

THE HIGH COURT

FAMILY LAW

2009 17 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

AND IN THE MATTER OF COUNCIL REGULATION 2201/2003

AND IN THE MATTER OF C.A., C.A. AND C.A. (MINORS)

BETWEEN

C.A.

APPLICANT

AND

C. A. (OTHERWISE C. Mc C.)

RESPONDENT

JUDGMENT of Ms. Justice Finlay Geoghegan delivered the 21st day of October, 2009

Preliminary

1. This is an application pursuant to the Hague Convention on the Civil Aspects of International Child Abduction ("the Convention"), as implemented in Ireland by the Child Abduction and Enforcement of Custody Orders Act 1991 and Council Regulation No. 2201/2003 ("the Regulation") for the return of the children named in the title to the jurisdiction of the Courts of England and Wales.

2. The applicant is the father of the first and third named child. He claims to be the father of the second child. This is disputed by the mother.

3. For the purposes of this application, it is accepted by the mother that the children were habitually resident in England prior to their removal by her to Ireland in January, 2009. She also does not dispute that, by reason of proceedings which she had instituted in England pursuant to the Children Act 1989, the Courts of England and Wales had rights of custody in relation to the children within the meaning of the Convention which were being exercised at the date of the removal of the children to Ireland and that the removal of the children to Ireland was in breach of those custody rights. There was a prohibited steps order of the County Court of England made on 6th October, 2008, which prohibited the mother from removing the children from the jurisdiction of the Courts of England and Wales.

4. It therefore follows that it is common case that the removal by the mother of the children from England to Ireland was wrongful within the meaning of Article 3 of the Convention and Article 11(2) of the Regulation. In such circumstances, it is unnecessary, for the purposes of this application, to determine the disputed claim of the father to paternity of the second child or the issue as to whether the father was exercising rights of custody in relation to all three children immediately prior to their removal to Ireland.

5. The father seeks an order pursuant to Article 12 of the Convention for the return of the children to England. The proceedings, in accordance with O. 133 of the Rules of the Superior Courts, are brought by way of special summons grounded on affidavit. Order 133, r. (5)(2) provides that such application shall be heard on the basis of affidavit evidence only, and that the Court, in its discretion may, in exceptional circumstances, direct or permit oral evidence to be adduced. Affidavits were sworn by the solicitor for the father, the mother and the father. No application was made to cross-examine either the father or the mother and there was no application for oral evidence. There was, in addition, the report of Dr. Teresa Graham presented to the Court pursuant to the order made requiring her to interview the two elder children.

6. The hearing date of 8th October, 2009, was fixed in September. The father, who is resident in England, did not appear at the hearing. He is not obliged to do so, as the matter was to be heard on affidavit evidence. No application was made by counsel on his behalf in relation to his non-attendance and no explanation given as to the reason for which he chooses not to appear.

7. Notwithstanding, counsel for the mother raised with the Court, at the commencement of the hearing, his concern that, by reason of Article 11(5) of the Regulation, the Court would not have jurisdiction, by reason of the father's non-attendance, and/or absence of oral evidence from him, to refuse to make an order for the return of the children. Article 11(5) provides:-

"A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard."

Counsel for the father did not make any submission that the court would not have jurisdiction to make an order refusing to return the child by reason of the father's non-attendance or absence of oral evidence from him.

8. On the facts of this application, the concern raised by counsel for the mother pursuant to Article 11(5) appears to me to be groundless. Article 11 of the Regulation does not prescribe the type of hearing or procedure to be applied by national courts in determining applications pursuant to the Hague Convention. It does set out certain minimum requirements. It requires, in sub-para (3), that a Court acts "expeditiously in proceedings on the application, using the most expeditious procedures available in national law". It also requires the Court, except where exceptional circumstances make this impossible, to issue its judgment no later than six weeks after the application is lodged. The procedure envisaged by O. 133 in this jurisdiction is probably the most expeditious procedure available. It is a special summons returnable directly to the Court and is to be heard normally on affidavit evidence alone. An applicant who has been given an opportunity to respond on affidavit to the replying affidavit of the respondent, and to be represented by solicitor and counsel at the hearing of the application, is, in my view, a person who has been given "an opportunity to be heard" within the meaning of Article 11(5). There does not appear any basis for suggesting that Article 11(5) requires a Court to take oral evidence from any applicant before having jurisdiction to make an order refusing to return a child.

