THE HIGH COURT

FAMILY LAW

[2017 No. 10 HLC]

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 1980

AND IN THE MATTER OF COUNCIL REGULATION 2201/2003

AND IN THE MATTER OF E(R)R AND E(D)R, MINORS

BETWEEN

R.R.

APPLICANT

AND

L.M.R.

RESPONDENT

JUDGMENT of Ms. Justice Reynolds delivered on the 17th day of August, 2017

1. In these proceedings, the applicant seeks the return of the children E(R)R (born 6/8/2004, thirteen years old) and E(D)R, (born 25/1/2009, eight years old) to England and Wales, pursuant to the provisions of the Convention on the Civil Aspects of International Child Abduction 1980 (the "Hague Convention"), the provisions of the Child Abduction and Enforcement of Custody Orders Act 1991, and the Matrimonial and parental judgments: jurisdiction, recognition and enforcement, Regulation (EC) No. 2201/2003 (the "Brussels II bis Regulation"). The respondent brought the children to Ireland in July 2016.

Chronology

2. Both parents in this case are Lithuanian nationals. They were married to each other on 22nd July, 2005, in Lithuania. The parties and their children were habitually resident in England and Wales prior to July 2016, having lived there since July 2013.

3. The relationship between the parties broke down in or about January 2016. Whilst the children originally remained with the applicant for a number of weeks, they subsequently moved to reside with the respondent having regard to her closer proximity to the children's school.

4. It is clear from the evidence that the breakdown was particularly acrimonious. The high level of conflict between the parties appears to have adversely affected the applicant's access to his children.

5. In July 2016, the respondent advised the children's school that she was removing them to reside permanently in Lithuania. This was done without any reference to the applicant and in circumstances where he was left with no contact details for the respondent or the dependent children. The respondent states that she did not realise she required the applicant's consent and now accepts that the removal was wrongful within the meaning of the Convention.

6. It is clear that the applicant had difficulty ascertaining the whereabouts of the children following their removal. He made initial inquiries through the respondent's family members in Lithuania and eventually discovered that the respondent had brought the children to this jurisdiction.

7. The applicant applied to the Central Authority for England and Wales seeking the return of the children in December 2016.

8. After the proceedings issued in April 2017, the respondent returned to England and Wales to facilitate contact by the applicant with the two children and the applicant enjoyed overnight access during the course of that weekend visit.

9. The respondent subsequently returned to Ireland with the children without any opposition from the applicant, in circumstances where the applicant contends that because matters were pending before the Irish Courts, he did not seek any further legal advice with a view to prohibiting such return. The respondent contends that the applicant's actions in permitting her to return to Ireland with the children amounts to consent and/or acquiescence.

10. The respondent contends that the children object to returning to England and Wales and on that basis should be permitted to remain within this jurisdiction.

11. Further, the respondent objects to the children's return in circumstances where she contends that it would expose them to physical and psychological harm or otherwise place them in an intolerable situation pursuant to Article 13.

12. The applicant submits that the respondent has isolated him from the children's lives and will have influenced them to such an extent that it may not be possible to discern the true situation.

13. There are no Orders in being in the Courts of England and Wales. It is accepted that both parties have custody rights pursuant to the laws of England and Wales.

Proceedings before this Court

14. The special summons in this case issued on 6th April, 2017. On 17th May, 2017, the respondent appeared before the court and provided the usual undertakings pending the hearing of the proceedings. The hearing took place on 26th July, 2017. Both parties were legally represented and the respondent appeared before the Court for the hearing. No oral evidence was given.

Issues in the Case

15. It is accepted by the parties that the children were habitually resident in England and Wales prior to July 2016. Further, it is

accepted that the applicant herein has formal rights of custody under the laws of England and Wales and was exercising them within the meaning of Article 3 of the Hague Convention.

16. It is further conceded that the respondent travelled from England and Wales to this jurisdiction with the children without notifying the applicant or obtaining his consent. The respondent accepts that the removal was wrongful within the meaning of Article 3 of the Hague Convention.

17. The key issues, therefore, arising in this case are as follows:-

> (i) whether the applicant consented or acquiesced to the retention of the children in Ireland, in circumstances where he failed to take any steps to prevent them from returning subsequent to the access visit in May 2017;
>
> (ii) whether there is a grave risk that the return of the children would expose them to physical or psychological harm or otherwise place them in an intolerable situation; and
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> (iii) whether having regard to the wishes of the children, the Court ought to exercise its discretion and refuse to return the children.

