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[31/07/1995; High Court (England); First Instance]
Re A. (Minors) (Abduction: Habitual Residence) [1996] 1 WLR 25

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

7, 31 July 1995

Cazalet J

In the Matter of A.

Henry Setright (instructed by Haring Ross Gagrat & Gardi) for the father

John Mitchell (instructed by Eaton-Evans & Morris) for the mother

CAZALET J.

These proceedings, which are brought under the Child Abduction and Custody Act 1985, concern three children: R. who is now aged six years; L., who is now aged five years; and K. who is now aged one year.

The plaintiff in the proceedings is the father of the three children. The defendant in the proceedings is the mother of the three children. The children are currently living with their mother in this country. The father seeks, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction (which is set out in Sch 1 to the 1985 Act), an order for the immediate return of the children to the State of Michigan, United States of America. The mother opposes this application.

Two main issues are joined between the parties. The father maintains that immediately prior to the mother's wrongful removal of the three children to this country on 3 April 1995 (which is not disputed) the children were habitually resident in the State of Michigan, United States of America, a contracting party to the Hague Convention. The mother disputes this and, whilst accepting that she acted in breach of the parties' joint rights over custody in bringing the children to this country, she maintains that at that time the children were habitually resident in Iceland, which is not a contracting party to the convention. In those circumstances the mother contends that this is not a convention case. However, I have been told that if this court decides that this is a convention case, and the children are to return to Michigan, then counsel consider that suitable undertakings can be worked out between them to enable the mother to travel and remain with them in Michigan pending any proceedings in that state being completed. The father contends that if, contrary to his contention, this is not a convention case, then nevertheless the court should exercise its wider inherent jurisdiction and return the children to Michigan to enable their future to be determined by

the courts of that state. The mother opposes this, saying that such a course would be wholly inappropriate in the circumstances.

Background history

I start by summarising the somewhat unusual background circumstances giving rise to these competing claims. The father is a United States citizen, now aged 27, who has been serving in the US Navy in its Air Force limb for seven years or more. The mother is a United Kingdom national, now aged 24 years, who was born and brought up in this country.

In January 1988 the father, under a US service posting, came to be based in this country at RAF Brawdy, Haverfordwest, this being a US military base. It is not in dispute that the father's sole reason for coming to this country was under his US service posting.

In about April 1988 the mother and father met, and in about September 1988 they started living together. The mother became pregnant. On 23 June 1989 they were married at the Haverfordwest Registry Office and thereafter they moved into service accommodation. In 1989 and 1990 R. and L. were born in this country, and the parties continued to live here until January 1993. At this time the father was assigned from this country to the US naval base at Keflavik, Iceland. It appears that the father was granted a period of leave before taking up his new position.

The family, in January 1993, then left the United Kingdom and traveled to Michigan, where they stayed with the father's parents. It is not in dispute that at all times the family envisaged moving on shortly to Keflavik, but in fact in February 1993 the father traveled from Michigan to Keflavik to take up his posting there, and the mother and children remained in Michigan through until March before joining the father. No doubt he was making arrangements for suitable married quarters to be made available for them. In March 1993 the mother and children traveled to the naval base at Keflavik to join the father. In August 1994 K. was born in Keflavik.

In about December 1994 - the father puts it in January 1995 - the relationship between the parties broke down and they separated. The father moved into barracks and the mother remained with the children in US naval family accommodation. The father continued to see his children and help with their care. At this time the mother, on her case, formed a relationship with another man and, as of mid January 1995, became pregnant. I am told her expected date of delivery is 30 September 1995. Subsequently she ended her relationship with the man concerned.

On 28 January 1995 the father filed a divorce suit in the Michigan Circuit Court. On 8 March 1995 the Wayne County Circuit Court, Michigan, made an order against the mother prohibiting removal of the children to the United Kingdom.