9. Article 11(2) of the Regulation requires the Court to ensure that the child is given an opportunity to be heard during the proceedings unless it appears inappropriate, having regard to his or her age or degree of maturity. In accordance with the practice of the High Court implementing Article 11(2), the Court (Feeney J.) made an order on 8th July, 2009, that Dr. Graham, a psychologist, interview the two elder children in relation to certain identified matters and report to the Court in accordance with the terms of the order. The youngest child was considered too young to be interviewed. The report of Dr. Graham dated 26th August, 2009, is in evidence before the Court and has been considered by the Court. The parties were given an opportunity of considering whether they required Dr. Graham to be present for the purpose of being cross-examined or giving oral evidence and indicated that this was not necessary.

10. As the wrongful removal of the children from England to Ireland is not in issue, the onus shifts to the mother to establish that the Court has a discretion not to make the mandatory order for return required by Article 12. She seeks to rely on two of the potential defences in Article 13, that of "grave risk" and the elder two children's objections to a return to England. Prior to considering these matters, it is necessary to set out in summary form the background facts.

Background facts

11. The father and mother met in Ireland in 1999, and the mother shortly thereafter became pregnant with his child. The eldest child was born in Ireland in November, 2000. The father was appointed guardian of the eldest child in Ireland in October, 2001. The parties married in Ireland in February, 2002. The mother contends that there was subsequently a break in the mother and father's relationship when they moved to Dublin and that she entered into a relationship with another person with whom the second child was conceived. The mother and father then reconciled in early 2003, and moved to England in February, 2003. The second child was born in England in August, 2003. The mother disputes that the applicant is the biological father of the second child, but accepts that she consented to the applicant's name being included on his birth certificate. The third child was born in England in August, 2004.

12. The mother asserts in her affidavits that the father was violent towards her in front of the children, both before and after the parties moved to England. This is denied by the father. In relation to the period in Ireland, An Garda Síochána have provided a letter dated 8th October, 2008, stating that their records show that the father was arrested on 23rd July, 2002, for breaches of a Barring Order. The Garda records state that he was charged and brought before the Courts in custody. It appears to be accepted that he was not convicted of the alleged breaches. The mother contends that she did not pursue the matter by reason of assurances then given. She contends that she also obtained a Safety Order from the Dublin Metropolitan District Court in September, 2002. There is confusion about certain dates which are not relevant to the issues I have to determine.

13. In England, it appears to be common case that after the birth of the youngest child in August, 2004, the mother and father lived apart. The mother contends that it was by reason of violence by the father towards the mother, and that she was forced to move to a number of different women's refuges in North West England. Whilst the father denies the violence, he does not appear to dispute that the mother and the children lived in more than one women's refuge between 2004/5 and 2007/2008. The mother also entered into further relationships in this period.

14. By March, 2008, the mother had commenced two sets of proceedings in the English County Court against the father. In proceedings under the Family Law Act 1996, she obtained a Non-Molestation Order on 17th March, 2008, restraining the father from using or threatening unlawful violence towards her or coming within 100 metres of her then home, or from sending any threatening or abusive letters, texts or other communications to her. This order was obtained *ex parte* and subsequently continued after appearance by the father. She also obtained, under the Children Act 1989, again on 17th March, 2008, an *ex parte* order restraining the father from taking any steps to remove the children from the care of the mother or their then schools. Again, after appearance by the father, these orders appear to have been continued. Both sets of proceedings appear to have continued through 2008. The parties have exhibited a number of orders made in the two sets of proceedings but not any applications made in the proceedings.

15. In 2008, the mother also commenced divorce proceedings in England and obtained a Decree Absolute in August, 2008.

16. On 6th October, 2008, in the Children Act proceedings, an order was made restraining the mother from removing the children from the jurisdiction of the English County Court. Directions were also given in relation to the preparation by CAFCASS of reports on contact and directions that the mother facilitate indirect contact by letters, cards and gifts between the father and the children *via* CAFCASS and the mother's solicitors.

