APPROVED

[REDACTED]

THE HIGH COURT

FAMILY LAW

[2024] IEHC 25

Record No. 2023/29 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 THE INHERENT JURISDICTION OF THE COURT

AND IN THE MATTER OF X (A MINOR)

(CHILD ABDUCTION: GRAVE RISK, VIEWS OF THE CHILD)

BETWEEN:

A

APPLICANT

-AND-

B

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 18th day of January 2024

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INTRODUCTION

Background

1. ‘A’ and ‘B’ are respectively the father and mother of X and all three are British nationals. ‘A’ and ‘B’ were married on 11th March 2009 in Wales and X[1], as the only child of this relationship, was born on 26th April 2011, so at the time of this application the child was aged approximately 12 years and 6 months.

2. Consequent upon their separation and divorce on 21st September 2015, ‘B’ and the child moved to Wales[2] but were within both a proximate distance to the Welsh/English border, and contact with ‘A’ and his family (including five half siblings of the child,[3] four of whom live with ‘A’), who reside on a farm in England.

3. After their divorce, ‘B’ and ‘A’ informally agreed that the child would reside with ‘B’ during the week, with accesss to ‘A’ (‘A’’s partner and the child’s half siblings) at his home on alternate weekends, including collection from school on Friday afternoon and return to school on Monday morning, in addition to holiday access. The evidence before me is that this arrangement would have continued but for the child’s removal and non-return since on or about 26th August 2023.

[1] Hereafter referred to as “the child.”

[2] ‘B’ and the child lived primarily in Powys, Wales.

[3] The half siblings of the child are aged between 5 to 24 years of age.

4. There is agreement between counsel for ‘A’, Ms. Grainne Lee BL, and counsel for ‘B’, Mr. Michael Mullooly BL, as to many of the background facts to this case, in addition to the well-settled legal principles which apply. Where the parties differ is, firstly, in relation to ‘B’’s allegation that she was the subject of coercive or controlling behaviour from ‘A’ which led to the resumption of a physical relationship with ‘A’, and, secondly, on the factual matrix which should inform the exercise of the court’s discretion.

5. The immediate factual context for the child’s removal, in summary, is as follows.

6. ‘B’ and the child went on holiday to Ireland on or about 12th August 2023 and ‘A’’s understanding was that the child would come to him on 19th August 2023, upon the child’s return from holidaying in Ireland. Whilst on holiday, ‘B’ informed ‘A’ that the child wished the holiday to continue and ‘A’ did not object to the holiday being extended to 26th August 2023. However, on 26th August 2023 ‘B’ informed ‘A’ that she was staying in Ireland with the child and was purchasing a property in the west of Ireland. ‘B’ sold her property in Wales. Without ‘A’’s knowledge and consent at the time, ‘B’ registered the child in school in a town in the west of Ireland near a property which ‘B’ purchased.

7. Accordingly, the gravamen of the application before me[4] centres on: (i) the removal of the child from the jurisdiction of England and Wales to Ireland (ii) the refusal and failure, since the 26th August 2023, to return the child to the jurisdiction of England and Wales.

THE APPLICABLE LEGAL TEST

8. This application concerns the Convention on the Civil Aspects of International Child Abduction (1980)[5] (the "Hague Convention").

9. As the High Court (Gearty J.) observed in *LB v AH* [2021] IEHC 849[6] in emphasising the child's welfare as the predominant concern, the court in an application pursuant to the Hague Convention must consider the fundamental importance of discouraging the unilateral removal of a child and the application of the principle of comity as between jurisdictions in trusting in the courts of the country of habitual residence. Ultimately, in an application under the Hague Convention the court has a binary choice: to return or not to return in respect of each child.

[4] The application was initially dated 6th September 2023; the Summons was dated 26th September 2023 and the first return date was the 5th October 2023.

[5] The Convention was signed on behalf of Ireland on 23rd May 1990, ratified on 16th July 1991 and entered into force with respect to Ireland on 1 October 1991 and was given the force of law in the State by the provisions of the Child Abduction and Enforcement of Custody Orders Act, 1991 (as amended), including section 6.

[6] At paragraph 6.4 of the judgment under a sub-heading dealing with 'grave risk'.

10. Article 3 of the Hague Convention provides that the removal or the retention of a child is to be considered wrongful where – (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

11. The rights of custody mentioned in Article 3(a) above may arise in particular by operation of law, or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

12. In effect, Article 12 imposes, subject to the defences in the Convention (including, for example, Article 13), a mandatory obligation on a court, where return proceedings are commenced within one year from the date of the wrongful removal, to order the return of a child who has been wrongfully removed from his State of habitual residence, thereby giving effect to the object of Article 1 of the Convention of securing the prompt return of children wrongfully removed to or retained in any Contracting State. In this case, the jurisdiction of habitual residence is that of England and Wales.

13. Article 13 of the Hague Convention provides that notwithstanding the provisions Article 12 a court "… *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; or (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…" (Emphasis and underlining added).

14. The provisions of Article 13, therefore, carve out defences ("Article 13 defences") which are exceptions to the mandatory default provisions in Article 12.

15. In this case, therefore, the onus is on 'B' to establish that one of the matters in Article 13(a) or Article 13(b) before the court is no longer bound by the mandatory provisions of Article 12. In contrast, it is a matter for the court to make findings in relation to the exercise of its jurisdiction to refuse to return by reason of a child's objections as per Article 13.

16. In the context of the provisions of the Hague Convention, the matters upon which the parties have agreed in this case are correlatively consequential in defining the contours of the respective legal requirements upon each of the parties, and ultimately, the matters which have to be assessed and determined by the court.

17. Insofar as the application of Article 3 of the Hague Convention to the facts of this case is concerned, for example, it is common case and accepted by 'A' and 'B' that: (i) 'A' had custodial and parental responsibility rights in respect of the child at the material time, namely 26th August 2023; (ii) 'A' was exercising those rights of custody and parental responsibility at the material time with his last access being on 11th August 2023; and (iii) the child was removed from his place of habitual residence in breach of 'A''s rights of custody and parental responsibility. 'A' had not consented to the child being removed from the jurisdiction of England and Wales and/or retained in the Republic of Ireland ***beyond*** 26th August 2023, which was the date of the agreed holiday extension.