It is not in dispute that there were discussions in March 1995 between the parties and their lawyers in Keflavik with a view to them reaching terms arising from the breakdown of the marriage and, in particular, as to with whom the children should make their home. In fact no written agreement was signed. I return to this later.

On 28 March 1995 the Wayne County Circuit Court made a further order against the mother prohibiting her from removing the children from the US naval base at Keflavik. At this time it is apparent that the father was genuinely fearful that the mother might abduct the children.

On 1 April 1995 the father made a complaint to the US Navy Security at Keflavik when he found that the family home had been vacated.

On 3 April 1995 the mother flew with the children from Iceland to England. She took them to a caravan next to her mother and her stepfather's caravan which is situated by a property which they are building.

The mother maintains that she was not served with any of the US court orders and no evidence by way of proof of any such service has been put before the court. The mother said that had she been so served she would not have left Iceland. She further says that she had been told, but she did not believe, either that the father had started these proceedings or that he had obtained an injunction against her. She maintains that in any event it was obvious that she was going to the United Kingdom and that the father would have known about this. The father maintains that mother wrongfully removed the children without his prior knowledge or consent.

On 9 May 1995 the mother left R. and L. in the United Kingdom and traveled by air to Iceland with K. She says that she had to go to make arrangements about the house contents and family belongings. She took K. with her because, as she put it, K. would have been upset to have been separated from her. In fact the parties were then in touch. The father accepted that he was unable to prevent any further wrongful removal by the mother of K., and made it clear to the mother that he did not agree to her further removal from Iceland and that he would pursue his legal remedies.

On 18 May 1995 the mother issued divorce proceedings. On 24 May 1995 the Lord Chancellor's Department, on the father's request, instructed agents to seek the return of the children pursuant to the Hague Convention. On 8 June 1995 the originating summons in child abduction was issued. There followed what can be described as the usual applications to the court in regard to surrender of passports by the mother and children, and undertakings by the mother to ensure that she remained with the children at her present address. Those orders having been made, the substantive matter now comes before me.

Is this a convention case?

Article 4 of the convention provides:

"The Convention shall apply to any child who was habitually resident in a contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

It is agreed between the parties that the mother's removal of the children from Keflavik on 3 April 1995 was wrongful and in breach of the father's custody rights. In those circumstances the question which I have to decide is where the children were habitually resident immediately before their wrongful removal.

It is Mr Setright's case on behalf of the father that at all material times the children were habitually resident in the United States and in particular in the State of Michigan. It is accepted on both sides that the children do not have nor have had an habitual residence independent of that of their parents, a child's habitual residence being necessarily the same as that of its parents (see Re B (minors: abduction) (No 2) [1993] 1 FLR 993 at 995 per Waite J).

The classic meaning of habitual residence appears in the speech of Lord Brandon in C v S (minor: abduction: illegitimate child) [1990] 2 All ER 961 at 965, [1990] 2 AC 562 at 578 to 579, when he said:

"The first point is that the expression "habitually resident", as used in art 3 of the convention, is nowhere defined. It follows, I think, that the expression is not to be treated as a term of art with some special meaning, but is rather to be understood according to the ordinary and natural meaning of the two words which it contains. The second point is that the question of whether a person is or is not habitually resident in a specified country is a question of fact to be decided by reference to all the circumstances of any particular case. The third point is that there is a significant difference between a person ceasing to be habitually resident in country A, and his subsequently becoming resident in country B. A person may cease to be habitually resident in country A in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead. Such a person cannot, however, become habitually resident in country B in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so. During that appreciable period of time the person will have ceased to be habitually resident in country A but not yet have become habitually resident in country B. The fourth point is that, where a child of J's age is in the sole lawful custody of the mother, his situation with regard to habitual residence will necessarily be the same as hers."

