

THE HIGH COURT

FAMILY LAW

[2017 No. 17 HRC]

**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 EU COUNCIL REGULATION 2201/2003

AND IN THE MATTER OF K.M.U. A CHILD

AND IN MATTER OF R.M.U. A CHILD

BETWEEN

M.U.

APPLICANT

AND

N.R.

RESPONDENT

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 11th day of December, 2017

1. This is a case in which the applicant, the father of two boys aged 11 and 9, seeks the return of the children to the jurisdiction of England and Wales, pursuant to the Hague Convention and Civil Aspects of International Child Abduction (hereinafter "the Hague Convention") and under Council Regulation 2201/2003. The issues raised in this particular application include the question of whether the "settled" defence in article 12 applies; whether the father was exercising custody rights at the time of the removal of the children; whether the children object to being returned to the jurisdiction of England and Wales; and whether there would be a grave risk to the children if they were returned to England and Wales.

2. There is a conflict of fact as to when precisely the mother arrived in Ireland with the two boys. The father says that he did not know where she was for much of 2016 and the early part of 2017, and only definitively learned that she was living in Ireland with the children in March, 2017, when this was disclosed in the course of divorce proceedings in the English courts. The mother says that she moved to Ireland with the children in March, 2016. This matter is relevant to a number of issues in the case, and it is therefore necessary to examine the chronology in some further detail and for the Court to decide this issue of fact before proceeding to the legal issues in the case.

Relevant chronology

3. The applicant and the respondent were married in Bangladesh in 2005. They had two children, K.M.U. and R.M.U in 2006 and 2008. The mother and father separated in or around May, 2015.

4. The respondent avers that she was subjected to physical, sexual, verbal and mental abuse at the hands of the applicant and his family throughout her ten-year marriage. She makes some very serious accusations in this regard. She also averred that the children had witnessed incidents of physical, verbal and mental abuse and she said that her eldest child sometimes refers to this. She also says that the applicant was verbally abusive towards the children. As will be seen, the children in their interviews with the child psychologist discussed below did not confirm these matters. She said that she contacted the police three times during the marriage due to his physical abuse but that on each occasion she withdrew her complaint upon receiving pressure from the applicant and his family to do so.

5. On 23rd June, 2015, more than a month after they separated, the respondent was granted a non-molestation order by an English family court. The respondent applied for this order on an *ex parte* basis initially, and the order was subsequently made, after notice had been given to the father, on a consent basis. The duration of the non-molestation order was one year. Shortly after this order was granted, the respondent left England with the children and travelled to Bangladesh. She says that she was advised by the court to find somewhere safe to live. The applicant says that she left without his knowledge or consent and that he filed a missing person's report, as a result of which the police established her whereabouts. She returned to England and was detained by the police in respect of the removal. The respondent says that she returned voluntarily and that the applicant had made false allegations about her to the police, and that when interviewed by the police, she was then released. She says she believes that he knew she travelled to Bangladesh and that despite this he informed the authorities that she had abducted the children, that she was a terrorist and that she was taking the children to Syria. She says that while in Bangladesh, she was contacted by her solicitor in England who told her about these matters, and she immediately contacted the authorities in Bangladesh and spoke to the police in the UK. She said that she would then present herself at a police station on her return, which she did on 1st August, 2015. She said that she was arrested for alleged child abduction and questioned for a number of hours, as were the children. She was ultimately released without charge. She also says that she had purchased a return ticket from London to Bangladesh.

6. The respondent says that after staying in temporary accommodation for 5 days, she moved to a refuge on or about 6th August, 2015. She says that the applicant, after her return to London, started calling her via a number of smart phone applications, which she was advised was in breach of the non-molestation order. She says that in or about September, 2015, the applicant started writing offensive material about her on a social media app. She says that in October, 2015, she contacted the police in relation to this. She says on 14th October, 2015 the applicant wrote to the court seeking that the non-molestation order be rescinded. She says that she attended before the Family Court on 3rd November, 2015 in relation to this and swore a written statement. The applicant

then withdrew his application to discharge the non-molestation order. She says that while she was residing in the refuge with the children from August, 2015 until February, 2016, the applicant was fully aware of her address. She says that she moved in February, 2016 to rental accommodation and that the applicant was also fully aware of her address, as was his brother, who tried to contact her by mobile telephone during the time she lived there. The applicant avers that he did not know where she was living, and counsel on his behalf pointed out that a statement of the respondent made on 23rd December, 2015 to the English Court withheld her address, and that and in the body of the statement she said that she was residing in a refuge at a confidential address.