18. In summary, arising from these matters which are accepted on behalf of 'A' and 'B', the central issue in this case is as follows: the onus is on 'B' to establish an Article 13 defence and by doing so, to seek to persuade the court to exercise its discretion not to return the child to the jurisdiction of England and Wales.

19. In this regard, Mr. Mullooly BL, for 'B', makes two central and separate arguments: first, he relies on the defence of grave risk and intolerable situation; and second (and separately), he relies on the views of the child contained in Family Law Assessor's report dated 4th December 2023 in addition to relying on the overall circumstances of the case.

20. Before setting out the contentions of the parties in this regard in more detail, the Superior Courts in Ireland, and in other juridisctions, have established the following principles when it

comes to assessing the two central issues in this case, namely (a) the defence of grave risk and intolerable situation and (b) the views of the child.

The legal principles governing the test of grave risk and intolerable situation

21. The following is a brief synopsis of the central legal principles which have been established by the courts and are relevant to the assessment of the defence of grave risk and intolerable situation as an exception to the default scenario of returning a child – in this case to the jurisdiction of England and Wales.

22. The basis for the defence of grave risk and intolerable situation must generally emanate from the prior circumstances in the requesting State which immediately led up to and prompted the removal and retention.[7]

23. Both parties in this case accept that the onus or burden of proving a grave risk exception to the default position of returning the child, in this case, is on 'B', and that the standard of proof is on the balance of probabilities and the situation examined is the position if the child was immediately returned, in this instance, to England. Whilst given a restricted

[7] *RK v JK* [2000] 2 I.R. 416 per Barron J. at p. 451.

application, that does not mean that the defence of grave risk should never be applied.[8] This onus on 'B' has been characterised as a high threshold and the type of evidence produced on behalf of 'B' is required to be clear and compelling.[9] The defence of grave risk has been described as the rare exception to the requirement to return and which should be strictly applied in the narrow context in which it arises.[10]

The legal principles in relation to the views of the child

24. The following is a brief outline of the central legal principles which have been established by the courts and are relevant to the assessment of the views of the child.

25. The authorities refer to the judgments of Finlay Geoghegan J. sitting as a judge of the High Court in *CA v CA* [2010] 2 I.R. 162; [2009] IEHC 460 (beginning at paragraph 25 of the judgment) and also as a member of the Supreme Court in *MS v AR* [2019] IESC 10 and, in particular, the court's endorsement of the following three stage approach outlined by Potter P. (in the English Court of Appeal (Civil Division)) in *Re M (Abduction: Child's Objections)* [2007] EWCA Civ 260 (beginning at paragraph 60 of that judgment):

> "*… [w]here 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*

[8] *P v P* [2012] IEHC 31 per Finlay Geoghegan J. at paragraphs 40 and 42.

[9] *CA v CA* [2010] 2 I.R. 162 per Finlay Geoghegan J. at paragraph 21.

[10] *CA v CA* [2010] 2 I.R. 162 per Finlay Geoghegan J. at paragraph 21.

second is whether the age and maturity of the child are such that 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. Thus, in *MS v AR* [2019] IESC 10 the Supreme Court (Finlay Geoghegan)[11] set out the obligations of a court in exercising its discretion to refuse a return under Article 13 of the Hague Convention and summarised the position at paragraph 65 as follows:

"*… 65. [o]verall, a court, in exercising its discretion where child's objections are made out under Article 13 of the Convention, must be careful to weigh in the balance the general policy considerations of the Convention which favour return and the individual circumstances of the child who objects to return, in order to determine what is, in the limited sense used, in the best interests of that child at that moment. The weight to be given to the general policies of the Convention which favour return and to the objections to return which were made and to other relevant circumstances of the child may vary with time. As has been said, the further one is from a prompt return, the less weighty the general Convention policies will be. In exercising its discretion, a court must take care that it has regard to the fact that the jurisdiction to refuse return is an exception*

[11] [2019] IESC 10, per Finlay Geoghegan J. at paragraphs 58 to 64 of the unreported judgment.

to the general policy and provisions of the Convention. The discretion must be exercised with care, and in the best interests of the child, but not so as to undermine the general policy objectives of the Convention, including deterrence of abduction."

27. As set out later in this judgment, in *M v M* [2023] IECA 126 the Court of Appeal referred *inter alia* to the decision of *MS v AR* [2019] IESC 10, (beginning at paragraph 73 of the court's judgment) particularly in the context of the exercise of the court's discretion when considering the third limb of the test articulated by Potter P. in *Re M* when assessing whether the objection of a child should lead to the court directing, or not directing, the return of a child. This included the requirement that the court's discretion must be operated in accordance with the legal principles which have emerged from the case law deriving from Covention policies, but that care should be taken with general statements of policy. While they may appear to be in tension, it was important for the court to be cogniscant of the fact that those included policies which ***both*** favoured the prompt return of children for the purpose of the courts of their habitual residence deciding custody disputes ***and*** the policy which gave a court a discretion to refuse to return a child following the child's objection.

28. In the exercise of the court's discretion, therefore, each case should be assessed having regard to the individual facts and circumstances of the child, the parents and other family circumstances. Both the Supreme Court (Finlay Geoghegan J.) in *MS v AR* [2019] IESC 10 at paragraph 65 and the Court of Appeal (Donnelly J.) in *M v M* [2023] IECA 126 at

paragraph 81 explained that a balancing process was inherent in the exercise of the court's discretion when assessing policies which emphasised the importance of return, on the one hand, and policies which provided for the consideration of the individual circumstances of the child who objects to return, on the other hand. The weight given to each may vary with time and the further one is from a prompt return, the less weight the general Convention policies will be.[12]

THE CASE ARGUED ON BEHALF OF 'B'

The question of grave risk & intolerable situation

29. On behalf of 'B', reliance is placed on the defence of grave risk where it is alleged that 'B' has set out evidence that she was the subject of coercive or controlling behaviour which led to the resumption of a physical relationship with 'A'. It is alleged that 'A' used financial inducements to maintain control and power over 'B' and thereby an intolerable situation was created which was harmful to 'B' and, if and when, this ongoing physical relationship was discovered was likely to cause harm not only to the child but to his extended family and his relationship with that family. It is alleged that 'B' had to leave Wales because of this coercive control and it is stated on behalf of 'B' that the advantage of living now in Ireland with the child is that it is far enough way to break the alleged cycle of coercive control yet close enough to allow 'A' to continue a relationship with the child.