Mr Setright submits that it follows from this that at the material time of the ether's wrongful removal of the children from Keflavik the court should hold at the children's habitual residence at that time was in Michigan. He contends at the father never lost his original habitual residence in Michigan and that this then attached to his wife and children. Alternatively, Mr Setright submits that if the court is against him on this primary submission, then the father, mother and children acquired habitual residence in Michigan arising from the period when they stayed there for two to three months in early 1993, and that in the circumstances in which they had been physically present in Iceland through until April 1995, that habitual residence in Michigan was never lost.

In support of his primary contention, Mr Setright submits that the father's essence both in this country and in Iceland resulted solely from the direction posed on him by his service in the US armed forces. He asserts that the sole reason for his presence in the two countries in question arose through his posting which his employers had the power to impose upon him and indeed had imposed upon him. He also made the point that even though these two postings may have lasted for some years, they were temporary and that his employers always had the right to require him to return to his home country or move elsewhere.

Following the marriage, Mr Setright contends that the mother's presence in this Country and thereafter in Iceland was dependent upon the father's presence. He relies on the fact that the father is a US citizen with his only permanent roots in Michigan. Mr Setright further relies upon the legal opinion of a Mr Ben Pearson, qualified lawyer of the State of Michigan. This opinion is dated 21 July 1995. It states that under Michigan law the father is and has been deemed to be a resident of the State of Michigan throughout the period of his armed service. Furthermore, Mr Pearson says that in the circumstances, Michigan is regarded as the children's "home state" with jurisdiction to deal with them. Mr Setright says that I should also take into account the fact that the Michigan court has assumed jurisdiction over the parties' marriage and prohibited the removal of the three children, who are registered US citizens and who have no connection with Iceland whatsoever other than following their father's service requirements. He urges on me that the US base at Keflavik is to be regarded as a self-contained community with its own US legal service to which the parties themselves had recourse, as well as its own housing in which the children were

accommodated, and no doubt its own shops, schools or nursery schools attended by the two eldest children, with its own social welfare system and the like. There was no suggestion, he pointed out, that either party had had any recourse to Icelandic law or other Icelandic services whilst in that country.

As I have already indicated, the speech of Lord Brandon in C v S (minor: abduction: illegitimate child) [1990] 2 All ER 961 at 965, [1990] 2 AC 562 at 578 to 579 makes clear that the expression 'habitual residence' is not to be treated as a term of art with some special meaning, but rather is to be understood according to the ordinary and natural meaning of the two words it contains. There is, as Lord Brandon indicated, no definition of the words 'habitual residence' appearing within the convention; in order to determine their meaning I must look at all the circumstances of this particular case. Nevertheless in so doing it is, I think, of some assistance to look at certain other cases and consider the approach which the court then adopted. In Re B (minors: abduction) (No 2) [1993] 1 FLR 993 at 995 Waite J said:

'1. The habitual residence of the young children of parents who are living together is the same as the habitual residence of the parents themselves and neither parent can change that without the express or tacit consent of the other or an order of the court. 2. Habitual residence is a term referring, when it is applied in the context of married parents living together, to their abode in a particular place or country which they have adopted voluntarily and for settled purposes as part of the regular order of their life for the time being, whether of short or of long duration. All that the law requires for a "settled purpose" is that the parents' shared intentions in living where they do should have a sufficient degree of continuity about them to be properly described as settled. 3. Although habitual residence can be lost in a single day, for example upon departure from the initial abode with no intention of returning, the assumption of habitual residence requires an appreciable period of time and a settled intention. The House of Lords in [C v S] refrained, no doubt advisedly, from giving any indication as to what an "appreciable period" would be. Logic would suggest chat provided the purpose was settled, the period of habitation need not be long. Indeed, in [Re F (a minor) (child abduction) [1992] 1 FLR 548] the Court of Appeal approved a judicial finding that a family had acquired a fresh habitual residence only one month after arrival in a new country.'