18. These issues arise in the context of the Hague Convention and the Brussels II bis Regulation, the relevant provisions of which are set out hereunder.

Relevant Articles of the Hague Convention

19. Article 12 of the Hague Convention provides as follows:-

> "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 concerned shall order the return of the child forthwith."

Article 13 further provides:-

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:-
>
> (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention.
>
> (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
>
> In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

Consent/Acquiescence

20. It is clear that pursuant to Article 13(a) that the Court has discretion to refuse to return a child if it is proved that the non-abducting parent consented or acquiesced to the removal of the children.

21. In the recent decision of the Court of Appeal in the case of *K.W. v P.W.* [2016] IECA 364 (Unreported, 25th November 2016, Court of Appeal), the President of the Court in referring to the issue of consent, stated at paragraph 22:-

"..... The relevant principles were to be found in the judgment of Denham J in *S.R. v M.M.R* [2006] IESC 7 as follows:-

(i) the onus of proving the consent rests on the person asserting it;

(ii) the consent must be proved on the balance of probabilities;

(iii) the evidence in support of the consent needs to be clear and cogent;

(iv) the consent must be real; it must be positive and it must be unequivocal;

(v) there is no need that the consent be in writing;

(vi) it is not necessary that there be proof of an express statement such as 'I consent'. In appropriate cases consent may be inferred from conduct but where such is alleged it will depend upon the words and actions of the allegedly consenting parent viewed as a whole and his or her state of knowledge of what is planned by the other parent."

22. In *J.J. v P.J.* [2017] IEHC 68 (Unreported, 10th February, 2017, High Court) Ni Raifeartaigh J. at paragraph 41 stated:-

> "…The relevant principles have been set out by Lord Browne-Wilkinson in *In Re H and Ors (Minors)* [1998] A.C. 72, approved by Denham J. in *R.K v J.K.* [2000] 2 IR 416:-
>
> 'To bring these strands together, in my view the applicable principles are as follows:

1. For the purpose of Article 13 of the Convention, the question whether the wronged parent has 'acquiesced' in the removal or retention of the child depends upon his actual state of mind. As Neill L.J. said in *In re S (Minors)* 'the court is primarily concerned, not with the question of the other parent's perception of the applicant's conduct, but with the question whether the applicant acquiesced in fact'.

2. The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent.

3. The trial judge, in reaching his decision on that question of fact will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to the evidence and is not a question of law.

4. There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced."

23. Also in the case of *JW v MR* [2017] IEHC 67 (Unreported, 31st January, 2017, High Court) Ni Raifeartaigh J. at paragraph 34 quoted at length from the judgment of Finlay Geoghegan J in *FL v CL* [2007] 2 I.R. 630:-

> "However, before such non-objection could amount to consent to the children changing their habitual residence to this jurisdiction or remaining for an indefinite period in this jurisdiction it appears that there would have to be clear and cogent evidence that the father was aware that the purpose of the trip on the 4th November 2004, was to bring the children to this jurisdiction for an indefinite period and to effect a long term change in their living arrangements….
>
> I find on the evidence that the mother did not inform the father that the purpose of the journey to this jurisdiction on 4th November 2004 was to make a change in the place of residence of the children either on a long term basis or for an indefinite period of time. Hence there was no consent by the father to the change of residence of the children and their retention in this jurisdiction."

24. In *FL v CL Finlay* Geoghegan J. referred to the decision of the Supreme Court in R.K. v J.K. (Child Abduction: Acquiescence) [2000] 2 I.R. 416 wherein the judgments cited a statement by Waite J. in *W. v W. (Child Abduction: Acquiescence)* [1993]12 F.L.R. 211 at p. 217 as follows:-

> "The gist of the definition can perhaps be summarised in this way. Acquiescence means acceptance. It may be active arising from express words or conduct, or passive arising by inference from silence or inactivity. It must be real in the sense that the parent must be informed of his or her general right of objection, but precise knowledge of legal rights and remedies and specifically the remedy under the Hague Convention is not necessary. It must be ascertained on a survey of all relevant circumstances, viewed objectively in the round. It is in every case a question of degree to be answered by considering whether the parent had conducted himself in a way that would be inconsistent with him later seeking a summary order for the child's return."