[12] *M v M* [2023] IECA 126 per Donnelly J. at paragraph 81.

30. On behalf of ‘B’, reliance is also placed on the contents of the affidavit sworn by ‘A’ in the making of this application and what is described as the characterisation of ‘B’ by ‘A’ in allegedly derogatory terms which, it is submitted, illustrate a propensity towards coercive control aswell as referring to ‘B’ not being good with money and not having secured employment.

31. In paragraph 5 of ‘A’’s affidavit sworn on 30th November 2023, which is sworn in response to ‘B’’s Affidavit and exhibits dated 19th October 2023 and the supplemental affidavit of ‘B’’s solicitor and Special Summons dated 26th September 2023, certain factual matters are disputed, and reference is made to ‘B’ mentioning the name of another child, who it is asserted “*… does not exist and this is totally fabricated and I have completely no idea why she would make this claim. There is no evidential basis for this assertion and it is made I believe in an attempt to tarnish my present relationship*.” However, the fact is that the child’s name was not introduced by ‘B’, but in fact was referred to initially in paragraph 9 of the affidavit sworn on ‘A’’s behalf by his solicitor on 26th September 2023.

32. A procedural objection was made on behalf of ‘A’ to the filing and reliance upon the supplemental affidavit of ‘B’ sworn on 7th December 2023. I allowed this affidavit to be filed during the hearing of this application, initially on an *de bene esse* basis, and am satisfied that it can form part of the matters which the court can consider in this application. Reference is also made to a domestic violence sanction, with there being some uncertainty as between the parties as to whether this was a Domestic Violence Protection Order

(DVPO) (issued by the Magistrate's Court) or a Domestic Violence Protection Notice issued previously to the Applicant from the police, which was in fact exhibited in the supplemental Affidavit of 'B' sworn on 7th December 2023 and was dated 18th June 2014.

33. Ms. Lee BL, on behalf of 'A' objected to the admission of the affidavit of 'B' sworn on 7th December 2023 submitting that it did not comply with the procedure and timeline contained in O. 133, r. 4 of the Rules of the Superior Court, 1986 (as amended) ("RSC") which prescribes the rules of court for Child Abduction and Enforcement of Custody Orders including the Hague Conventions.

34. O. 133, r. 4 RSC provides as follows:

> (1) A respondent may deliver a replying affidavit and such replying affidavit shall be served on the applicant within seven days of the grounding affidavit having been served upon the respondent.
> (2) The replying affidavit shall set out all grounds of defence being relied upon in opposition to the applicant's application.
> (3) The applicant may file a further affidavit replying to any issue or matter raised by the respondent within seven days after the service upon the applicant of the respondent's affidavit.

35. In addition to that objection, it is submitted that the affidavit of 'B' is nothing more than commentary on 'A''s replying affidavit.

36. I am prepared, in all of the circumstances of this case, to allow the admission of the affidavit of 'B' sworn on 7th December 2023 and I understand that it was filed in court during the hearing before me.

37. In the written Legal Submissions on behalf of 'A' setting out the objections to the admission of the Supplemental Affidavit sworn by 'B' on 7th December 2023, it is accepted that "… *[i]t does appear that there is an error in the summons and affidavit of the Applicant's solicitor. There is no child [NAMED REDACTED]*." No explanation was offered, however, in previous affidavits notwithstanding that the error emanated from 'A''s legal representatives and that a robust response followed from 'A' when the matter was mentioned by 'B.'

38. Additionally, in the written Legal Submissions on behalf of 'A' setting out the objections to the admission of the Supplemental Affidavit sworn by 'B' on 7th December 2023, the correspondence from the parties' solicitors is referred to where 'B' requested 'A' to amend his affidavit by omitting the words 'fantastical' and 'unwell' from his affidavit and it is stated that this was agreed to on the basis that it did not change the meaning of A's response in paragraph 12 of his Affidavit to the allegation of 'B'. It submitted that despite this, 'B' in her supplemental affidavit persisted in commenting about the use of these words and it is submitted on behalf of 'A' that the meaning of the averment that 'B''s allegations were untrue was not withdrawn.

39. Further objections are made on behalf of ‘A’ in relation to the assertions and exhibits set out by ‘B’ in her affidavit sworn in 7th Decemmber 2023 that the child’s absences from school were because he was being bullied, the DVPO/DVPN issue (referred to above) and the exhibiting of the formal documentation of the divorce of ‘A’ and ‘B’.

40. There is, in my view, no prejudice to ‘A’ in allowing this Affidavit in the context of this application and I note that the Legal Submissions on behalf of ‘A’ filed in court before the hearing responded to the matters raised.

41. The serious allegations of coercive or controlling behaviour are referred to *inter alia* in paragraph 9 of ‘B’’s affidavit sworn on 19th October 2023 and are refuted vehemently by ‘A’ at paragraph 12 of his affidavit sworn on 30th November 2023 and it is in that context that ‘A’ states “… *[w]ith regard to para. 9 I say that I refute the allegations completely. They are simply fantastical and really shows that the Respondent is unwell and simply endeavouring to manufacture some unrealistic defence for her actions* …”. The matter is further addressed in the affidavit of ‘B’ sworn on 7th December 2023 (the admission of which was objected to on behalf of ‘A’) at paragraph 4 (fifth bullet point) where ‘B’ states that “… *[a]t paragraph 12 the Applicant refutes the allegations at paragraph 9 of an ongoing physical relationship and coercive control in the following terms* I say that I refute the allegations completely. They are simply fantastical and really shows that the Respondent is unwell *… I say that the allegation that I am a fantasist and am unwell is a gratuitous falsehood, which the Applicant knows to be false and rather than deal with what I have set out in my Affidavit, in a respectful way, the Applicant has chosen to attack me*

personally and the remainder of paragraph [sic.] continues in the same vein and finishes with what can only be interpreted as a threat of sorts with the following words I have further details on her relationships however I don't see how it is relevant to the issues between the parties …".

42. The Affidavit of 'B' sworn on 7th December 2023 exhibits correspondence between the parties which includes a letter from the solicitors on behalf of 'A' dated 6th December 2023 which states that their client ('A') "… *is agreable to amend/edit the sentence at paragraph 12 of his affidavit to omit the words 'fantastical' and 'unwell' that your client finds so offensive on a without prejudice basis so the sentence would now read "They really show that the Respondent is simply endeavouring to manufacture some unrealistic defence for her actions. We trust this in order. Our client will initial the original amended Affidavit on Thursday before Court* …".