17. The order made by the County Court in the Children Act proceedings on 21st November, 2008, indicates that by that date the mother's application included an application "to remove the children" presumably from England. Further directions were given extending the time for CAFCASS to report until 6th March, 2009, and for the report to address issues of contact, residence and the mother's application to remove the children. A further directions hearing was fixed for 26th

March, 2009.

18. The other significant event in 2008, was that in April, the mother, regretfully, miscarried at five and half months, with twins. These twins were conceived in a new relationship and not with the father. The mother contends that the miscarriage was primarily due to stress and anxiety caused by the behaviour of the father towards her and the necessity to attend many Court hearings.

19. The mother moved to this jurisdiction with the children in January, 2009. She has not given the Court any explanation on affidavit as to why she did this, notwithstanding the order made by the English County Court on 6th October, 2008, restraining her from leaving the jurisdiction of those Courts. She does state that at the time of the funeral of her twins, her family travelled to England and that their presence reminded her that she was not alone and that she then resolved to return to Ireland. The father exhibited a letter of 13th February, 2009, from the mother's English solicitors, which indicates that their instructions were that she came to Ireland with the children for the funerals of an uncle and her brother's girlfriend, and that when she arrived "she realised that this is where the children are happy and they did not want to return home". In the same letter, they indicate her knowledge of the Prohibited Steps Order still in force and her willingness to travel to England for Court hearings and her intention to do so for the then proposed directions hearing of 26th March, 2009. In the course of the hearing before me, it was confirmed that the mother had attended in England for the hearing which took place on 26th March, 2009. It appears that by reason of her removal of the children from the jurisdiction of the English Courts, the then proceedings were transferred to the High Court in London and that the hearing which took place on that date was not a directions hearing but related to the issue as to whether the removal of the children was a wrongful removal. The father's solicitor has exhibited a copy of an order made by the High Court of Justice Family Division on 26th March, 2009, in which a declaration was made that the removal by the mother of the second and third children towards the end of January, 2009 "appears to be wrongful". The Court also made an order staying the Children Act proceedings until the determination of then intended Hague Convention proceedings in this jurisdiction.

Defences

20. The first defence raised by the mother is that of "grave risk" within the meaning of Article 13(b) of the Convention. This 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) ...

(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."

21. It is common case, in accordance with the decisions of the Supreme Court, and in particular those in *A.S. v. P.S.* [1998] 2 I.R. 244 and *E.M. v. J.M.* [2003] 3 I.R. 178, that the potential defence provided for in Article 13(b) is a rare exception to the requirement under the Convention to return children who have been wrongfully removed from their jurisdiction of habitual residence and that it is an exception which should be strictly applied in the narrow context in which it arises. Further, it is common case that the evidential burden of establishing that there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place him or her in an intolerable situation is on the person opposing the order for return, in this case the mother, and is of a high threshold. The type of evidence which must be adduced has been referred to in a number of decisions as "clear and compelling evidence".

22. I am not satisfied, on the facts of this application, that the mother has put before the Court clear and compelling evidence that if the Court were to make an order for the return of the three children named in the title, there is a grave risk that such return would expose the children to physical or psychological harm or otherwise place them in an intolerable situation. Even if I were to accept the evidence of the mother that the father has, in the past, been violent towards her, and has caused her in the past to live with the children in women's refuges in England and to have to move from one to the other, it does not appear to me that there is any evidence that the English Courts and other relevant authorities are not in a position to now protect the children and their mother from any potential threat of violence by the father. The mother and children were living in a house in England prior to removal of the children to Ireland. In so considering the evidence, I am not making any finding in relation to the alleged behaviour of the father but merely wish to demonstrate that the mother has failed, even if her factual evidence were to be accepted, to meet the necessary threshold. Since the mother commenced proceedings in the English Courts in 2008, and obtained a Non-Molestation Order against the father, there is no independent evidence that he has acted in breach of such order. The English Court orders produced make no reference to any such alleged breach or any determination that the father has acted in breach of the Non-Molestation Order. There is no evidence before this Court of the inability of the English Courts and other authorities to protect the children and mother (if necessary) from any threats of violence by the father.

