the investigating magistrate of P- for false accusations on 16th August 2012. It seems that similar allegations have been made in this jurisdiction to the Health Service Executive.

8. On the 2nd April 2012 the Family Court Judge of the Court of A- pronounced a divorce of the parties and ordered that it be effective from 7th April 2009. The judge ordered that parental authority be exercised jointly by both parties and ordered that the habitual residence of the child be with the respondent. It is necessary to refer to this ruling in some detail.

9. The divorce was granted on the basis of mutual fault, each party having been found to have used verbal violence against the other.

10. The court considered that it would be in the interest of the child to transfer her habitual residence to her mother, the respondent. This transfer was to be progressive and was to take effect from the 7th July, 2012. Arrangements for the intervening period were stipulated, with H.'s residence provisionally set on a staged basis. As to what was to happen after that date the court said as follows:

> *"From 7th July 2012, the residence of the child will be set at the domicile of the mother, and the father will benefit from a right to access and receive visits from the child every second weekend from Friday at 18h00 to Monday morning when school starts in the case where the mother remains on French territory.*
>
> *Concerning the authorisation sought by the mother to leave the national territory to return to Ireland, it was not contested that Mrs. G. has difficulty speaking French, that she has no professional activity in France and that her sole income was limited to the maintenance paid by her husband until the divorce was granted.*
>
> *Moreover, it is appropriate to recall that the principle of free movement remains and that restrictions relating to choice of place of residence are contrary to the fundamental freedoms as defined in the European Convention on Human Rights in which can be found among the rights and freedoms protected by the Convention: "the right to freedom of movement and the right to choose one's residence': article 2 of Protocol no. 4 to the Convention also providing that "whosoever is regularly situated in the territory of a State has the right to travel there freely and to freely choose his/her residence. Anybody is free to leave whatever country, including his own.*
>
> *Consequently, it is necessary to permit Mrs. G. to set up residence in Ireland. The principles quoted above must be reconciled with the necessary preservation of contact between the child and her father and her paternal family through rights of access and to receive visits from the child appropriate to the age of the child and the geographical distance.*
>
> *Therefore, rights to access and to receive visits from the child one weekend per month and for all of certain school holidays are likely to preserve the links binding H. to her father and her paternal family in the sense recommended by the experts.*
>
> *In the event of departure of the mother to Ireland, the father will have a right of access and to receive visits from the child until the child is 5 years old:*
>
> > *In Ireland, one weekend per month, from Friday evening to Sunday evening with the father being responsible for respecting a notice time limit of 15 days,*
> >
> > *In France, all of the autumn (October/November), winter (February) and Easter school holidays, and the 1st half of the Christmas and summer holidays in odd years, alternating annually.*
>
> *...It is appropriate to firmly remind Mrs. G that the fixing of the residence of the child at her domicile is not an advantage conceded to her but a measure which has been taken solely in the interest of the child which is assessed notably with regard to her availability, the young age of the child who has been raised mainly by her mother during her first years and who needs mothering and her capacity to respect the relations between the father and the child so that she is obliged, in her capacity as mother and in the interest of the future equilibrium of the child, to see to it that the latter retains close links with her father and her paternal family."*

11. The order envisaged that when H. reached the age of five she would be old enough to travel alone on a flight and she was therefore to be put on the plane by the respondent at X airport, with the applicant collecting her in France and bringing her back for the return flight to X.

12. The court also made provision for maintenance of H. by her father up to the age of majority, or longer if she was not able to support herself and was engaged in studies.

13. On the 23rd April 2012 the applicant lodged an appeal against the ruling of the 2nd April 2012.

14. An application, lodged on the 5th June, 2012, for a stay on the immediate enforceability of the part of the ruling authorising the respondent to go to Ireland with the child was refused on the 5th July by the First President of the Court of Appeal. It appears from the ruling on that application that it had been contended that the lower court had failed to consider the greater interest of the child; had considered only the position of the mother and that the distance involved constituted a risk of manifestly excessive consequences in that the child would become detached from her father.

15. In rejecting the application, the First President held that the trial judge had put the interest of the child at the centre of his reasoning and that he had envisaged the consequences of the distance on the relations. The judgment goes on:

> *"Consequently, subsidiary, it will be explained that in entering into marriage, a man and a woman of different nationalities necessarily envisage for themselves and their children travel between their two countries of origin. In consideration of the speed of transport, the distance of a child who would reside in Ireland remains very relative and does not in itself constitute an obstacle to quality relations with the parent living in France. As a consequence, the principal residence of the child in the country of origin of her mother does not constitute a risk of manifestly excessive consequences."*

16. On the 11th July 2012 the respondent returned to Ireland with the child and has remained here since. They are living in a rural area, not far from the applicant's mother and sister. H. has attended school for the past year. According to reports from a general practitioner and a child psychologist, she is well settled in school.