The views of the child

43. On behalf of 'B', Mr. Mullooly BL submits that the Supreme Court (Finlay Geoghegan J.) in *MS v AR* [2019] IESC 10, held that the child's objections should be considered in accordance with the three stage approach considered by Potter P. in *Re M* [2007] EWCA Civ 260 (referred to earlier) and that the correct approach was to pose the following questions: first, has the child objected to the return; second is the child of such age and maturity it can take account of those objections; and third, if the two questions are answered in the positive ought the court to exercise its discretion in favour of no return.

44. In this case, it is submitted, on behalf of 'B', that the child (who is over 12 years of age and will be 13 years of age in April 2024) has undergone an assessment which is set out in the report (directed by the court) dated 4th December 2023 from a Family Law Assessor of the Child Advocacy & Assessment Service (Guardians ad Litem Ireland), exhibited in the Applicant's Solicitor's Affidavit dated 6th December 2023.

45. It is submitted on behalf of 'B' that I should have regard to the views of the child and the overall circumstances of the case be considered as illustrating the level of the child's integration into the community, and 'B''s view that, compared to his previous experience in Wales, the child has settled in well at a local school, has made friends and is enjoying playing school rugby.

46. On behalf of 'B', it is further submitted that the report dated 4th December 2023 is very positive and is interpreted on behalf of 'B' as follows: the child expresses an objection to returning to Wales; the child's views are characterised as an 'objection' by the Family Law Assessor carrying out the assessment; the objection is based not just on a wish to live with his mother, but he also references issues of lifestyle, school, sport and friends. It is stated that the Assessor confirms the child has achieved expected milestones for a child of his age and is capable of forming his own views and that the assessment shows that the child knows his own mind, whilst at the same time, has an insight into the situation and has a positive attitude to both parents.

47. It is further submitted that the fact that the child is happy at school in Ireland is very significant, given ‘B’’s statement regarding what is described as the experience of the child being previously bullied at his school in Wales.

48. Mr. Mullooly BL, on behalf of ‘B’, states that in respect of the third question considered by Potter P. in *Re M* [2007] EWCA Civ 260, and the balancing of the interests of the child with the objectives of the Convention, that the court should exercise its discretion to allow the child to remain in all the circumstances of the case including having regard to the following matters: (a) the child appears to be happy in his present home and has integrated well into the local community; (b) the child’s attitude to school is positive in contrast to his previous experience; (c) the child is benefitting from the exposure to other friends at school and an excellent rugby club which despite its size and rural location provides coaching and the opportunity to play rugby with his peers; (d) ‘B’ has broken the cycle of the alleged controlling behaviour of ‘A’ by moving to Ireland; (e) the child is at no risk in Ireland of a repeat of the controlling behaviour while ‘B’ lives further away from ‘A’; and (f) the child has expressed a positive attitude to ‘A’ and clearly wishes that their relationship to continue. Mr. Mullooly BL submits that the organisation of a co-parenting arrangement is not insurmountable as there are flights to and from Knock and ‘B’ has conceded that she will facilitate this and has no objection to ‘A’ availing of longer holidays with the child outside school term.

THE CASE ARGUED ON BEHALF OF 'A'

The question of grave risk & intolerable situation

49. In oral and written submissions to the court, Ms. Lee BL, on behalf of 'A', submits that no defence of grave risk of the child being returned to an intolerable situation has been made out on behalf of 'B.'

50. As Mr. Mullooly BL had done in arguing his case, Ms. Lee BL also referred me to extracts of the Family Law Assessment Report dated 4th December 2023 which, it was submitted, confirmed that (a) the child is not in fear of 'A'; (b) the child can return to the care of 'A' should 'B' not wish to return to live in the jurisdiction of England and Wales; (c) the child enjoys the company of 'A', his half-siblings (whose company he has been deprived of) and enjoys agriculture and farm-life; and (d) the report dated 4th December 2023 at paragraph 47 states that the child "… *has a pleasant demeanour. He presents as a friendly, engaging and capable young person who would likely manage most environments well* …" and it is submitted by Ms. Lee BL that there is no suggestion in this report that the child would suffer any harm by virtue of a return order to the jurisdiction of England and Wales whether that was in the care of 'B' or 'A'.

51. Reference is made by Ms. Lee BL to what is described as a number of entirely unsubstantiated allegations in B's affidavit which refer to 'A''s alleged behaviour towards 'B' and have no bearing on the child, which it is submitted, when taken at their height, do

not meet the threshold of grave risk and intolerable situation. It is further claimed that 'B' has a history of making spontaneous decisions when in relationships that have an impact on the child without appearing to take cognisance of the impact that such actions might have on him. It is submitted, for example, that if there was any basis to the allegations made by 'B' of coercive and controlling behaviour towards her by 'A' and a consequent dysfunctional relationship, there would simply be no basis for suggesting mediation as a possible avenue of redress and further there are no text messages exhibited which would suggest a physical relationship because, it is submitted, there was no such alleged physical relationship.

52. It is submitted that in the event that the child is returned he would also enjoy the company, association and friendship of his half siblings, have security of accommodation and attend school regularly and join the local rugby club. It is also submitted that access can be facilitated with 'B' in Ireland. By the child's own admission, it is submitted, he had friends in Wales that he attended primary school with.

53. Ms. Lee BL places reliance on the text messages exhibited and the chronology of events in July and August 2023 leading up to the removal and retention of the child in the Republic of Ireland, in referring to the concern expressed by the school and Social Services as to the child's record of attendance at school, the reasons given by 'B' for this non-attendance, the fact that 'B' did not inform 'A' of her plans not to return with the child until the 26th August 2023 (and 'A''s last physical contact with the child was 11th August 2023), notwithstanding that on 28th July 2023 'B' informed the child's previous school in Wales, by e-mail, that

the child would not be returning, and, on the 19th August 2023 'A' had agreed with 'B' that the holiday in Ireland could be extended to 26th August 2023.

54. Accordingly, Ms. Lee BL submits that no defence of grave risk and intolerable situation has been made out by, and on behalf of, 'B' and therefore no discretion arises on whether the court should make an order for return.