25. The facts in *F.L. v C.L.* were that the initial removal took place in November 2004. Until the end of January 2005 there was an attempt at reconciliation between the parties. In September 2005 proceedings were instituted seeking the return of the children. One of the main issues was that of acquiescence/consent. The Court concluded that there was acquiescence in the retention of the children. In particular the court reached this conclusion on the actions of the father prior to the end of January 2005 and subsequently. Finlay Geoghegan J stated at paragraph 36 (p.648)

> "… In reaching this conclusion I have considered differently the words and actions of the father prior to the end of January, 2005, and subsequent to that date. The actions of the father particularly in bringing the children back to this jurisdiction after the Christmas holiday in Northern Ireland and staying with them and settling them back to school here evidence an acceptance at that time by the father that the children should remain living in this jurisdiction. However, in this period the father was seeking to achieve a reconciliation with the mother and a voluntary return of the mother and the children to the family home in Northern Ireland. Accordingly, in reaching my overall conclusion I have not taken into account the actions of the father in this period save as constituting the factual background against which his actions and inactivity in the subsequent period should be considered."

26. At paragraph 39 (p.649) she stated:

> "Taking into account all the relevant circumstances and findings of fact, I have also concluded that, even in considering the period from early February, 2005 the father accepted the residence of the children in this jurisdiction such as it is reasonable to hold that he is bound by such acceptance and it would be inconsistent for him to be entitled to obtain the summary return of the children to Northern Ireland pursuant to the Hague Convention in proceedings commenced on the 9th September, 2005."

27. The Court of Appeal in *R v R* [2015] IECA 265 (Unreported, Court of Appeal, 4th November, 2015) considered whether the applicant had acquiesced in the retention of his sons in Ireland. Finlay Geoghegan J. stated in paragraph 34 (p.10) that:-

> "However, being so close to the removal of the boys and without taking legal advice it does not appear to the Court that he can, in the words of Lord Browne- Wilkinson, be considered to have 'clearly and unequivocally' shown and let the mother to believe that he was not going to seek to assert his rights, including an application for the summary return of the boys to Germany."

28. In that case, the mother relied on several events as amounting to acquiescence including the father's attendance in the District Court for a hearing in relation to a protection order and other actions whilst in Ireland in May 2015.

29. The judgment continued at paragraph 35 (p.11):-

> "…the furthest the mother can put the facts relied upon is that the father both discussed a move to Ireland and entered into negotiations with her in relation to a settlement of the various proceedings. Unfortunately, from the children's perspective, no settlement was reached at that time.

> In a factual context where these return proceedings had already commenced and were ongoing in Ireland, it does not appear to the Court that these facts relied upon by the mother taken at their height can be considered to constitute acquiescence by the father. They were negotiations in a context of the existing Hague proceedings for the return of the boys."

30. Further at paragraph 38 (p.11) she stated:-

> "The mother laid emphasis on *Smith v Smith* as indicating that where a wronged parent has acquiesced following a wrongful removal he will not be permitted to change his mind and seek the summary return of the child wrongfully removed. The principle identified is correct but the facts were very different. In *Smith v Smith* the acquiescence had been clear and unequivocal as the father having commenced Hague proceedings, with the benefit of legal advice, then withdrew same but later following different legal advice changed his mind and commenced a second set of Hague proceedings."

31. In the instant case, the respondent accepts that the applicant did not consent to the initial removal of the children to this jurisdiction in July 2016 but contends that his failure to prevent the respondent and the children returning to Ireland in May 2017 amounted to acquiescence or consent on his part to the children remaining in Ireland. The applicant contends that in circumstances where proceedings had already been issued and were pending before the Irish Courts, he expected all matters to be resolved therein and was unaware of any other legal remedies that may have been available to him.

32. Taking into account all of these circumstances in this case, it is simply untenable to suggest that the applicant's non-objection to the children returning to this jurisdiction in May 2017 could amount to consent or acquiescence to the children changing their habitual residence to this jurisdiction. The applicant had already applied to the Central Authority for England and Wales some five months earlier seeking the return of the children and indeed the within proceedings were pending before this Court. It is simply inconceivable to suggest that his failure to prevent the return of the children was suggestive or indicative of his consent/acquiescence to them remaining in this jurisdiction when all the necessary steps had been taken by him to assert his right to the summary return of the children.

