

THE HIGH COURT

[Record No: 2015/1139P]

**IN THE MATTER OF L.T. (A MINOR), BORN ON THE 1st OF OCTOBER 2014 AND IN THE MATTER OF THE CHILDCARE ACT 1991 (AS AMENDED) AND IN THE MATTER 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 AND IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT**

**BETWEEN:**

**CHILD AND FAMILY AGENCY**

**PLAINTIFF**

**AND**

**C.C AND D.T**

**DEFENDANTS**

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

1. The proceedings were issued by way of notice of plenary summons in this jurisdiction by order dated the 11th February, 2015. By further order granted on an ex-parte application, dated the 25th February, 2015, this Court granted the following orders:

- (a). An order pursuant to Order 52, rule 11, or in the alternative pursuant to Order 122, rule 7 of the Rules of the Superior Courts 1986, abridging time for service of the notice of motion to 10.00am on the 12th of March, 2015.
- (b). An order pursuant to Order 10, rule 1 of the Rules of the Superior Courts 1986, granting the plaintiff leave to serve the within proceedings on the defendants by means of email.

2. Given the urgency of the situation presented, the time for filing of an appearance by the defendants in the proceedings was abridged to two weeks. Costs of the proceedings were reserved, and liberty to apply was granted.

3. An affidavit of service of the proceedings has been filed.

4. The notice of motion came before this Court for hearing on the 19th March, 2015. At each hearing of these proceedings, this Court granted an order pursuant to s.45 of the Courts (Supplemental Provisions) Act 1961, prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would be likely to identify “L.T.”, a minor born on the 1st October, 2014.

5. It is clear from the affidavit evidence and the submissions tendered by counsel for the plaintiff, that the defendants are British citizens who moved to Ireland from the United Kingdom in advance of the birth of their daughter, “L.T.”. “L.T.” was born on the 1st October, 2014.

6. The motive for the defendant’s relocation was to ensure that their daughter was born in this jurisdiction. On the 1st of October, 2014, “L.T.” was born in the Rotunda Hospital, Co. Dublin, Ireland. The defendants have children who have been taken into care in the United Kingdom.

7. In this jurisdiction, hospital personnel contacted the Child and Family Agency in relation to concerns they had at the time of the birth of “L.T.”. It became apparent to the plaintiff that the defendant had travelled to Ireland from England preceding the birth of “L.T.” so as to avoid imminent care proceedings being brought in respect of the aforesaid minor in England.

8. The defendants were absent for seven schedule access visits with “L.T.” following her birth and such absences occurred up until the end of December 2014. They have not attended any visits by way of access with “L.T.” in this current calendar year.

9. The infant, “L.T.” is currently five months old. An application was made to this Court for the transfer of the public law proceedings in respect of “L.T.” to the High Court of England and Wales.

10. In this jurisdiction, the plaintiff sought an interim order in respect of “L.T.” on the 9th February, 2015, which was granted and extended to the 9th March, 2015. The aforesaid order was extended further to the 1st April, 2015.

11. The District Court appointed a *guardian ad litem*, Ms. Carmel Murphy. Ms. Murphy was subsequently appointed as *guardian ad litem* in the High Court proceedings herein.

12. The plaintiff submitted that the first named defendant has physical and mental health issues. Moreover, the plaintiff highlighted to the Court that the first named defendant is over medicating with morphine for her condition. As a result of such over medicating, “L.T.” was born with an addiction to morphine, but treatment has been administered in respect of same.

13. Counsel for the plaintiff submits that the first named defendant also has serious psychological issues. In particular, the plaintiff submits that the first named defendant suffers from Hysterical Personality Disorder and Somatoform Disorder. It is further submitted to this Court that the first named defendant has another child who was taken into care because of the defendant’s physical and psychological difficulties, which hindered her parental functions. Moreover, there was neglect and physical chastisement on behalf of the first named defendant, which was deemed inappropriate in relation to the age of the child.

14. It was further submitted that the second named defendant did engage with social services in this jurisdiction, and took the position that he should be assessed in this jurisdiction to reassess his parenting abilities, given that he had children taken into care in

England previously.

15. The defendants were accommodated in a hostel type accommodation (dormitory style) in this jurisdiction. The defendants returned to England for the purposes of accessing social services monies and for medical treatment.

16. It was further submitted to this Court that both parties were British citizens, and that the appropriate test to be applied is an attenuated "best interests" test given that the parents of "L.T." are habitually resident in England.

17. It was submitted that the infant "L.T." has been effectively abandoned in this jurisdiction and that matters dealing with her future care should be transferred to the Courts of England and Wales. It is proposed that such a transfer is the best mechanism for ensuring that "L.T.'s" rights are vindicated under the Irish Constitution 1937.

18. It is submitted to this Court that all material relevant to the current proceedings should be transferred to the respective solicitors for the parties so that the relevant material would be made available to the Courts of England and Wales.

### **The legal issues**

19. Both counsel referred to the legal issues in their submissions and the guardian ad litem's counsel helpfully supplied written submissions. These addressed the general jurisdiction of the Court pursuant to article 8 of Council Regulation (EC) No: 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility which sets out:-

"1. The courts of a Member State shall 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.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12."