The views of the child

55. In her submissions on this issue Ms. Lee BL for 'A' also referred me to extracts of the Family Law Assessment Report dated 4th December 2023 (as did Mr. Mullooly BL for 'B'). As this is a matter for the court to make a finding on (rather than for 'B' to establish), I will similarly (as with Mr. Mullooly BL's submissons) summarise the arguments made on behalf of 'B'.

56. The written submissions of Ms. Lee BL contend that from the information provided by the child to the Family Law Assessor in the interview (consultation) held on 18th October 2023, when the child was approximately 12 and half years of age, and as reproduced in the report, it would appear to show that the child lived what is described as a somewhat chaotic life since 'B''s separation from 'A'. It is submitted that the child was privy to money worries and that 'B' had got rid of her furniture when coming to Ireland but had brought her animals (which it is said comprised of ten horses and twenty-three dogs).

57. In summarising the written and oral submissions on this issue by Ms. Lee BL for ‘A’, it is submitted by counsel that the Family Law Assessment Report dated 4th December 2023 confirms the following.

58. The child is heavily influenced by, and his views align with, the views of ‘B’ and he repeats what she says to him and is aware of when she is stressed.

59. The child and ‘B’ are currently living in a caravan or mobile-home type accommodation which is placed on the same land as the property (house) purchased by ‘B’, which needs extensive renovation (subject to planning), and is currently unhabitable.

60. The child enjoyed farming life with ‘A’, envisages spending time with him wherever he is living and has an enthusiastic interest in agriculture.

61. There is, it is submitted, no force behind the child’s objection to a return to the jurisdiction of England and Wales and it is submitted that this is a preference (including a preference to live with his mother) rather that an objection *per se* and does not meet the threshold of an objection or, in the alternative, if the court deems it to be an objection, it is a mild objection and one that should not outweigh the underlying principles of the Hague Convention.

62. On behalf of ‘A’, it is further submitted that if the court deems it appropriate to consider the child’s views, given his age and maturity, when the court considers those views, if it is clear that they align with that of ‘B’ (his mother) and that because the tone of the report dated 4th December 2023 from the Family Law Assessor is that the child is heavily influenced by the

views of ‘B’, it would not be appropriate to consider (and or give weight to) the views expressed by the child, in such circumstances.

63. It is submitted again that as the report dated 4th December 2023 (at paragraph 47) states that the child is a “… *capable young person who would likely manage most environments well* …”, this would include a return to the jurisdiction of England and Wales.

64. It is submitted on behalf of ‘A’ that it would not be appropriate in those circumstances for the court to consider exercising its discretion not to return the child.

65. It is submitted by Ms. Lee BL in her written Legal Submissions that in the event that the court exercises its discretion, it should consider *inter alia* the totality of the evidence before the court, including the child’s somewhat chaotic life in the care of ‘B’, that his education suffered when in Wales, that the move to Ireland came about when his attendance at school was being investigated by Social Services, and that when with ‘A’ the child never had any difficulty with school attendance and that it was only when in the care of ‘B’ that the child did not attend school.

66. It is further submitted that the child is living in a caravan whereas if he is returned to the jurisdiction of England and Wales he will be able to live with ‘A’ in a house, attend school regularly and join the local rugby club. It is submitted that ‘A’ can assume full time care of the child should ‘B’ not wish to return to the jurisdiction of England and Wales. On

behalf of 'A', questions are raised about how 'B' supports herself and the child into the future and when in Ireland.

67. In the written Legal Submissions on behalf of 'A', Ms. Lee BL refers to the exercise of the court's discretion where one of the defences set out in Article 13 of the Convention is made out and refers *inter alia* to the decision in *B v B* [1998] 1 I.R. 299 (per Denham J.[13] at page 313), stating that the following matters should inform the exercise of the court's discretion when the factors identified by Denham J. are applied to this case: (i) the child's habitual residence was England and Wales prior to his wrongful retention; (ii) the parties had joint custody of the child, primary care was with 'B' with regular access to 'A' which included access with his half-siblings; (iii) the objective of the Hague Convention is to prevent the wrongful removal of a child[14] and it is clear that 'B' took unilateral action in the removal of the child to the Republic of Ireland; (iv) the court's discretion must be exercised with care, and in the best interests of the child, so as not to undermine the general policy objectives of the Convention, including deterrence of abduction; (v) the background information on the child is that he has lived a somewhat chaotic life with 'B'. The child's main interest in life is farming/agricultural life which lifestyle he had with 'A' every second weekend in England. The child has half siblings in England which he has lost the benefit of seeing every fortnight by virtue of the action taken by 'B'; (vi) it is alleged that 'B' has litigated freely in England and there was nothing to prevent her bringing an application for

[13] As she then was.

[14] As per the decision in *MS v AR* [2019] IESC 10.

permission to relocate but she chose not to do so; and (vii) it is submitted that the issue of undertakings can be addressed, if required.

ASSESSMENT, FINDINGS & DECISION

Grave risk & intolerable situation

68. By way of preliminary finding, I find that these proceedings were commenced by 'A' within one year from the date of removal/retention of the child and the child was at all material times, including at the time of his removal, habitually resident in the jurisdiction of England and Wales. Further, I find that 'A' has custody rights over the child and he has exercised those rights in this case. The informal agreement between 'B' and 'A', whereby the child resides with 'B' during the week, with accesss to 'A' (his partner and the child's half siblings) at his home on alternate weekends, including collection from the school on Friday afternoon and return to school on Monday morning, in addition to holiday access, would have continued but for the child's removal by 'B', and failure to return, in late August 2023. The decision to remove the child to the Republic of Ireland and not return the child to the jurisdiction of England and Wales was a unilateral decision taken by 'B'.

69. In paraphrasing the observations of Finlay Geoghegan J in *CA v CA* [2010] 2 I.R. 162; [2009] IEHC 460 at paragraph 21, for the following reasons, I consider and so find that 'B' has neither established the evidential burden nor adduced clear and compelling evidence that there is a grave risk that the return of the child to the jurisdiction of England and Wales

would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

70. First, the following chronology of events occurred immediately prior to the removal of the child to, and retention in, Ireland: (i) on 24th July 2023, the school referred the fact of the child's attendance record at school to Social Services; (ii) on 28th July 2023 Social Services contacted 'B' regarding the referral received from the school; (iii) on 28th July 2023 'B' sent an e-mail to the school indicating that the child will not be returning to school in Wales; (iv) a request was made by the school for details on the new school but none was provided by 'B'; (v) the 11th August 2023 was the last physical contact between 'A' and the child; and (vi) on 19th August 2023 'B' requested an extension of time for her holiday in Ireland and did not inform 'A' that she had taken the child out of his school in Wales.