In Shah v Barnet London BC [1983] 1 All ER 226, [1983] 2 AC 309, a case which concerned grants to overseas students living in this country, the question arose as to the meaning of 'ordinary residence' in the United Kingdom, pursuant to the Education Acts 1962 and 1980. In the course of his speech Lord Scarman said ([1983] 1 ALL ER 226 at 235, [1983] 2 AC 309 at 343):

'Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration. There is, of course, one exception. If a man's presence in a particular place or country is unlawful, e.g. in breach of the Immigration Laws, he cannot rely on his unlawful residence as constituting ordinary residence (even though in a tax case the Crown may be able to do so) ...'

Lord Scarman continued ([1983] 1 ALL ER 226 at 235, [1983] 2 AC 309 at 344):

'There are two, and no more than two, respects in which the mind of the propositus is important in determining ordinary residence. The residence must be voluntarily adopted.

Enforced presence by reason of kidnapping or imprisonment, or a Robinson Crusoe existence on a desert island with no opportunity of escape, may be so overwhelming a factor as to negative will to be where one is. And there must be a degree of settled purpose. The purpose may be one or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the propositus intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.'

In V v B (a minor) (abduction) [1991] 1 FLR 266 it was held that for the purpose of the Hague Convention the words 'habitual residence' which appear in art 3 are to be equated with 'ordinary residence'.

In developing his first submission that the father had at all times been habitually resident in Michigan, Mr Setright relies in particular upon the passage in the judgment of Waite J in Re B (minors: abduction) (No 2) [1993] 1 FLR 993 at 995 to which I have already made reference. He submits that the father and consequently his family, never adopted the place or country in which they for the time had been living. The essence of his submission is based on the compulsive element of the father's posting by the US armed service; this also being recognised by the State of Michigan in holding that the father, throughout his service career, was to be regarded as resident in that state.

For my part I think that this is too simplistic an approach. It should, I consider, be borne in mind that when the father elected to join the US forces such embraced the fact that he would, no doubt from time to time, be required to move to different countries following the Stars and Stripes. On any view this was a voluntary election, with, in my view, no material distinction between that of the business employee who knows when he joins a particular firm that he may well be required by his employer to work in different parts of the world. Of course it would be different in this case had the father been posted, for example, on active service, or to a bivouac in Bosnia; but that is not this case. The father's initial posting was for some five years to the United Kingdom; then, after a short period of leave in Michigan whilst he and his family were waiting for the move to Iceland, they together set up home in Iceland, in March 1993 for a further anticipated period, so it appears, of at least three years. For these appreciable periods of time he made his sole family home in each of the two countries. Furthermore, given that a career in the armed services was the way of life that he had chosen to adopt, it has become apparent that, as he is now a veteran, he is able to leave the services if he so wishes. This has come to light because he has recently decided to take this course and in about September of this year he will be leaving the services and returning as a civilian to Michigan.

Whilst I am not bound by the law of the State of Michigan as to the father's residence at the material time I of course bear in mind and take into account the position under Michigan law. Mr Mitchell on behalf of the mother urged me to discount the significance of this by looking at the complaints for divorce filed by the father in the State of Michigan, where reference is made to the minor children 'residing' during the last five years with their parents at the naval facility, Keflavik and at their address in the United Kingdom. However, whilst on the face of it there may be some inconsistency between this wording and an established residence recognised under the law of Michigan, I do not think that there is any substance in the point since a distinction can be made between physical presence and habitual residence.

I do however think that there is force in what Mr Mitchell submits is the somewhat ludicrous situation which could have arisen if the father were to be deemed to have been habitually resident, from at least the date of his marriage, in Michigan. For example, he submits that if in 1992 the father had wrongfully removed the children from the United Kingdom before his posting here was at an end, the mother would in those circumstances have had no redress under the convention since on Mr Setright's argument the children would not have been deemed to have been habitually resident in the United Kingdom immediately before the wrongful removal. I think this helps to throw some light on the proper construction of the convention, pointing to the children having been habitually resident in the United Kingdom through until early January 1993. It indicates the danger, in my view, of an alternative or artificial approach.