Grave Risk

33. It was submitted on behalf of the respondent that there is a "grave risk" to the children within the meaning of Article 13 if they are to be returned unless adequate and appropriate undertakings are put in place to secure a smooth return. Article 13(b) refers to "a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation".

34. In *A.S. v. P.S.* [1998] 2 I.R. 244 Denham J. stated at p. 259 as follows:-

> "The law on "grave risk" is based on art. 13 of the Hague Convention, as set out earlier in this judgment. It is a rare exception to the requirement under the Convention to return children who have been wrongfully retained in a jurisdiction other than that of their habitual residence.
>
> This exception to the requirement to return children to the jurisdiction of their habitual residence should be construed strictly. It is necessary under the Convention that the situation be one of grave risk, an intolerable situation.
>
> The Convention is based on the concept that the children's interest is paramount. It is not in the children's best interest to be abducted across state borders. Their interest is best met by the courts of the jurisdiction of their habitual residence determining issues of custody and access."

35. In *R.K. v. R.K.* [2000] 2 I.R. 416 Denham J. in the Supreme Court stated at p. 434 as follows:-

> "The grave risk contemplated in the Hague Convention is that of a serious risk. In *Thomson v. Thomson* [1994] 3 S.C.R. 551, La Forest J. of the Supreme Court of Canada stated at p. 596:-
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> > "In brief, although the word 'grave' modifies 'risk' and not 'harm', this must be read in conjunction with the clause 'or otherwise place the child in an intolerable situation'. The use of the word 'otherwise' points inescapably to the conclusion that the physical or psychological harm contemplated by the first clause of Article 13(b) is harm to a degree that also amounts to an intolerable situation."
>
> Thus, whereas any movement of children from one country to another and from one physical home to another is upsetting and may involve some harm, that is not the level of risk anticipated in the Hague Convention."

36. More recently, the Court of Appeal in *R. v. R.* [2015] IECA 265 (Court of Appeal, unreported, 4th November 2015) in dealing with a defence of grave risk having referred to the case of *A.S. v. P.S. (Child Abduction)* [1998] 2 I.R. 244 per Fennelly J. and stated that the test is a high one stated the judgment of the Court (Finlay Geoghegan J.) went on at para. 40:-

> "Where, as in this instance, one of the risks being referred to is a risk of physical or psychological harm of the boys, it is also clear that the courts in this jurisdiction will normally place trust in the courts of the country of habitual residence to be able to protect the children, and indeed, the mother, from any such harm. This is particularly so where the state of habitual residence is a member of the European Union and Article 11 of Regulation 2201/2003 applies to the return."

37. It is clear from the authorities aforegoing that the threshold for establishing "grave risk" is very high and that it is only in exceptional cases that the Court should exercise its discretion in refusing to return a child who has been wrongfully removed within the meaning of the Convention.

38. In the instant case, the respondent submits that to return the children would be to expose them to physical and psychological harm or would otherwise place them in an intolerable situation. Further, she asserts that there has been a long history of abuse directed at her and the children from the applicant. However, this appears to be little more than a bald assertion by the respondent where there is no evidence supporting same and wherein it is clear that there have been no previous Orders made by the Courts in England and Wales. It is clear that the respondent was happy to facilitate overnight access for the children with the applicant in recent months, which raises questions over the credibility of the respondent's assertions in this regard.

39. Furthermore, it is evident from the report of Dr. Moane, Clinical Psychologist, dated the 20th July 2017 that both children make

reference to wishing to see the applicant and missing him since their removal to this jurisdiction. In relation to the younger child, E. (D.)R., Dr. Moane notes that he "did not demonstrate signs of being afraid of either parent." In respect of the older child, she notes that he "appeared somewhat conflicted about which parent he would like to be with."

40. In all the circumstances, I am not satisfied that the evidence in this case could allow the Court to conclude that there is a "grave risk" to the children or that a return to England and Wales would place them in "an intolerable situation". Furthermore, I am satisfied that the applicant has offered all the necessary undertakings to ensure and secure the smooth return of the children to England and Wales.