71. Second, the court in hearing an application for return of a child does not attempt to resolve conflicts of fact in relation to the disputed claims of alleged coercive or controlling behaviour, which are as between 'A' and 'B' and do not involve the child, or the subsequent correspondence in relation to matters averred in the parties respective affidavits. However, taking and assuming the allegations of 'B' in relation to a number of matters, including in relation to the alleged coercive or controlling behaviour at its height, the report of the Family Law Assessor dated 4th December 2023 confirms at paragraph 46 that the child is not fearful of 'A' and at paragraph 41 the report states that the child voiced no objection to living in the vicinity of 'A' and was clear that he enjoyed his time with 'A' and wants their relationship to continue and therefore, contrary to the views expressed by 'B' and on her behalf, the child will not be exposed to physical or psychological harm or otherwise placed

in an intolerable situation. The report of the Family Law Assessor dated 4th December 2023 confirms at paragraph 16 that the child has a keen interest in farming, animals and the outdoors and that "… *he chatted about these topics with an easy enthusiasm* …" and at paragraph 17 that the child "… *spoke extensively about farming and his experiences of his father's family farm* …" and at paragraph 39 that the child "… *has an enthusiastic interest in agriculture* …".

72. As stated by the High Court (Simons J.) in *DB v HC* [2022] IEHC 627[15] (at paragraph 31), the term "grave" qualifies the risk, not the apprehended harm and it is not necessary for the apprehended harm to be grave, provided it meets the high threshold of being intolerable, which connotes substantial and not trivial circumstances.[16] Further, there is no such similar allegation made by 'B' in the context of 'A''s relationship with the child.

73. Third, issues of custody and access should generally be determined by the courts of the child's habitual residence in the jurisdiction of England and Wales.

Findings in relation to the issue of the child's own views and objections

74. Separate from the Article 13 grave risk and intolerable situation defence, Article 13 of the Hague Convention provides that a court may 'also' refuse to order the return of a 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*."

[15] Also reported as *In re AB (A Child)* (Grave risk defence: domestic violence) (25/11/2022).
[16] *CMW v SJF* [2019] IECA 227 per Whelan J. at paragraph 56.

75. Accordingly, this jurisdiction to refuse to return by reason of a child's objections is predicated on *the court's findings* which is in contrast to the position of the Article 13(a) and (b) defences where, for example, the onus is on the party opposing the return *to establish* a grave risk and intolerable situation.

76. As referred to earlier in this judgment, the three stage approach identified by Potter P. (in the English Court of Appeal (Civil Division)) in *Re M (Abduction: Child's Objections)* [2007] EWCA Civ 260 (beginning at paragraph 60) has been referred to and applied by the Superior Courts in Ireland in a number of cases.

77. A child's objections are separate and distinct from the circumstances referred to in Article 13(a) and (b) which relate to grave risk and intolerable situation. They are, of course, not dispositive, in and of themselves, of the question which the court has to decide and make findings on.

78. In compiling the report dated 4th December 2023, the Family Law Assessor in this case met with the child on 18th October 2023 for approximately one hour.

79. The report states that its purpose was to provide to the court the child's views as reported to the Family Law Assessor regarding the following matters: (a) the circumstances in which the child came to Ireland in or about August 2023; (b) the circumstances in which the child remained in Ireland since August 2023; (c) the child's wishes in relation to their future care

and living arrangements including where they would like to live; (d) if those wishes do not include living in the jurisdiction of the UK, whether the child has any objection to returning to live in the jurisdiction of the UK; (f) in the event of any objection to returning to live in the jurisdiction of the UK being expressed, the child's reasons for the objections; (g) if the child were to return to live in the jurisdiction of the UK, any wishes as to how and when the return would take place; (h) should the child stay in Ireland or return to the UK what role they envisage for the non-resident parent and extended non-resident family in their future life; and (i) any other information they may wish the Court to take into account in deciding the application that they be returned to the jurisdiction of the UK.

80. In addition, the report of the Family Law Assessor dated 4th December 2023 states that the assessment was undertaken in accordance with the Information Note for the Interview and Assessment of Child in Child Abduction Cases and therefore included the Assessor's professional opinion regarding: (a) the child's degree of maturity; (b) whether the child was capable of forming their own views and if so a general description of the type of matters about which they appear capable of forming their own views; (c) whether the child objects to being returned to the jurisdiction of the UK; (d) if the child does object to being returned to the jurisdiction of the UK: (i) the grounds of such objection and in particular whether it relates to an objection to living in the jurisdiction of the UK and/or a desire to remain in Ireland or whether it relates to an objection to living with or living in the vicinity of a particular parent and/or wish to live with the other parent (ii) whether any objections expressed have been independently formed or result from the influence of any other person including a parent or sibling; and (e) any other matter which the Assessor considers should

be brought to the attention of the Court arising out of the interview and assessment for the purpose of its decision in these proceedings.

81. In assessing the first issue identified by Potter P., the report of the Family Law Assessor dated 4th December 2023 does not draw a bright line distinction or provide a detailed basis as between the child indicating *a preference* for staying in Ireland, on the one hand, and expressing *an objection* to returning to the jurisdiction of England and Wales, on the other hand. This is perhaps understandable, and the definitional difficulties in distinguishing between a stated 'preference' or 'mere preference' and an 'objection' have been considered by the Superior Courts in a range of cases including by the High Court (Ní Raifeartaigh J.) in *ZR v DH* [2019] IEHC 775 (at paragraph 17 of that judgment), the Court of Appeal (Whelan J.) in *JV v QI* [2020] IECA 302 (at paragraph 69 of that judgment) and the Court of Appeal (Donnelly J.) in *M v M* [2023] IECA 126 (at paragraphs 24 and 61 to 71 of that judgment).