7. In her sworn affidavit in the present proceedings, the respondent mother averred that that she came to Ireland in March, 2016 and has been living here since with the two children. She says that she lives with her new partner and that she assists with him in the running of a business, which is in the nature of a fast food type shop. She now also has a one-year-old baby as a result of this new relationship. She says that the two adults, herself and her partner, the two boys in issue in these proceedings and the new baby all live together happily as a family unit in Ireland.

8. The respondent issued divorce proceedings in England. It appears from the English High Court Order dated 13th June, 2017 that she lodged her divorce petition dated 12th August in which she relied on her own residence in England; and that in a signed statement dated 21st December, 2016, she gave her address as Birmingham in England.

9. On the 16th March, 2017, the applicant applied for a prohibited steps order and a child arrangements order in respect of the two children, returnable before a particular family court in England. The parties appeared in person. The family court determined that it had no jurisdiction as the respondent was habitually resident with the children in Ireland. This decision was appealed and subsequently overturned on appeal by the High Court of England and Wales on 13th June, 2017. It was held that the family court did not have sufficient evidence to determine the issue of habitual residence and should not have dismissed the application of the father. The court remitted the case to the family court.

10. The applicant maintains that he did not know definitively where the respondent was living with the children until the family court proceedings on the 16th March, 2017. In an affidavit sworn on the 18th July, 2017 the applicant said that he was unaware of the respondent's address and that all attempts to contact her and the children were unsuccessful except when she attended court in person and without the children. He also says that despite his many attempts to exercise his custody rights and rights of access, the respondent had refused to allow him to speak with, let alone visit the children, and had actively concealed the location of the children from him.

11. In a replying affidavit dated 27th July, 2017, the respondent said that she had been living at a particular location in Ireland from the 30th March, 2016. She exhibited certain written tenancy agreements in this regard, which I have examined. The first one is a letting agreement between an Irish couple and the respondent and her partner dated the 30th March, 2016. The first page records (in handwriting) the date of the agreement as being the 30th March, 2016, but it might be argued that the year 2016 does not appear to have been written at the same time as the digits indicating the day and date. The second page records the 30th March (in handwriting) but does not record any year. A signature appearing to be that of the respondent appears at the conclusion of the document, but there is no date on this signature page. There is a second letting agreement between the same landlord and tenants dated the 29th August, 2016 and again the signature page, which appears to have the signature of the respondent and the landlords, is undated. There is then a one-page letting agreement dated 1st May, 2017 between a different landlord and the respondent and her partner, which appears to be signed by all three parties on that date.

12. As regards the Birmingham address given by her in the divorce proceedings, she says that she was not resident in Birmingham as set out in those proceedings, but that friend of her was resident at this address and she used the address for the purpose of receiving post. She says that it is "patently obvious" that the applicant was at all times aware of her location. He was able to bring her before the Watford Family Court in November, 2015 to deal with his application to discharge the non-molestation order, and that he could have addressed any issue relating to custody or access to the children in the context of the UK divorce but failed to do so. She also says that the applicant has not paid any maintenance or brought any application for access or custody until January, 2017.

13. By affidavit sworn on the 15th September, 2017, the applicant replied stating, *inter alia*, that he denied the allegations of domestic violence and also that he separated from the respondent because of her infidelity with her current partner. He disputed the circumstances described by the respondent with regard to her trip to Bangladesh and return to England. He reiterates that he was unaware of her location throughout the period from the grant of the non-molestation order. He says that in his application to have the non-molestation order rescinded he served those papers on "the same address and purported residence of the respondent in address in Birmingham". He says this appears now to have been a subterfuge.

14. In the period between the commencement of these proceedings and the hearing date, an issue arose as to access to the children. The Court made an order indicating that telephone or Skype access should be given once a week. Further affidavits were sworn in relation to a particular call on the 24th September. There was a stark conflict of fact as to what had taken place during the course of that call.

The reports of the assessment of the children

15. A clinical psychologist, Dr. Fiona Moane, carried out an assessment in respect of each of the children and prepared reports for the court.