17. After a hearing on the 22nd January, 2013, in a ruling delivered on the 5th March 2013, the Sixth Civil Division of the Court of Appeal of B- overturned the judgment of the 2nd April 2012 relating to the residence of the child and the contact and accommodation rights. The Court confirmed the joint exercise of parental authority and ordered that the child should reside with the applicant with specific contact and accommodation rights for the respondent. The court's reasons included the view that the respondent had not shown herself capable of protecting the child from the consequences of the conflict between the parties and that she had used unfair means (including the previous removal of the child to Ireland without consent or legal authorisation and the making of unsubstantiated accusations against the applicant) which could only have an adverse effect on H.

18. The summons herein was issued on the 29th May, 2013.

19. At a hearing before the family court in N- on the 2nd July, 2013 the applicant sought an order transferring parental authority to him exclusively and prohibiting the removal of H. from France. The respondent raised two procedural objections to the application, both relating to the then pending proceedings before this court. The objections were rejected, the judge considering that the matter before the Irish court did not concern the "substance of the custody" and that there was no risk of a conflict between the courts because the Irish court

> *"would not appear to have competence to judge on the return or not of a child of whom the usual residence, therefore the substance of the case, has been fixed by appeal to France, by a very recent decision."*

20. The court therefore proceeded to order the return of H. to her father's home in France, granted him exclusive parental authority and forbade her exit from French territory without his consent.

Issues in the case

21. While the question of "grave risk" of exposing the child to "physical or psychological harm" or otherwise placing the child "in an intolerable situation" has been raised, it was not really argued at the hearing. The burden is on the respondent to establish the existence of such a risk, and this burden is a heavy one- see *C.K v. C.K* [1994] 1 I.R. 250.

22. I have considered the reports of H.'s general practitioner and the child psychologist. They confirm H.'s attachment to her mother and consider that she does not have such a relationship with her father. She becomes "sad" when the topic of France is raised and has in the past exhibited problem behaviour on returning from there. However, while they are clearly of the view that it would be preferable for H. to stay with her mother, there is no material before the court that would justify a finding of "grave risk" beyond the inevitable disruption that such a situation will cause to a small child.

23. It must also be pointed out that at least some of the reports put before the French courts, before the removal of the child to Ireland, did not find a problem with the relationship between the applicant and H. If that has changed, it may be that the respondent is to some degree responsible - there is certainly serious cause for concern as to what has happened in relation to the access situation since the removal - but I make no findings in this regard.

24. The real issue in the case is the child's habitual residence.

The Convention and Regulation

25. Article 3 of the Hague Convention provides as follows:

> *The removal or the retention of a child is to be considered wrongful where-*
>
> *a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
>
> *b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*
>
> *The rights of custody mentioned in sub-paragraph a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.*

26. Article 12 provides in relevant part that

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment."

27. Article 18 stipulates that the general power of the court to order the return of the child at any time is not limited.

28. Council Regulation 2201/2003, which governs the application of the Convention as between EU member states, defines "wrongful removal or retention" as meaning a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility."

29. The relevant jurisdictional provisions are set out in Articles 8 to 11. Article 8 provides, under the heading "General Jurisdiction", that the courts of a Member State have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised. It is important to stress that this general provision is to be read subject to Articles 9, 10 and 11 of the Regulation.

30. Article 9 makes provision for the situation where a child moves lawfully from one Member State to another and acquires a new habitual residence there. In that case

"...the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.

31. Article 10 stipulates that in a case of wrongful removal or retention

".. the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention."

Application of the Convention and Regulation to the instant case

32. It is well-established law that habitual residence is a question of fact depending on the evidence in the case.

33. It is common case that the removal of the child H. from France to Ireland in July of 2012 was not wrongful, in that it was expressly authorised by the order made in April, 2012. Counsel for the applicant argues, however, that the retention of H. after the judgment of the Appeal Court on the 5th March, 2013 was wrongful within the meaning of the Convention. For this argument to succeed, the "rights of custody" relied upon must be those acquired by the applicant by virtue of that judgment (there being no question of such rights arising by operation of law or by an agreement having legal effect). It is therefore necessary for him to establish that the habitual residence of the child was in France "immediately before" the allegedly wrongful retention: that is, immediately before the ruling of the appellate court. He submits that it was, on the basis that although the removal was lawful, it must be regarded as not having changed H.'s habitual residence. This contention is in turn based on the proposition that the April 2012 order was provisional or, alternatively, that it was subject to the applicant's right of appeal. In these circumstances, it is claimed that the respondent's intention must itself be regarded as provisional or conditional upon the outcome of the appeal.