82. The authorities, just cited, suggest that it is important when ascertaining whether an 'objection' is or is not made by a child, one ought to go beyond the formulaic or rhetorical nature of a 'leading-type' question (referred to by Ní Raifeartaigh J. in *ZR v DH* as "semantics") in a report of an interview/consultation with a child (such as, for example, 'do you *object* to being returned to country Z?') and assess, rather, whether or not strong feelings (going beyond a preference) have been expressed by a child having regard to the context of the particular facts involved in each case.

83. In this case, the report of the Family Law Assessor dated 4th December 2023 identifies what could be charactersied as a mild objection – but it is an objection, nonetheless. The report, for example, poses the question "… *whether [the child] objects to being returned to the jurisdiction of the UK* …" and states in answer to that question at paragraph 40, … *[The child] says he objects to being returned to the jurisdiction of the UK*."

84. The next question thematically follows the previous question and asks that if the child "… *does object to being returned to the jurisdiction of the UK the grounds of such objection and in particular whether it relates to an objection to living in the jurisdiction of the UK and/or a desire to remain in Ireland or whether it relates to an objection to living with or living in the vicinity of a particular parent and/or wish to live with the other parent* ... ".

85. In answer to that question the report at paragraph 41 states that the child "… *says he objects to being returned to the jurisdiction of the UK because he likes the lifestyle he and his mother have developed in Ireland in recent weeks, his home with his mother in Wales has been sold and he has started at a new school and joined a rugby club in Ireland. [The child] voiced no objection to living in the vicinity of his father, indeed he was clear that he enjoyed his time with his father and wants their relationship to continue. [The child's] expressed preference is to continue to live with his mother, as he always has.*"

86. I, therefore, find that the report of the Family Law Assessor dated 4th December 2023 does refer to the child stating that they have an objection to being returned to the jurisdiction of England and Wales.

87. Next, I have to consider whether the age and maturity of the child are such that it is appropriate for a court to take account of his views.

88. On the question of their maturity, the report dated 4th December 2023 states, at paragraph 38, that the child appears to have achieved the expected developmental milestones for a child of their age, 12 years and 6 months, and does not present with any communication or cognitive impediment and provided extensive linear narratives about events in their life.

89. The report of the Family Law Assessor dated 4th December 2023, at paragraph 47, describes the child as having "*a pleasant demeanour*" and presenting as "*a friendly, engaging and capable young person who would likely manage most environments well*."

90. At aged approximately 12 years and 6 months, the child in his answers as recorded by the Family Law Assessor in the report dated 4th December 2023, illustrates a commendable awareness and insight of the situation and views of his parents. I find, therefore, that the child is of an age and maturity that I should consider his views which I so do.

91. Whilst I have a found as a fact that the child objects to a return to the jurisdiction of England and Wales and that having regard to his age and maturity that I should also consider his views, I further find that a low weight should be accorded and applied to those views because the following parts of the report of the Family Law Assessor dated 4th December

2023 confirm that the child's views are very much influenced by, and align with, that of 'B', his mother.

92. For example, in addressing the precise question as to "… *whether any objections expressed have been independently formed or result from the influence of any other person including a parent or sibling* …" the report states at paragraphs 42 and 43 that "*42. [The child] said that his mother had told him about the purpose of the interview as being to express his opinions about where he would like to live*" and "*43. [The child] is aware that his mother wants to remain in Ireland and is trying to establish a life here. His wishes are ad idem with hers*."

93. When asked about the circumstances in which the Applicant came to Ireland in or about August 2023 the Assessor records the child as *inter alia* stating at paragraph 21 of the report the following "… *[m]e and mum came over to Ireland on holidays in June for a weekend. We really could never go on holidays because of all the animals but mum said 'let's get someone in to look after them' so we did. When I was going to dad's for the weekend she asked if it would be okay to sell the place in Wales because we never had much money with all the animals, you see we have ten horses and twenty three dogs. It was a good idea to sell so we sold, well mum did while I was at dad's. She said she would tell dad because he would ask me too many questions*."

94. Further, in the context of the same question, the Assessor records the child as *inter alia* stating at paragraph 24 of the report the following: "*[y]ou see it was going to work until he*

got things into his head and when that happens he thinks that he's the only one that is right. Me and mum had planned that I would go to him one weekend a month and longer in the holidays, well that's what mum said."

95. When asked about the circumstances in which the child has remained in Ireland since August 2023, the report of 4th December 2023 states *inter alia* at paragraph 28 that the child has not seen 'A' "… *because mum is scared he won't let me come back. I have a video call planned with him tomorrow. I have messaged him and offered him to come over and watch me play rugby but he didn't say anything. It was my mum's idea to message him. Dad doesn't always reply to messages. He reads them and then ignores them*."

96. When the child is asked about their wishes in relation to their future care and living arrangements including where they would like to live, the report *inter alia* states at paragraph 29 that "… *[the child] said he would like to remain in Ireland and commented: "*I want to live here with my mum because I've made mates here in Ireland at school and at rugby. That's what my mum wants too. Dad wants me to live nearer to him or even with him*""*.

97. Finally, I must now consider, in accordance with Article 13 of the Convention and having regard to all of the circumstances of the case, whether I should exercise my discretion in favour of the child's retention or return.

98. In doing so, and while they may seem in tension with each other, I have had regard to the general policies and objectives of the Hague Convention including those which favour the prompt return of children for the purpose of the courts of their habitual residence deciding custody disputes and also those which include a policy that where a child objects, a court may refuse to return the child.

99. In *M v M* [2023] IECA 126, the Court of Appeal[17] (Donnelly J.), at paragraph 58 of the court's judgment, referred to the identification of deterrence of child abduction as a policy of the Convention to which the court must have regard when considering whether to exercise its discretion to refuse return based upon a child's objection. Donnelly J. quoted the following extract from paragraph 65 of the judgment of the Supreme Court (Finlay Geoghegan J.) in *MS v AR* [2019] IESC 10:

> "*[i]n exercising its discretion, a court must take care that is has regard to the fact that the jurisdiction to refuse to return is an exception to the general policy and provisions of the Convention. The discretion must be exercised with care, and in the best interests of the child, but not so as to undermine the general policy objectives of the Convention, including deterrence of abduction*."