The report in respect of K.M.U. (older child)

16. The first report relates to the older child, K.M.U., who is currently eleven and a half years old. The date of her consultation with him was the 22nd September, 2017. She said that he appeared somewhat reticent and guarded and needed reassurance from his mother to go ahead with the interview, although he entered the interview on his own. She said that he seemed uncomfortable during the interview, not forthcoming with information, and repeatedly said that he did not remember when asked details about his life in England and when living with his dad. He appeared relieved when the interview ended. When asked about his life in England, the first thing he reported was that his father mostly had fights with his mother there and that he did not like his father because of that. When asked about the fights, he seemed reticent to answer, shrugging his shoulders and saying he did not remember much. He gave an example that on Fridays when his mother asked his father to pick him up from school, his father would start shouting and swearing at his mother. When probed more about the fights, he said that when this happened, his mother just went into her room. When asked about any physical violence, he said that sometimes when they got into a fight, his father slapped his mother; however, when probed about this, he acknowledged that he had never actually seen this so he was not sure how hard he slapped her and said that the parents would fight in their room.

17. When asked about other aspects of his life in England, he said that he felt sad all of the time because his mother and father were always in fights. He said his father never took them anywhere and they never did anything as a family. He did not engage in any

extracurricular activities or sports there. He was not forthcoming about any other aspects of his life in England, "as if he wanted to dissociate from that part of his life".

18. She said that he was somewhat vague about the details of their leaving England but said that he was happy to leave England and get away from his father as he was worried about his mother's safety when living in England. He was "very clear that he prefers Ireland because their house is safe and mostly calm with no fights". He said that he plays with his brother and his younger sister; that he is happy in school, that the teachers are good and that he has made good friends; and that he enjoys playing football and sport in Ireland. He also likes his mother's new partner who he said he liked very much and said that he took good care of the family including his mother. They do things as a family such as visits to the park and trips to Dublin.

19. When asked if he would like to see his father again, he replied that he had not seen his dad since leaving England and did not want to talk to or see him, including not wanting to go to England to see him. He said he did not think it would be safe to do so but that maybe when he was older, aged 20, he might go, but that right now he wants to stay in Ireland and study here. When asked why he wanted to wait, he said that he was afraid his father might "brainwash" him and would change his mind to think he is good and his other family are bad. When asked if he ever talked to his mother about his father, he replied that his mother does not talk about his father in England. He said that he thinks his father in England is a bad person because he hits his mother and he "teared up", saying that he always worries about his dad in England doing something to his mother. When asked about his own safety, he said he is also afraid his father would hit him, "saying he hit him mostly when doing fun things like playing outside, that his dad would say they are not allowed, and when K. said his mother allows them to play outside his dad would hit him and say "don't talk about her"". He said that he just wanted to forget about his father in England because he made his life bad and miserable and he just did not want to talk about him. He added that his father did not provide anything for the family and just cared about himself, whereas his new father worked hard and did care about the family.

20. Dr. Moane was of the view that the child appeared bright, calm and well-adjusted. She observed that although he did not want to discuss his life in England, he did not exhibit any symptoms of anxiety about his experiences there. She thought this showed that he had solid internal coping mechanisms, probably because of his secure attachment to his mother. She said that although his attitude at present was to see his father as all bad, he was aware of the possibility that this may not be entirely true and he expressed being afraid that his father would brainwash him into thinking that he is good. She thought that perhaps this black-and-white view of the "all good and the all bad parent" might be an important coping mechanism, and that he should have an opportunity to re-evaluate this and should be encouraged to have some visitations with his father and maintain some form of communication with him throughout his adolescent years. She said that the most striking aspect about the interview was the child's resistance to talking about anything of his early life with his father in England. She attributed this to repression and dissociation.

The report in respect of R.M.U. (the younger child)

21. The report of Dr. Moane in respect of the younger child, R., aged 9 contained the following. She said that he was a friendly and lively boy and that he settled down well during the interview, although he exhibited some reticence about attending the interview on his own. She said that he was responsive and appeared to be answering questions to the best of his ability. He was especially enthusiastic talking about his life in Ireland.

22. When asked about his life in England, he said that his father used to fight with his mother a lot and he thought this was about money but he could not remember. He said that his mother used to pick him up from school every day except Friday when his father did it and sometimes they fought about that. He said that there was a lot of talking and arguing between his mother and dad and thought it was mostly about money. He said that his father said a lot of rude words but when asked for specific examples, he said he had found this out "by reading the court statement". He said that he was happy to leave for Ireland because he did not like all the fighting in the house and also said that he had read in the court statement that his father had pulled his mother's hair. He said that he liked living in Ireland because his mother and her partner do not fight. He said they go to the park as a family together. He said his school in Ireland is nice and that he has four or five good friends here. He likes, English, Geography, Irish and Maths. He enjoys basketball, P.E. and rounders and once went swimming with his class which was fun.