Objections of a Child

41. It is well established that the objections of a child to a return may form the basis of a stand alone defence under para. 2 of Article 13(b) of the Convention, whereby the Court can exercise its discretion and refuse to return the child.

42. The approach to be taken by the Court in considering the views of the child was established in *C.A. v. C.A.* [2010] 2 I.R. 162. At paras. 32-34, Finlay Geoghegan J. stated:-

> "Counsel for both parties referred me to a number of decisions in which the courts in Ireland and England have reviewed how they should exercise their discretion under Article 13 where a child's objections to return have been made out. Amongst those is the judgment of Sheehan J. in *S.R. v. S.R.* [2008] IEHC 162, (Unreported, High Court, Sheehan J., 21st May, 2008) in which he reviewed and cited a number of relevant passages from those authorities. He expressed the view (with which I agree) that the court should be particularly mindful of the judgment of the Supreme Court in *B. v. B. (Child Abduction)* [1998] 1 I.R. 299, and be influenced by the view expressed by Baroness Hale of Richmond in *In re M. (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 A.C. 1288, where, at p. 1307, she stated:-
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> [42] In Convention cases, however, there are general policy considerations which may be weighed against the interests of the child in the individual case. These policy considerations include, not only the swift return of abducted children, but also comity between the contracting states and respect for one another's judicial processes. Furthermore, the Convention is there, not only to secure the prompt return of abducted children, but also to deter abduction in the first place. The message should go out to potential abductors that there are no safe havens among the contracting states.
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> Counsel for both parties were in agreement, correctly, that the children's objections are not determinative but rather must be taken into account and balanced against the general policy of the Convention. Counsel for the mother made two further submissions in relation to how the court should approach the exercise of its discretion. First, he submitted that there is an increasing policy requiring courts to have regard to the views of the child. He referred in particular to Article 12 of the United Nations Convention on the Rights of the Child 1989 to which Ireland has acceded, albeit not implemented into Irish law, and Article 11(2) of the Regulation which applies to this application. I accept that there is such a policy and this appears to be a matter which has already been considered by the courts in their approach to the exercise of discretion under Article 13 where a child's objections are made out. Baroness Hale of Richmond in *In re M. (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 A.C. 1288, at p. 1308, stated:-
>
> [46] In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of Article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.
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> I would respectfully agree with the above and, in particular, the nuanced approach suggested to considering the balance to be achieved on the particular facts of each case, and having regard to a numbers of factors including the nature and strength of the child's objections, the extent to which they are "authentically her own" or may have been influenced by others and the age and maturity of the child."

43. In the High Court in *A.U. v. T.N.U.* [2011] IEHC 268 Bermingham J. considered the objections of two children, aged 8 and 7. The relevant part of his decision is quoted in the Supreme Court's judgment at para. 15 thereof:-

> "In the present case I am satisfied that we are dealing with bright children with clear views and firm views and it is appropriate to take account of them. It seems to me that the views expressed by the children have to be seen in the wider context surrounding the application. The factors that I identify as relevant are that the applicant does not have custody rights, that the parent who brought the children to Ireland had been granted sole custody by a court of competent jurisdiction, that the applicant's behaviour at supervised access visits led to the termination of that regime. Also, highly relevant is that the applicant has spent relatively little time with the children since 2005 …. It seems to me that all of these factors make understandable why the children should be expressing the views that they are and that all of these factors offer a degree of validity to the views.
>
> This is a case where having regard to the views of the children when seen in the context to which I have referred, that I believe that I am justified, in the exercise of my discretion, in refusing to return the children to New York."

44. The Supreme Court upheld the decision in *A.U. v. T.N.U.* [2011] IESC 39 in which Denham CJ. at para. 32 stated:-

> "The learned trial judge was entitled to have regard to the children's stability and contentment in determining what policy of the Convention should prevail. The policy of the Convention should be viewed in the context of the totality of the evidence and in the best interests of the children. This policy includes the general principle that the issue of the custody of the children be determined by the country of their habitual residence. However, also included in the Convention's policy is Article 13 wherein it states that the judicial authority may refuse to return a child if it finds that the child objects to being returned and has reached an age and degree of maturity at which it is appropriate to take account of its views."