In the circumstances, and in the context in which Waite J was using the word 'voluntarily' in Re B (minors: abduction) [1993] 1 FLR 993 (above cited), I consider that the father lived with the mother in both the United Kingdom and then Iceland voluntarily with the required degree of continuity and for the settled purpose as part of the regular order of their lives for the time being, which for either period was in any event appreciable, and cannot in either case be said to have been one which was in its context short.

I emphasise that whilst the father was in the United Kingdom for the five-year posting he married the mother, they set up and made their only home here, albeit at the US services base, with their two eldest children having been born here. Likewise upon the transfer to Keflavik, the family moved into married quarters and made their only home there with their daughter being born there. They had no home base of their own elsewhere.

Furthermore, as to Mr Setright's additional point that, whatever the position before, the father and consequently the family became habitually resident in Michigan as a result of their stay there in 1993, it is apparent from the papers before me that when the family moved to Michigan for the two to three month period in 1993 they were, so to speak, in transit, waiting for the move to Iceland. Nonetheless, they must be regarded as having terminated their habitual residence in the United Kingdom upon their departure from this country.

After a few weeks break in Michigan the father went on ahead to Iceland to make the arrangements for the family to follow; once arrangements had been put in place the mother and children followed. Whether they were staying with his parents in Michigan on holiday and/or in transit may not matter, although I think it would be difficult to find that they stayed in Michigan at that time with the required settled purpose of continuity such that they then became habitually resident in the State of Michigan. However for present purposes, it is unnecessary to resolve this question because I am fully satisfied that habitual residence was established by the father and the family in Keflavik from March 1993 onwards.

A further point arises in regard to the parties' attempts to reach a compromise following the marriage breakdown. The mother contends that as part of negotiations carried on between the parties' legal advisers in March 1995, the father agreed that the children should live with her. On this basis she maintains that at that time, at the latest, the children's habitual residence followed hers, and that in such circumstances it is not open to the father to maintain that the children were thereafter otherwise than habitually resident with her wherever she might be. I do not think that there is any substance in this argument since although the mother exhibits to her affidavit of the terms discussed Ä one of which appears to indicate that agreement was reached that custody of the children was to be vested in her Ä it is apparent that other matters were not agreed and that no overall agreement was

reached; furthermore there was no term that the mother was to be able to bring the children to the United Kingdom to live with her and no written agreement was ever signed. I accordingly attach no significance to this contention.

As an alternative way of putting his case, Mr Setright submits that I should regard the US base at Keflavik as part of the United States for present purposes. In support of this submission he repeats the point that the lifestyle of this family in the fullest sense must then have been American. He submits that in effect this was a 'little America' situated outside the United States but none the less America in the context of this case and the convention.

I bear in mind that the words of article 4 require that the child in question must have been habitually resident in the contracting state immediately prior to the wrongful removal. It is not suggested that there was some overall local law immunity, as might attach to an embassy, in relation to the American camp in question. No doubt American Federal law may to some extent have applied, but there is no evidence before me which indicates that in some way Icelandic law was excluded. In any event I am firmly of the view that this argument cannot succeed. In ties case the state within which the US base was to be found was Iceland. Whilst I appreciate that the way of life led by this family may well have been closer to an American lifestyle than that of those who go overseas for the purposes of education, business or a career, nevertheless 'habitual residence' requires a physical presence in the place or country in question. In my view that physical presence was in Iceland at the material time and given its nature and duration cannot be deemed to have been an habitual residence in a State of America.

For the reasons which I have given I consider that the father was habitually resident in the United Kingdom through to early January 1993, with his family adopting and following him in that habitual residence. Upon the father being posted to Keflavik and the family leaving this country, his connection and base in this country terminated and habitual residence here came to an end. However, shortly thereafter the family in my view then established an habitual residence in Iceland.

Accordingly and notwithstanding the succinct and persuasive arguments of Mr Setright I am satisfied that these children were habitually resident in Iceland for the purposes of the convention immediately prior to the mother's removal of them from that country on 3 April 1995. Because Iceland is a non-convention country, it is not open to me to make any order, therefore, under the convention.