23. He said that he had spoken to his dad on a video call last week but did not really like it and that it was the first time his dad had called in two years. He is not sure he would like to visit his dad as he did not feel it would go well, saying he had bad memories of his dad. He recalled as an example that if they wanted a drink of water, his father would tell them to wait until they got home. He commented that when they lived with him, his dad did not talk to him a lot, but now that they are in Ireland he wants to talk. He "was clear that he would rather stay with his mum in Ireland, that he likes it here in Ireland much better". He talked about some of the activities he did in Ireland and their plans to visit Belfast and the Ulster Museum. He said that his dad in England did not bring him on any trips and he does not miss him.

24. The psychologist was of the view that he was a nine-year-old boy who separated without anxiety from his mother and with whom it was easy to establish a rapport. He was lively and articulate and engaged well although he was vague about some of the details of his life in England. She thought that these suggested a psychologically healthy and well-adjusted boy who had developed both intellectually and socially in an age appropriate way, including having a basic sense of trust in the world. She thought that he would thrive in his new environment in Ireland and would benefit from having a "new dad" in his life whom he could look up to as a positive male role model. She did not believe he was unduly influenced by either parent informing the opinions he expressed at the interview. She said that he was not entirely opposed to communicating with his dad although he did express some discomfort around that. She thought that some form of contact with his dad should be encouraged, perhaps in the form of "infrequent and supervised visits to assess if a more comfortable relationship can be established between them". She thought that his future development should be helped by a realistic view of his father based on his own personal experiences rather than being coloured by what he read in court statements.

The Factual issue: When did the respondent arrive in Ireland with the children?

25. There was surprisingly little evidence in relation to this issue although it was a key matter in the case. The only documentary evidence consisted of the tenancy agreements referred to above, including one dated the 30th March, 2016. This did not, in my view, put the matter beyond doubt because of the absence of a date on the signature page. If they had come to Ireland in March, 2016, I would have expected the children to attend school in April, May and June 2016, but there was no evidence of their attendance at the school during that period. The Court was informed orally that the school could confirm that the children had attended there from September 2016. Further, the respondent said that she had arrived in Ireland on the 30th March 2016, but this seems to me difficult to reconcile with her having signed a tenancy agreement of that date; it seems unlikely she would have signed a tenancy on precisely the same date as her arrival in Ireland. While there is every possibility that the respondent did come to Ireland more than a year before the applicant commenced his proceedings by way of special summons, I did not have sufficient evidence to be satisfied of this on the balance of probabilities.

26. In circumstances where I am not satisfied that there is sufficient evidence for the court to conclude that the respondent and the children arrived in Ireland more than one year before the applicant brought his application, I did not think that the "settled" defence under article 12 can be dealt with by the Court.

Whether the applicant was exercising his custody rights at the time of the removal of the children to Ireland

27. I am satisfied, however, that the respondent and her children arrived in Ireland some time prior to September, 2016 and that the children started school in that month. The issue then is whether, taking that as the latest of the removal of the children to Ireland, the respondent had been exercising the custody rights that he undoubtedly had as a married father of the children for the purpose of the Hague Convention.

28. In *M.S.H v L.H.* [2000] 3 I.R. 390, the Supreme Court discussed the issue of custody rights in a case where the mother of children had removed the children to Ireland from England, and the father, at the time of the removal of the children was serving a prison sentence. The Supreme Court endorsed a liberal approach to this issue and said that failure to exercise rights of custody must be clearly and unequivocally established.

29. The issue of the exercise of custody rights was again discussed by Finlay Geoghegan J. in *M.J.T. v C.C.* [2014] IEHC 196, in which she said that it was possible to discern from the decisions to which her attention was drawn by counsel that "firstly, the courts take a very liberal view as to what will constitute the exercise of custody rights, and, secondly, that it does require the demonstration by an applicant/parent that he either did or attempted to maintain contact or a relationship with his child. She referred with approval to *In Re H.; Re S. (Minors) Abduction: Custody Rights* [1991] 2 A.C. 476, in which Lord Brandon observed at p. 500:-

"In my view article 3(b) must be construed widely as meaning that the custodial parent must be maintaining the stance and attitude of such a parent, rather than narrowly as meaning that he or she must be continuing to exercise day to day care and control." Finlay Geoghegan J. also referred with approval to the U.S. Court of Appeals decision in *Friedrich v. Friedrich* 78 F. 3d 1060 (6th Cir. 1996), where Boggs J said:

"Enforcement of the Convention should not to be made dependent on the creation of a common law definition of 'exercise'. The only acceptable solution, in the absence of a ruling from a court in the country of habitual residence, is to liberally find 'exercise' whenever a parent with *de jure* custody rights keeps, or seeks to keep, any sort of regular contact with his or her child."