23. Accordingly, I conclude that the defence based on grave risk has not been made out.

24. The second defence raised on behalf of the mother is pursuant to the second indent of Article 13 of the Convention which provides:-

"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."

25. Counsel for both parties were in agreement that the proper approach of this Court is what has been termed the three stage approach to a consideration of a child's objections. Potter P. in *Re M. (Abduction: Child's Objections)* [2007] 2 F.L.R. 72 at p. 87, para. 60 stated:-

"Where a child's objections are raised by way of defence, there are of course three stages in the courts consideration. The first question to be considered is whether or not the objections to return are made out. The second is whether the age and maturity of the child are such that it is appropriate for the court to take account of those objections (unless that is so, the defence cannot be established). Assuming a positive finding in that respect, the court moves to the third question, whether or not it should exercise its discretion in favour of retention or return."

26. This defence only relates to the two elder children. The report by Dr. Graham of her interview with those children is the relevant evidence for the purposes of the first two stages of the consideration. Dr. Graham first met the children on 20th July, 2009. The two elder children were accompanied by their mother and the mother's now husband. Sadly, at the outset of that interview, the mother, who was waiting outside, came into Dr. Graham's office and informed her that she thought she was having a further miscarriage and the ambulance was called; the mother taken to the hospital and she suffered a miscarriage. As a result, the interviews with the children did not proceed on that occasion.

27. The children were again brought to the office of Dr. Graham on 7th August, 2009, and she spoke with each of the children individually. In summary, Dr. Graham has reported to the Court that the eldest child, who was eight at the time of the interview, informed Dr. Graham that she did not like living in England as she had no friends, cousins or other family living nearby and that she had no friends in school and was being called names in school. She said her father did not live with them in England and she did not see him often, could not remember his name and it was such a long time ago since she had last seen him. She said she liked going to school in Ireland and had lots of friends. She also visits her grandparents and other family members in Ireland. She told Dr. Graham that her father used to smack her and recalled an incident where her father was violent towards her mother. Towards the end of the interview, Dr. Graham asked her how she would feel if someone told her she had to go back to England and she became upset and cried. She said she did not want to go back to England or see her father any more. Dr. Graham asked each child to complete a test known as the "Draw-A-Person Test" (D-A-P Test) in order to measure the development of the child and help ascertain the maturity of the child. Dr. Graham's opinion was that the elder child scored in the superior range of the D-A-P assessment. Dr. Graham was also of the opinion that the elder child had no discernible signs of depression.

28. The second child was five years old at the time of interview, he also told of the same incidents where his father was alleged to have hurt his mother, as recounted by his sister in her interview. He also said he did not remember much about living in England. He said that he did not have any friends in England and that he liked living in Ireland, liked school and he had cousins and friends and his grandparents. He scored in the superior range in the D-A-P assessment and Dr. Graham found no evidence of depression.

29. Dr. Graham, in her report, drew attention to the fact that on the first day the children came to see her and their mother got ill, they did not get upset or frightened. Dr. Graham's conclusion is that they are used to drama in their lives and accept it as normal without having to panic about it and things come to be alright in the end. She commented on the very polite behaviour of both children and formed the view that it did not appear to stem from fear of punishment or being cowed, and told the Court that the children were a pleasure to deal with. She further reported that the elder child knew and understood what the interview was about. She had been prepared for it and some of the answers she gave were coached. Dr. Graham's view is that the coaching was not necessary as the elder child appeared to have her own strong views on the subject of return to England and does not want to return to England. The younger child did not have a very clear idea of what the interview was about and did have definite opinions about the merits of living in England or Ireland. Dr. Graham again reported that there was some evidence of coaching in certain of the answers that he gave. Notwithstanding the coaching, Dr. Graham formed the view that it was possible for her to tell what were the feelings of the second child. Dr. Graham's conclusion and specific answer to the request and the order of the Court that she ascertain whether the children have any objection to returning to live in England is that the elder child "is very definite that she does not want to return to England and [the second child] was nearly as sure". On the reasons for the objection Dr. Graham's summary is "[the elder child] did not like the school, the other girls, where she lived or her dad. [The second child] has bad memories of his dad which are associated with living in England. The more cogent reasons were the positiveness of living in Ireland – schools, friends, family, interesting things to do".