The wardship question

Mr Setright develops his case further. He has told the court that although the solicitors who brief him are only instructed by the appropriate authority to make an application pursuant to the convention, he does have instructions from them which would enable him to give an undertaking on their behalf to file an originating summons in wardship, making the three children wards of court if the court under its inherent jurisdiction were to be minded to order at this hearing the immediate return of the children to Michigan. He draws the court's attention to the established law that even when exercising its inherent jurisdiction the court will normally apply the principles of the convention in determining whether to make a peremptory order returning the children to another country. He submits that although the father is not currently present in this country there is adequate evidence before the court to enable it to take this course. He referred me to the Court of Appeal decision in D v D (child abduction: non-convention country) [1994] 1 FLR 137. In that case the Court of Appeal held:

'1. It was proper to apply the general principles of the Convention in a non-Convention case to the extent that it was in the interests of the children that parents or others should not abduct them from one jurisdiction to another, but that any decision relating to the custody of the children was best decided in the jurisdiction in which they had hitherto been normally resident, always bearing in mind that in the wardship jurisdiction the court retained the discretion to consider the wider aspects of the welfare of the wards. The judge had been right to apply the general principles of child abduction to the case, and, as his findings based on the provisions of the Convention could not be criticised, his decision at the time that it was made to order the children's return had been fully justified.'

In that case a child had been abducted from Greece where the Hague Convention had not yet been ratified. The mother was held to have removed the children wrongfully from their country of habitual residence. The judge hearing the contested wardship applications in respect of the children applied the principles of the convention and ordered the return of the children. In those circumstances the Court of Appeal held that the general principles applied.

In inviting the court under its inherent jurisdiction to make a peremptory order today returning the children to Michigan Mr Setright does not suggest that the mother should immediately be separated from the children. He relies on the fact that had I decided that this was a convention case and been minded to order that the children should be sent forthwith to Michigan, there could have been put in place undertakings upon which the father and mother were already broadly agreed, and which would have enabled the mother to travel with the three children to Michigan and be supported there pending a hearing before the Michigan State Court which the father would then pursue.

Mr Mitchell told me that whilst, in that context, the mother may have been prepared to accept undertakings, these were against a background of problems inevitably raised by her advanced state of pregnancy. She is due to give birth on 30 September 1995. She has been medically advised that she will not be able to travel by aeroplane during the month prior to her expected date of delivery. In those circumstances it would be possible for her to travel during the month of August out to Michigan. The proposal is that the family should stay there either in hotel accommodation or with the father's parents.

Against that background and in the absence of any ground being raised analogous to those available under the convention, and under article 13 in particular, this is a situation, submits Mr Setright, in which the general convention principles should be followed

In Re M (abduction: non-convention country) [1995] 1 FLR 89 the Court of Appeal restated the principles upon which the courts act in non-convention cases. It was held as follows (at 89-90):

'Per curiam: the principles upon which the courts acted in non-Convention cases could be summarised thus: (1) Normally, the best interests of children were best secured by having their future determined in the jurisdiction of their habitual residence. (2) The court, in determining a non-Convention case, would take account of those matters which it would be relevant to consider under Art 13 of the Convention. (3) The essence of the jurisdiction to grant a peremptory return order was that the judge should act urgently. Accordingly, where on appeal a party sought to introduce fresh evidence, there was some relaxation of the principles in Ladd v Marshall ([1954] 3 All ER 745, [1954] 1 WLR 1489). (4) It was assumed, particularly where member States of the European Union were concerned, that facilities such as rights of representation would be secured as well within one State's jurisdiction as within another ...'