30. I have considered the events during the period May 2015 to September 2016, being the period starting with the date when the respondent left the family home with the two children and ending with the date on which in my view she can definitely be said to have been in Ireland. It does not seem to me that the applicant took any steps to exercise his custody rights during this period. The only court order sought in the month following her departure from the family home with the children was the non-molestation order which she herself sought. This was sought on an *ex parte* basis initially and was then made into year-long order on the consent of both parties. This was on 23rd June, 2015. The applicant made no attempt to seek any access to the children. On the 20th October, 2015, he sought to discharge the non-molestation order and claimed that the respondent had been misusing or abusing the order; although this application was subsequently withdrawn. At this time, he did not refer to the children at all or make any application with regard to access or custody. During all of that time, there was no application in respect of the children. The applicant now says that he did not know where she was living. However, he was able to bring her before the court in respect of the application to discharge a non-molestation order. Further, he did not invoke any of the court's powers to seek out and find children which exist for the situation when a parent has chosen to conceal their whereabouts. Nor was it disputed that he paid no maintenance during the period. Nothing further at all appears to have been done until the respondent took the first step in initiating divorce proceedings. There were documents in this regard stemming from August, 2016 and in December, 2016. Again, during this period, there was no application by him for access or custody in relation to the children. The first time that the applicant took a step seeking access/custody in respect of his children was in January 2017. This was some 18 months after the applicant had left the family home with the boys. In my view the applicant was not exercising custody rights within the meaning of the Convention at the time of their removal to Ireland, even having regard to the liberal interpretation given to that phrase under the Convention. If this is correct, it follows that there was no wrongful removal of the children to Ireland within the meaning of article 3 of the Convention and the reliefs sought should be refused.

31. Nonetheless, for completeness and lest I am wrong in that conclusion, I will proceed to consider the other aspects of the case argued before me.

Is there an objection to return by the children?

32. A three-stage approach to this issue was approved in *C.A. v. C.A. (otherwise McC)* [2010] 2 IR 162, being: (1) whether or not the objections to return are made out; (2) whether the age and maturity of the child are such that it is appropriate for the court to take the objections into account; and, if the answer to that is in the affirmative; (3) whether or not the court should exercise its discretion in favour of retention or return. Regarding the question of discretion, the Supreme Court in *A.U. v. T.N.U. (Child Abduction)* [2011] 3 IR 683 emphasised that the court, when having regard to a child's objections, should consider "the nature and strength" of the objections; the extent to which they are "authentically" the child's own objections or the product of an abducting parent; the extent to which they coincide or are at odds with other considerations relevant to the child's welfare; and the general Convention policies and purposes. The Chief Justice also said that the courts should "not lightly exercise a discretion to refuse or to return a child to his or her country of habitual residence since that would risk undermining the effectiveness of the Convention in both remedying and deterring the wrongful removal of children from the jurisdiction of the courts in such country" and that "those courts are normally best placed to determine the respective rights of parents and in particular where the best interests of a child lie".

33. Counsel on behalf of the applicant submitted, in relation to psychologist's assessment of the two children, that while they had expressed a "preference" for remaining in Ireland, this did not amount to an "objection" within the meaning of Convention. While the Convention does use the term "objection", I would be concerned if this were used to shut out the views of children who had expressed a clear view about where they wanted to live but had not used the language of an objection either because of their own choice of language or the choice of language used by the psychologist questioning them. It seems to me that the difference between preference and objection is not so much a question as choice of words but the strength of view expressed by the child and the reasons for that view. The position reported by Dr. Moane was, I believe, that both children had a strong view that they wished to remain in Ireland, where they were happy in a family environment, in their community and at school. They appeared to have little connection with the jurisdiction of England and Wales, not referring to any friends or family or activities that they missed over there. In particular, their key connection with the jurisdiction of England and Wales is their father and each of them made it clear that they did not want to visit him or indeed speak to him on the phone. In those circumstances, I reach the conclusion that each of them had, in substance, expressed an objection to being returned to the jurisdiction of England and Wales.