30. The parties were given the opportunity of cross-examining Dr. Graham on her report. They chose not to do so. I am satisfied from the entire of the report that I should make a finding consistent with Dr. Graham's conclusion that, notwithstanding the evidence of coaching, each of the children objects to being returned to England. I am also satisfied that the elder child is of an age and degree of maturity that I should take her views into account. The second child appears to me to be marginally of an age and degree of maturity where the Court should take his views into account. On balance, I have determined that I should do so, but of course the child's young age and relative immaturity is a significant factor in determining the weight which should be given to the child's objections.

31. I am satisfied, therefore, that the mother has made out the first two stages of the potential defence of child's objections referred to in Article 13 and therefore the Court should now move to the third stage of its consideration, namely whether, having regard to the children's objections in this case, it should exercise its discretion in favour of or against an order for return.

32. 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. of the 21st May, 2008, *S.R. v. S.R.* [2008] IEHC 162, 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 *Re M.* [2008] 1 A.C. 1288, where at para. 42 of her speech she stated:-

"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."

33. 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 Convention on the Rights of the Child 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 *Re. M.* at para. 46 of her speech 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."

34. 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.

35. The second submission made by counsel for the mother was, in my experience, novel. He submitted that the policy of the Convention in an application such as this where the Regulation also applies must be considered in the context of Article 11(6) to (8) of the Regulation. In Convention cases where the Regulation does not apply, if a requested Court determines not to make an order for return of a child then, subject to appeal in that jurisdiction, it is a final order. The Court of prior habitual residence of the child has no further jurisdiction under the Convention to make any different order. However, that is no longer the case where the Regulation applies. Article 11(6) to (8) of the regulation provides:-

"6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child."

36. It was argued that in an application such as this even if this Court were to make an order refusing to return a child, any dispute in relation to the custody of a child may ultimately be determined by the Courts of the child's prior habitual residence and any order made by those Courts, including for the return of the child, will be enforceable in the EU member state in which the child is residing in accordance with Section 4 of Chapter III of the Regulation. Counsel for the mother submitted that this Court should take those provisions into account as part of the now combined policy of the Convention and Regulation in determining whether, notwithstanding the objections of the child, the overall policy of those instruments required this Court to make an order for the return of the child.

37. I accept the submission of counsel for the mother that the Court should take into account the provisions of Article 11(6) to (8) in addition to the policy of the Convention, as referred to in the decisions of the Supreme Court in *B. v. B.* and by Baroness Hale of Richmond in *Re M.*, when deciding how it should exercise its discretion in a case such as this where the child's objections are made out. Nevertheless, it does not appear that the potential for the Court of habitual residence to make an enforceable order for return pursuant to Article 11(8) takes away from the requirement that this Court to take into account the policy of the Convention, not only to secure the prompt return of abducted children, but also to deter abduction in the first place, and to respect the judicial process of other contracting states. Nevertheless, it is a factor to be taken into account and the weight to be attached would depend upon the facts of the particular application. Care must be taken that the policy of the Convention to deter abduction is not undermined by giving an advantage in any subsequent hearing to a parent who wrongfully removed children. If the Court of the jurisdiction of habitual residence is required to consider custody issues, including an issue of return in the context of the Court of another member state having made an order for non-return, there may be such an advantage or a perceived advantage.

38. On the facts of this application, the mother had commenced proceedings before the English County Court seeking, *inter alia*, an order permitting her to take the children to Ireland. Since October, 2008 she was the subject of an order of the English County Court prohibiting her from removing the children out of the jurisdiction of the English Courts (presumably intended to continue until further order or the determination of the proceedings). On the limited evidence in the affidavits, I have concluded, as a matter of probability, that the mother moved with the children to Ireland in

apparent breach of the Court order prohibiting her from doing so, not for the purpose of avoiding the English Courts dealing with the relevant custody issues, but rather by reason of a requirement for her to attend funerals and a preference on her and the children's part to live in Ireland. I have reached this conclusion primarily by reason of the letter written by her solicitors in February, 2009, indicating a willingness on her part to return to England to participate in proceedings and the fact that it was confirmed in the course of the hearing that she did so return for proceedings on 26th March, 2009. Nevertheless, the move she made was in breach of an English Court order of which she was aware.