34. Undoubtedly, some of the earlier orders in the French proceedings were temporary in effect and were frequently expressed to be

provisional. However, looking at the terms of the April 2012 judgment and order, I can see no indication that it was intended to be in any sense interim, temporary or provisional. It sets out a phased time-table for the transfer of custody in a process that was to culminate on the 7th July, 2012. It expressly authorises the respondent to take the child to Ireland thereafter and envisages that this will be for an indefinite period. There is a careful determination as to how access is to be managed as between France and Ireland. It is, in my view, a final order, although subject in the ordinary way to appeal.

35. Article 9 is the provision dealing with an extension of the period of time within which the courts of the original Member State retain jurisdiction after a lawful removal. The period of time is fixed at three months. In this case, a n application for a stay was made, within the three month period, but it was refused by the First President of the Appeal Court in July, 2012. There was therefore no order modifying the April 2012 judgment made within three months of the removal.

36. Article 10 provides that the courts of the Member State of origin will retain jurisdiction in the event of a wrongful retention unless certain conditions are met, none of which apply in this case. However, Article 10 is in any event only applicable where the removal or retention is established to be wrongful.

37. The question then is whether the exercise by the applicant of his right of appeal could have the effect of preventing a change of habitual residence after an otherwise lawful removal, so that the French courts retained jurisdiction and the non-compliance with the March 2013 order amounted to wrongful retention.

38. This point does not appear to have arisen before in this jurisdiction. Counsel for the respondent relies upon the recent decision of the English courts in *DL v. EL* [2013] EWCA Civ 865, delivered on the 16th July, 2013.

39. The case concerned a removal from the United States of America to England, and was, therefore, governed by the Convention only, without reference to the Regulation. Counsel for the applicant in the instant case seeks to argue that for this reason it is not relevant. However, it will be seen that the reasoning of the decision was in part based on the interpretation of the Regulation and a desire not to take differing approaches to EU and non-EU cases.

40. The history of the litigation is complicated but for present purposes I think it can be summarised in the following lines.

41. The parents were separated with divorce proceedings pending. The mother brought the child to the UK and succeeded in obtaining indefinite leave to remain. The father subsequently obtained an order from the Texas court granting him exclusive rights to designate the child's residence. The mother complied with and did not pursue an appeal against this order but rather, a considerable time later, filed a petition in Texas relying on the Hague Convention. She alleged that the child had been habitually resident in England and that the father's retention of him on foot of the Texas order was a wrongful retention for Hague purposes. She succeeded in this; an order was made requiring the father to deliver over the child and he was returned to England. No stay was sought but the father lodged an appeal against the Hague order about a month after the child had departed. The mother did not participate in the appeal.

42. For the next ten months the parties litigated in England in relation to custody and access issues. The United States Court of Appeal then decided the appeal in the father's favour, with a reversal of the Hague Convention order on foot of which the child had been sent to England and a finding that he had been habitually resident in the USA at the relevant time. As a result of this the Texas judge, apparently of his own motion, made a declaratory order that the child must be returned to Texas.

43. The father the sought relief under the Convention in the English courts. The mother contested the application on the basis, *inter alia*, that the removal of the child from the USA to England had not been wrongful because it was done in compliance with the order of the court, albeit that the order was successfully appealed. It was further argued that the subsequent retention of the child was not wrongful because he had become habitually resident in England by the time of the appeal hearing.

44. In the High Court, Singer J held that the question of wrongful removal had to be considered as of the date of the removal and therefore that the court sanctioned removal from the USA did not breach the father's rights of custody.

45. The judge then went on to consider whether, in the circumstances of the mother's non-compliance with the order to return the child to the USA, there had been a wrongful retention. In his view, it could only be such if the child was habitually resident in the USA at the time of the appeal. He concluded that, as a matter of fact, the child had by that time become habitually resident in England.

> *"His practical ties with America were sundered. He was not only resident here but firmly so for what, the vagaries of life apart, looked likely to be an indefinite but by no means necessarily brief or delimited period".*

46. Singer J noted that the mother and child had the right to remain in England and that the mother, plainly, was no longer habitually resident in Texas but on any reading had become habitually resident in England. He could not accept the proposition that the child's Texan habitual residence

> *"was somehow fixed in aspic and held in suspense for the year during which the Hague return order was subject to pending appeal. That proposition would introduce a legal figment into what has so often been described as essentially a factual question."*

47. In so finding, the judge said that he was rejecting the submission that it would be consistent with the purposes and philosophy of the Convention to determine that a removal prior to the exhaustion of the appeals process did not cause a change in the child's habitual residence.