20. It is submitted by Counsel for the *guardian ad litem* that article 8 of the Regulation provides that the Courts of a member state shall have jurisdiction over matters of parental responsibility concerning a child who is habitually resident in that member state at the time the court is seised. In this case, the District Court was seised with these proceedings on the 9th of February, 2015. It was proffered by Counsel for the *guardian ad litem* that "L.T." could be said to be habitually resident in Ireland, having been born in this jurisdiction, and having never been present in the jurisdiction of England and Wales. However, this Court must take cognisance of s.2(1)(a) of the British Nationality Act 1981, which would establish that "L.T." was a born a British citizen by descent.

21. Article 15 of the Regulation deals with a transfer to a court better placed to hear the case. Article 15(1)-(3) of the Regulation sets out as follows:-

"1. 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:

(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

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court's own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where 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."

22. Notably, article 15 of the Regulation stipulates that the child should have "a particular connection" to the other member state. In particular, article 15(3) of the Regulation provides five means by which a particular connection with a member state can be established. Article 15(3)(c) of the Regulation applies in the present case in that the United Kingdom is the place of the child's nationality. Article 15 operates as an exception to article 8 so that the fact that "L.T." is potentially habitually resident in Ireland does not prevent a transfer of the child from this jurisdiction to the United Kingdom under article 15 of the Regulation. In this case, the provisions and mechanisms of article 15 of the Regulation may be invoked as an exception to the general rule that the courts of the child's habitual residence exercise jurisdiction.

23. This Court notes the case of *HSE v. W & Anor* [2013] 2 I.L.R.M 225, where McMenamin J. cited with approval the judgment of

Mostyn J. in *Re T (Care proceedings: Request to assume jurisdiction)* [2013] EWHC at 521 (Fam). In *HSE v. W & Anor*, McMenamin J cited para. 24 of the judgment of Mostyn J. in *Re T* which dealt with the issue of appropriate jurisdiction(at pg: 248):-

"24. Therefore pulling the threads together it seems to me that the applicable principles are as follows:

- i) Article 15 applies to public law as well as private law proceedings.
- ii) As a precondition the court must be satisfied within the meaning of Article 15(3), that the child has "a particular connection" with the relevant other member state.
- iii) The applicant must satisfy this court that the other court would be better placed to hear the case (or a specific part thereof). In making this evaluation the applicant must show that the other court is clearly the more appropriate forum.
- iv) In assessing the appropriateness of each forum, the court must discern the forum with which the case has the more real and substantial connection in terms of convenience, expense and availability of witnesses.
- v) If the court were to conclude that the other forum was clearly more appropriate, it should issue the transfer request and grant a stay unless other more potent factors were to drive the opposite result.
- vi) In the exercise to be conducted at (iii) – (v), the best interests of the child is an important, but not the paramount, consideration.
- vii) In making the best interests analysis at (vi) the court will not embark on a profound investigation of the child's situation and upbringing but will dwell in an attenuated inquiry upon the sort of considerations which come into play when deciding upon the most appropriate forum."

24. Counsel for the *guardian ad litem* directed the Court to the High Court judgment of Birmingham J in *HSE v. W & Anor* [2013] 2 I.L.R.M 225, where the Court considered issues such as the potential for conflict with the child's parent, sibling access, and the options available to the determining court in assessing the child's best interests. In the Supreme Court, McMenamin J. approved these considerations.

25. It is the view of this Court that the infant herein was born in this jurisdiction in circumstances where her parents, the defendants, came here to avoid public order proceedings which were not at that time in being, but were anticipated. It is noted by this Court that the defendant's habitual residence lies in England and Wales.

26. Based on the findings of this Court that the nationality of this child being British by descent, this Court takes the view that the best interests of "L.T.", who has been effectively abandoned in this jurisdiction since January 2015, are best served by the matter being transferred to the Courts of England and Wales. This Court takes the view that the Courts of England and Wales are best placed to deal with these proceedings.

27. This Court notes that there were difficulties, as set out in the affidavit of the instructing solicitor for the plaintiff, serving the parties and liberty was given specifically to serve them by email and while notwithstanding that a full affidavit of service has been made available to the Court, it is clear that no appearance was entered, nor did the defendants ever appear before this Court for these proceedings.

28. The *guardian ad litem* has set out that the current foster placement is excellent and meeting the child's needs. However, she further points out that issues such as access to child's extended family and the issue of availability of evidence to determine what is in "L.T.'s" best interest weigh in favour of "L.T.'s" care proceedings being heard by the Courts of England and Wales.

29. This Court finds that the habitual residence of the defendants has never changed, and remains in England. The child's habitual residence must be that of the defendants. In turn, this Court finds that "L.T.'s" habitual residence lies in the jurisdiction of England and Wales.

30. This Court notes that it is in the best interests of the infant herein that this case, by way of exception, should be transferred to the Courts of England and Wales given that both the defendants are British citizens and also on the basis of the applicability of article 15(3)(d) of the Regulation in that it is noted that the defendants' habitual residence lies in England. In addition, this Court finds that the provisions of article 15(3)(c) of the Regulation apply, and that these matters should be dealt with in the place of the child's nationality.

31. Therefore, this Court is disposed to making the orders sought in terms of the draft order furnished. Moreover, this Court lifts the in-camera rule so that all materials pertinent to the relevant parties in England, including the High Court of England and Wales and the respective solicitors of the parties, be made available so that the best interests of "L.T." can be fully considered in that jurisdiction. This Court appends the order made on the 19th March, 2015 hereto.

32. The costs of these proceedings are reserved over to the 7th May, 2015, with liberty to apply.

33. Therefore, this Court requests that the Courts of England and Wales accept jurisdiction in this case.