39. Each of the two elder children interviewed in these proceedings are relatively young. Whilst the oldest child's objections to returning to England are in part based on her experience at school in England, I have concluded that part of her objections, as reported, and the primary source of the second child's objections, are based on their preference for their life in Ireland, which of course they had been experiencing for approximately seven to eight months prior to their interview by Dr. Graham. On balance, I have concluded that, having regard to the nature of the children's objections and the children's ages and degrees of maturity, the Court should not depart from the policy of the Convention, even when combined with a consideration of the provisions of Article 11(6) to (8) of the Regulation, having regard, in particular, to the existence of the English order of the 6th October, 2008, prohibiting the mother from doing what she did.

40. I have therefore concluded that I should exercise my discretion so as to make an order for the return of all three children.

41. The final submission made by counsel for the mother was that even if I determined to make an order for return that I should exercise my discretion so as to place a stay on the order for return for a longer period than would be normal in the case of an Article 12 order, so as to permit the mother to pursue the existing proceedings in England seeking the approval of the English Courts to her relocation to Ireland. In support of this submission, he relied upon the decisions of Sheehan J. in *S.R. v. S.R* (referred to above) and *M.N. v. R.N.* [2009] I.E.H.C. 213, in each of which cases Sheehan J., notwithstanding the objections of the child which had been made out, made orders for return but placed stays on those orders pending further proceedings in Latvia and Lithuania, respectively.

42. In an application under the Convention where the Court makes an order pursuant to Article 12 of the Convention for the return of child, it appears that the Court has a limited jurisdiction to place a stay on that order. It is done sometimes for a short period to facilitate undertakings or arrangements being put in place to secure an orderly and safe return of the child. However, the Convention requires the prompt return of the child.

43. In a case where an Article 13 defence based on the child's objections has been made out, such that the Court is given a discretion as to whether or not to make an order for return, it appears to me not to be contrary to the Convention for the Court, having regard to the child's objections and the overall facts of the case, to exercise a discretion to place a longer stay on an order for return where there are either already in being or intended to be proceedings before the Courts of habitual residence of the child seeking the approval of that Court to relocate the child. It is in the interests of the child that the number of moves between jurisdictions be minimised. Such a stay will, of course, depend on individual facts and must, of course, be limited in time and be subject to conditions that the relevant parent pursues an application expeditiously (in this instance, before the English Courts), and gives undertakings to cooperate and, if necessary, bring the child to the jurisdiction of habitual residence if required for the purpose of the proceedings.

44. On the facts of this case, I have determined that I should put such a stay on the order for return. Factors which have influenced me in so determining in this application are that the father, at the time of the removal from England, was not exercising direct contact with the children and was precluded from doing so. Further, he did not make any application to this Court since the commencement of these proceedings for any different access to the children than the indirect contact which can be made, irrespective of their location, pursuant to the orders of the English Courts. The proximity of England and Ireland, common language and similarities in systems and my experience from other cases, suggest that CAFCASS may be able to arrange, for the purpose of English proceedings, the carrying out of assessments on children located in Ireland. In all of those circumstances, I have concluded that, having regard to the two elder children's objections and the fact that we are now in the middle of a school term and the two elder children are at school in Ireland, I should place a stay on the order for return for a period of approximately two months to permit the mother pursue her application before the English Courts, provided of course that she gives the undertakings to this Court set out below.

Relief

45. There will be an order for the return of the children to the jurisdiction of the Courts of England and Wales with a stay on that order until 16th day of December, 2009, on condition that the mother give undertakings to this Court that:-

(i) She will promptly pursue her application to the English Courts for permission to relocate with the children to Ireland; and

(ii) She will attend, with the children if required, any court hearings or meetings with CAFCASS which she is so directed to do by the English Courts.

I further direct that this judgment and all Orders and the pleadings, affidavits exhibits thereto and report of Dr. Graham be made available to the English Courts and the parties' English lawyers for use in any relevant English proceedings.

46. I have not addressed the issue of any undertakings required of the father to facilitate the smooth return of the children as they were not specifically addressed at the hearing.

47. I will hear the parties as to the terms of any liberty to apply.