> *"Apart from the artificiality of stopping time in a situation where time's passage is a component of the transfer or acquisition of habitual residence, this would produce a sharp contradistinction between Hague practice and that which operates in a situation where the Brussels II Revised Regulation applies. I have in mind the provisions of the code concerning parental responsibility comprised in articles 8 to 15 of the Regulation. Article 8 lays down the general rule that in cases within its scheme the habitual residence is the foundation a/jurisdiction. Article 10 sets out a series of considerations, compliance with any one of which leads to a shift of jurisdiction away from the state which, before an abduction, was where the that it operates upon the basis that a child may acquire a changed habitual residence before jurisdiction shifts: whereas the outcome contended for by [the father] in this case would prevent habitual residence changing in analogous circumstances. This would be to open a chasm in the operation of the Hague Convention because article 60 of the Brussels II Revised Regulation stipulates that it takes precedence over the Child Abduction Convention "in relations between Member States"...such a result I suggest all would agree, would be profoundly regrettable and is therefore by any possible means to be averted. Thankfully it can be so, by rejecting the "let us wait and see what*

happens on appeal approach"..."

48. In the appeal against the decision of Singer J, counsel for the father argued *inter alia* that, having regard to the fact that the mother knew of the appeal against the Hague order and did not oppose it, the child's presence in England was never more than provisional or transient. He further contended that the removal was wrongful once the appellate decision removed its lawfulness. This, he said, was because the father had rights of custody under the previous order and would have exercised them but for the removal.

49. The Court of Appeal rejected these arguments, holding that the child's departure from the USA was a lawful removal pursuant to the order of a court of competent jurisdiction and that the child had, in all probability, acquired habitual residence in England by the date of the filing of the father's appeal. The Court said that it was

> *"artificial, indeed almost fanciful, to label his residence here between summer 2011 and summer 2012 as conditional upon the outcome of the father's appeal and therefore transient."*

50. In relation to the second argument the court held that Article 3 did not support the assertion that the effect of the appellate decision was to render the removal unlawful. In fact, the court considered, the Convention "*was never foreseen or intended to be used*" in such circumstances.

Discussion and conclusions

51. In my view the logic of the reasoning in the above-cited case is compelling and I intend to adopt it. On the facts of this case, the removal of H. from France to this State in July, 2012, after the decision of one French court permitting her to do just that and of another refusing a stay, was lawful.

52. That being so, there is nothing about the concept or definition of "habitual residence" that could prevent it from being changed. H.'s habitual residence was not "fixed in aspic" nor rendered conditional by the fact that the respondent had lodged an appeal. I agree with Singer J. that to hold otherwise would be to introduce a legal figment into what is essentially a factual question. I further agree that the Regulation envisages that the habitual residence of a child may change before jurisdiction shifts. It seems to me that Article 9 is specifically intended to deal with such a situation where the removal has been lawful. Where its applicability has ceased after the expiry of three months, I do not see how any notional suspension of alteration in habitual residence can be read into the Regulation.

53. I have regard to one difference between this case and *DL v EL*, which is that in the instant case the appellate court was seised within the meaning of Article 8 before the removal took place. However, Article 8 is subject to Article 9, which is the article governing lawful removals and which sets out a three months limit for modification of a judgment. It seems to me that the consequence of this is that where there is a lawful removal pursuant to a court order, there must either be a stay on that order or the appeal process has to take place within three months.

54. The issue in this case is, then, to be decided in the normal way- that is, by looking at the factual reality of H.'s life. There can be no doubt but that her mother is no longer habitually resident in France, but in this State. That is the logical outcome of the factors identified by the French court as reasons for her not wanting to remain in France. The reality of H.'s day-to-day life is that it too is centred here. In my view she is habitually resident here, and probably has been since her mother took her here with the intention of settling here. That process took place with the full permission of the French court, which gave to the respondent the right to decide whether the child should live in France or Ireland.

55. I appreciate, as did Singer J., that this may cause a dilemma where a court of first instance makes a final order permitting one parent to take the child out of the jurisdiction. If a stay is to be granted in all such cases, the intent of that court may be, at least for some period of time, frustrated unnecessarily. If the stay is not granted, the intent of an appellate court may be frustrated because the passage of time in dealing with the appeal may lead to a change in habitual residence on the part of the child. It may be that the only answer is to either grant a stay or to ensure that appeals are dealt with swiftly.

56. The decision on this application does not dispose of the issues between the parties. It is simply a determination that the case is not one amenable to the principle of summary return under Article 12. I will therefore hear the parties as to what should happen hereafter.