Waite LJ said (at 98):

'The paramountcy of the welfare of the child in these cases arises at every stage from the first preliminary to the last adjudication. The fact that there is jurisdiction to grant a peremptory return order in child abduction cases where the Convention does not apply, is itself based upon nothing else but an appreciation of the general demands of the best interests of all children. It assumes that in the absence of special circumstances, it will best serve the immediate welfare of the abducted child to have its long-term interests judged in the land from which it was abducted. When that principle is taken with the general principle of comity which applies between civilised countries, and especially between partners in the European Union, an element of trust is bound to become involved. Judges in one country are entitled, and bound, to assume that the courts and welfare services of the other country will all take the same serious view of a failure to honour undertakings given to a court (of any jurisdiction), failure to maintain financially, failure to afford contact, and so on. It is to be assumed that the courts in every country will not hesitate to intervene to enforce whatever orders, or to direct whatever inquiries, are called for in the children's best interests. In that process every judge is bound to take into full and careful account what his or her colleague has already ordered in antecedent proceedings in another jurisdiction.'

The major distinction between this case and the usual convention case is that if a peremptory order is made here for the Michigan courts to decide the issues between the parties the children will not be returning to their former status quo. They will be returning to Michigan, to a place which they have only visited shortly, to a new home, to new schools, to new faces and to surroundings which will be wholly novel to them. They would not be returning to where they had been settled and they would not be going back to their former status quo in any physical sense. Inevitably this would be a major upheaval for them, quite different to the usual concept of a return to the warmth of a well-known home, friends and a general way of life. Furthermore, the advantages of returning to a jurisdiction where there would be available outside the family those who had first hand . knowledge of the children immediately prior to their being brought to this country in April 1995 would not arise.

Following the dicta in D v D [1994] 1 FLR 137 at 137 and Re M [1995] 1 FLR 89 at 98 I am satisfied that one of the essential grounds for returning a child peremptorily to its former habitual residence is that it will best serve the immediate welfare of the abducted child to have its long term interests judged 'in the land from which it was abducted', as Waite LJ put it in Re M. I am not asked to return these children to Iceland, the country from which they were abducted, but to Michigan, a state which in essence is wholly strange to them.

Furthermore, these children have been in this country since 3 April 1995 and over that nearly three-month period I am told that the eldest two have been either in school or in nursery school. I am told that all three children have settled well and that the maternal grandparents have played a full part in helping to look after them.

If a move to the United States for the purposes of a hearing is to be made the mother will in those circumstances almost certainly have to give birth to her expected child there. There could be complications. She has been the principle carer for these children all their lives. Because she and the father have become estranged in really quite bitter circumstances, it cannot be predicated that she and her in-laws will be able to cope well together. Alternatively if she has to live in a hotel, as counsel has suggested, this might be wholly unsatisfactory for these children at a time when their mother is about to give birth or has just given birth to her expected baby, yet, at the same time, feels that she must maintain her full commitment to her three eldest children.

I would add that there has been no criticisms made by the father of the mother as a mother and no suggestion that the children should be separated. There must be also a prospect that the children may ultimately make their home with their mother in this country and, in these circumstances, a double move could ultimately prove to be highly disruptive for them.

In making my order in this case I of course take into account the two court orders made by the Michigan State Court in March 1993. I also bear in mind that these three children, being children of an American father, would, if the marriage had survived, ultimately have expected to have been brought up in America.

Bearing in mind that under the inherent jurisdiction I, whilst applying the principles of the convention, am entitled to and indeed must look at the wider concepts of the welfare of the children in the context of the Children Act 1989, I do not consider that, having regard in particular to the fact that these children would not be returning to their former status quo, it would best serve their interests or be proper to order at this stage in any wardship proceedings a return of the children to Michigan. I accordingly decline to make any order to that effect.

In declining at this stage to make the orders sought I wish to make it fully dear that this court is not seeking in any way to prejudge the final resolution of this case, which can only properly be achieved when there is full and detailed evidence before the court, including evidence from each party as to his and her long term proposals, with both parents being available to come to court to give evidence. In those circumstances this application is refused.

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