At paragraph 36:-

> "As Article 13 states, in considering the circumstances in which an exception may be made to returning a child to such country, the court may take account of information provided to it from a competent authority concerning the child's social background. As was pointed out in *In re M. (Abduction: Rights of custody)* [2007] UKHL 55, [2008] 1 A.C. 1288, the extent to which the child's objections "coincide or are at odds with other considerations" which are relevant to his or her welfare are also relevant."
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> At paragraph 37:-
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> "The balance between the policy of summary return and the operation of the exception may alter with time. In this case the children have been in Ireland for a considerable time. I would endorse the acknowledgment of Baroness Hale in *In re M. (Abduction: Rights of custody)* [2007] UKHL 55, [2008] 1 A.C. 1288, where she states at p. 1307:-
>
> [44] … But the further away one gets from the speedy return envisaged by the Convention, the less weighty those general Convention considerations must be.
>
> A court should at all times seek to expedite cases arising under the Hague Convention, but circumstances such as have arisen in this case are the exception."

At para. 38 Finlay Geoghegan J. continues:-

> "In this case the High Court Judge was entitled to conclude, in the light of all the evidence before him, that the objections of the children to being removed from their stable home in Ireland, with the respondent, and to being moved to New York, were strong; that the children had the requisite age and degree of maturity; that the trial judge could attach weight to the views of the children; and that it would not be in the best interests of the children that they be returned to New York."

45. It is clear therefore from the authorities aforegoing that in interpreting and applying Article 13 of the Convention, the Courts should not lightly exercise their discretion to refuse to return a child to his or her country of habitual residence. Clearly the essence of the Convention is that a child should be swiftly returned after a wrongful removal to the country of his or her habitual residence, save and accept for exceptional cases where the objections of the child are strong, where the child has the requisite age and degree of maturity to allow him or her to properly form such objections and where it is in the best interests of the child not to direct a return.

46. In considering the views of the children in the instant case, the Court again has had regard to the report of Dr. Moane. In respect of the younger child, E.(D.)R. she notes that:-

> "E. stated that he prefers living in Ireland because he has more fun times here".
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> "E. does not appear as independent and atonomous as would be typical of his peer group, exhibiting more indecisive and dependent behaviour than would be typical of this age."
>
> "E. ….. would appear happy to spend time with either parent with an overall preference to remain living with his mom."

47. In respect of the older child, E.(R.)R., now thirteen years old, Dr. Moane reports as follows:-

> "He would like to stay in Ireland and go to the secondary school with his friends here, …"
>
> "He would like to stay in Ireland with his Mom and see his Dad once or twice a month."
>
> "Although he appeared somewhat conflicted about which parent he would like to be with, and it is apparent that ideally he would like to see both parents equally, he expressed an overall preference for living in Ireland, mainly on the basis of having made good friends here."
>
> "I do not believe that E. was unduly influenced by either parent."

48. In respect of the older child, Dr. Moane was of the view that he was of sufficient age and maturity to be able to freely express his opinions such that would be appropriate for the Court to take these into account. However, in respect of the younger child, she opined that he was susceptible to being more easily influenced by adult figures in his life and having regard to his nervous and withdrawn disposition during the interview, it is clear that the Court must attach lesser weight to his views.

49. Whilst it is evident from the report that both children have expressed a preference to remain in this jurisdiction, this falls considerably short of any objection on their part to returning to England and Wales. As already stated, it is clear that the Court should not lightly exercise its discretion to refuse to return a child to his or her country of habitual residence, particularly where the Courts in such a country are normally best placed to determine the respective rights of parents and where the best interests of a child lie.

50. Accordingly, the Court has concluded that the respondent has not established on the evidence that a return of the children to England and Wales would constitute a grave risk of creating an intolerable situation for them.

Time of the Return

51. Article 12 requires the Court to make an Order for the return of the children "forthwith". It is well established that the Court may, where it considers that the best interests of the children so require, either place a short stay on that Order or provide that the Order come into effect, not immediately, but at a proximate further date. Taking into account the circumstances of this case, the Court is of the view that it would be preferable that the children be returned in advance of the commencement of a new school year with a view to minimising the disruption for them. I propose to hear from the parties on the form of wording and the precise details of the undertakings to be given by the applicant and also the arrangements to be made for the children to return to England in the care of the respondent, pending an Order from the High Court, Family Division, England and Wales.