100. In her consideration in *MS v AR* [2019] IESC 10 of the "*small but important possible difference between the approaches of Denham C.J. and Baroness Hale*" in the

[17] The Court of Appeal was comprised of Donnelly, Faherty and Ní Raifeartaigh JJ.

judgment of the Supreme Court (Denham CJ) in *AU v TNU (Child Abduction)* [2011] I.R. 683; [2011] IESC 39 which referred to the decision of Baroness Hale in *Re M. (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 A.C. 1288, Finlay Geoghegan J. agreed with the statement of Denham C.J. in *AU v TNU* (at paragraph 32 of that judgment) that:

> "*… [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"*[18]*. Also later at [paragraph] 37, she refers to "the balance between the policy of summary return and theoperation of the exception" (i.e. those exceptions laid out in Article 13 of the Convention) which may alter with time. Denham C.J. makes clear that a court exercising a discretion under Article 13 is not merely entitled to have regard to the policies of the Convention which favour return but is bound to do so. I respectfully agree that it is an obligation*".

101. Similarly, in *M v M* [2023] IECA 126 the Court of Appeal (Donnelly J.) (at paragraph 82) noted that the reference at paragraph 65 in the judgment of Finlay Geoghegan J. in *MS v AR* [2019] IESC 10 to the phrase "*exception*" – *"In exercising its discretion, a court must take care that it has regard to the fact that the jurisdiction to refuse return is an exception to the general policy and provisions of the Convention and the discretion must be exercised with care, and in the best interest of the child, but not so as to undermine the general policy objections of the Convention, including deterrence of abduction*" – ought not to be interpreted as importing any test of exceptionality into the

[18] Emphasis added in the judgment of Finlay Geoghegan J.

exercise of the court's discretion and the exercise by the court of its discretion must be considered on all of the evidence before the court.[19]

102. In its judgment in *M v M* [2023] IECA 126 the Court of Appeal (Donnelly J.) pointed out (beginning at paragraph 78 of the judgment) that the court, in the exercise of its discretion must be careful not to equate Convention policy *only* with the principle of prompt return but must be alive and sensitive to the policy which gives it a discretion to refuse when a child objects mindful, of course, that the child's views are not dispositive or determinative of the issue and ultimately the decision as to whether or not the child is returned is that of the court. Each case must be assessed as the Supreme Court stated in *MR v AR*, having regard to the individual facts and circumstances of the child, the parents and other family circumstances.

103. Guided by this approach, the totality of the evidence which I must consider includes, the circumstances leading up to the child's removal from the jurisdiction of England and Wales involved both the school and the Social Services in the child's place of habitual residence (which, in this case, is the jurisdiction of England and Wales) inquiring into the child's non-attendance at school and the text messages exhibited in the affidavit of 'A''s solicitor sworn on 26th September 2023 which suggest that child's attendance at the end of the previous academic year was 59%, that 'B' had e-mailed the head of year on 28th July 2023 to

[19] *M v M* [2023] IECA 126 per Donnelly J. at paragraph 83; *MS v AR* [2019] IESC 10 per Finlay Geoghegan at paragraph 94.

say that the child would not be returning to his school in Wales, that the reason given by 'B' for the child's absence from school on 15th June 2023 was because of a family emergency in Ireland (when there was no family in Ireland),followed by six further days of absence (the reasons given being that 'B' and the child had arrived home late on the Sunday night and that the child's horse had died). While I do not have to decide the issue of the alleged bullying of the child referred to by 'B' while at school in Wales, the exhibit referred to in the supplemental Affidavit of 'B' sworn on 7th December 2023 is an e-mail sent by 'B' to the Board of Governors on *28th July 2023* (the same date as the e-mail from 'B' to the head of year) and furthermore issues such as alleged bullying and the record of attendances/absences at school are all matters which are more properly matters to be addressed in the child's place of habitual residence, which is in the jurisdiction of England and Wales.

104. Further, the evidence before me is that 'B' did not notify 'A' of her intention to remain in Ireland and not return with the child.

105. In this regard a text message from 'B' to 'A' dated 26th August 2023 stated that "*[w]e are proposing that [the child] comes to you one weekend a month that suits you and in the holidays instead of half a week go for the full week or longer, as Irish school holidays are longer than UK, I will bring him over to Shrewsbury and you pick him up from there, also the summer holidays are 3 months long so you will see him a lot more and they have a month off over Christmas so again you will see him for a longer period of time. None of this is done to hurt you or stop you and [the child] seeing each other that was never the intention, all I want is a better life style for me and [the child], in the two weeks we have*

been here he has thrived and is a much happier confident boy which surely is the whole purpose?"

106. 'A' responds to this text message stating "*I don't accept this at all and will see what the solicitor says about it before I say anything else. Can you tell me the name of the school that [sic.] you have enrolled him in without my permission please.*"

107. The reason given for moving to Ireland at the date of this text on the 26th August 2023 which coincided with the extended date of the holiday was the stated desire or preference for a better lifestyle for 'B' and the child in Ireland.

108. Further, during this period and up to the 26th August 2023 no application was made by 'B' to the relevant authority in the jurisdiction of England and Wales for permission to relocate to Ireland.

109. It is common case that both 'B' and the child are presently living in a caravan or mobile-home type accommodation located on the lands of a house which was bought by 'B' and requires extensive renovation (subject to planning) and remains uninhabitable.

110. The report of the Family Law Assessor dated 4th December 2023, at paragraph 47, describes as "… *a friendly, engaging and capable young person who would likely manage most environments well.*" The child, if returned to the jurisdiction of England and Wales, in the custody of either 'B' or 'A', can pursue his interest in farming and agriculture, have

access to his wider family and half-siblings, resume his schooling and continue his enjoyment of playing rugby.

111. In the circumstances, therefore, in the exercise of my discretion, I accede to the application made on behalf of ‘A’.

112. I therefore find that ‘B’ has wrongfully removed and retained the child from the place of his habitual residence in the jurisdiction of England and Wales to the jurisdiction of the Republic of Ireland within the meaning of Article 3 of the Hague Convention.

113. Accordingly, I propose to make an order pursuant to Article 12 of the Hague Convention directing the return forthwith of the child to his place of habitual residence in the jurisdiction of England and Wales.

PROPOSED ORDERS

114. As stated, I propose to make an order pursuant to Article 12 of the Hague Convention directing the return forthwith of the child to his place of habitual residence in the jurisdiction of England and Wales.

115. I shall discuss with the parties the precise terms of the order and any ancillary or consequential matters which may arise when the matter is listed before me on Friday 19th January 2024 at 10:30 am.