34. The authorities make it clear that the court should be careful to be alive to the possible influence of a parent. Undoubtedly,

children of the age of these two boys (11 and 9) would be expected to be influenced to some degree by the view of the parent with whom they are living, in this case their mother. It is not entirely clear how much influence she had on their views. The child psychologist explicitly stated that she did not think that the younger child had been subjected to undue influence, while she did not specifically address this issue in relation to the older child. I am perhaps slightly less convinced than the child psychologist of the absence of deliberate influence insofar as there were a number of references, at least with regard to the younger child, as to his having read court reports. It is highly inappropriate that children would be shown documents for court proceedings involving parents who are in conflict with each other, as a selective reading of such court documents could obviously influence their views. There are also indications that the children were very reticent about discussing their life in England and their father with Dr. Moane. While the psychologist tended to attribute this to their having experienced an unpleasant situation and that they did not wish to revisit it in their minds, one could also take the view that they were uncomfortable discussing their life in England because they knew that what they might say might not be sufficiently adverse to their father from their mother's point of view. I also note that the psychologist noted that the older child did not exhibit any symptoms of anxiety when describing unpleasant events in England. There also seemed to be a tendency on their part to make general negative assertions which did not yield concrete examples when the child was further probed by the psychologist. Therefore, I am a little more sceptical than the child psychologist as to the degree of influence the mother may have had on the children's views, whether directly or indirectly.

35. Nonetheless, it seems to me that the child psychologist was in a good position to ascertain whether their enthusiasm for living in Ireland and not wanting to go back to England was genuine and in his regard she was very clear that both boys were animated and engaged when talking about their life in Ireland and that they were very happy here. On the balance of probabilities, I am persuaded that their views that they want to live in Ireland and not return to England are sufficiently the product of their own minds and are sufficiently authentically their own to be taken into account by the Court.

36. The Court must also take into account the age and maturity of the children and in this regard, it seems to me that the boys of 11 and 9 are of an age where those views can be given quite a degree of weight. In all of those circumstances, it seems to me that the child's objections are sufficiently made out to engage the Court's discretion under article 13 of the Hague Convention.

37. This brings me to the question of the appropriate exercise of the discretion. I consider that the discretion should be exercised in favour of a non-return of the children to the jurisdiction of England and Wales. The situation is that the children have been living in Ireland for approximately fourteen months (at least), that they are in a happy and stable family environment, and that they are happy in school and in their activities and friendships. They do not appear to miss England at all and the child psychologist reports that they appear to have little or no attachment to their father. In this context also, it is relevant that their father made no effort to enlist the power of the English courts to have access to them, or to find them, if, as he says he did not know where they were, during the entire period May 2015 to January 2017. This seems to me to corroborate the evidence suggesting that there seems to be little in the way of a meaningful relationship between the children and their father. In all of those circumstances, it does not seem to me that the policy of the Hague Convention to deter parents from abducting children are particular strong in this case, while, on the other hand, the best interests of the child would certainly suggest that they should be remain where they are in Ireland.

Grave Risk

I do not accept that there would be a grave risk to the children if they were returned to the jurisdiction of England and Wales, within the meaning of that phrase under the Convention and as interpreted in the authorities. The threshold for establishing grave risk under the Convention is very high, and while the children would clearly prefer to live in Ireland and would not likely have a good quality of life in England if returned, I do not think that this amounts to circumstances of grave risk within the meaning of the Convention as interpreted in the authorities by which I am bound. Nor do I think that the allegations of physical violence in respect of the children have been borne out by the evidence before me, although in any event it seems unlikely the children, if returned, would be living with their father in any event. The height of the respondent's argument regarding grave risk appears to be that she does not have financial means or a home if she returns to England with the children. While I have every sympathy with her argument at a human level, this does not appear to me to satisfy the requirements of the legal defence of grave risk as previously interpreted by the authorities, such as *A.S. v. P.S.* [1998] I.R. 244, *R.K. v. J.K.*, [2000] 2 I.R. 416, and *T v. M* [2008] IEHC 212.

Habitual Residence

38. As I have based my decision on the absence of a wrongful removal upon the conclusion that the applicant father was not exercising his custody rights at the time of the children's removal to Ireland, it is not strictly necessary for me to rule on the issue of habitual residence. However, I should perhaps clarify that, as is in any event implicit in my discussion of the facts and my findings in relation thereto set out above, on the basis of the limited evidence before me, my view is that Ireland had become the habitual residence of the children at the latest by the month of September, 2016.

39. In all of the circumstances, I refuse the reliefs sought.