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[01/05/2002; Family Court at Waitakere (New Zealand); First Instance]
Winters v. Cowen [2002] NZFLR 927

Winters v. Cowen

FP 090/50/02

Family Court Waitakere

23 April, 1 May 2002

Before: Clarkson, J.

Counsel: C Pidgeon QC for the applicant; J Anfield for the first respondent; S Quinn for the second respondent; D Ransfield for the children

CLARKSON, J.:

Introduction

[1] S. and C. are in a very difficult situation. They have parents who reside on either side of the Tasman Sea. They came to New Zealand to visit their grandparents and mother in January this year (as on a number of previous occasions) and now they say they do not want to return to Australia, to the care of their father and stepmother. This case involves, within the narrow decision making confines of Hague Convention proceedings, an examination of those wishes, the weight to be attached to them and whether they ought to be granted.

Historical background

[2] S.W. was born on 10 April 1990 and C.W. on 6 March 1992. There have been proceedings concerning them in the Family Court since 1994 following their parents' separation in 1993.

[3] Although initially having sought their custody, the girls' father departed New Zealand in March 1995 to live in Australia where he remained until September 1996. During that time he formed a relationship with his present partner and began to live with her and her two children who are of similar ages to S. and C. While absent the father kept contact regularly with his children and also checked on their welfare through his mother and also the maternal grandparents. The children were in the care of their mother, who has had significant problems with alcohol and drug abuse for many years.

[4] When Mr W., the applicant, received reports from New Zealand that his former wife was not coping with the children and was drinking heavily he returned to New Zealand to seek their care. This was supported by the present first respondents, the maternal grandparents Mr and Mrs C. In fact when Mr W. arrived back in New Zealand the girls were with their grandparents who asked him to take over care of them immediately. He did so and therefore

the girls have been in his continuous primary care since September 1996. His 1996 application for custody was opposed by the mother. Senior counsel was appointed to represent the children (Dr Priestly as he then was), and a psychologist's report called from Ms Anne Raethel.

First psychological report

[5] Because of the importance of describing and interpreting the girls' current views, it is important for me to refer to comments in the first psychological report, which was provided to the Court in June 1997. The writer has this to say:

(1) Both girls have a warm relationship and close attachment to each of their parents.

(2) The children expressed strong affection for the partner of their mother J.P., and their half brother T.

(3) There is a strong relationship and close attachment between the children and their maternal grandparents B. and P.C. It appears highly appropriate and necessary for the children to have relatively frequent access with their grandparents.

(4) The children report that they have witnessed extensive violence between their mother R.C. and her partner J.P. They have memories of details surrounding these past events and express their fears and anxieties for the safety of all concerned including baby T.

(5) The children have been re-traumatised by incidents of violence occurring on the most recent access visit.

(6) R.C. has on-going problems in the areas of violence und alcohol which make it unsafe for the children to be on access visits without supervision or close monitoring.

(7) There are no concerns about the care and management of the children in their father's home. The children have a strong attachment to his partner, K.A., who is a constant and appropriate care giver for the children.

. . .

[6] Following the release of that report and a meeting organised by counsel for the children, consent orders were made vesting primary care in the children's father.

[7] For the sake of completeness I should also record that the extensive access was agreed in favour of the mother, but was not always exercised by her and subsequently a further consent memorandum was entered into simply granting her "reasonable access" (in July 1998).

The second psychological report

[8] In September of that year Mr W. applied for leave to remove the children to live in Australia and once again Ms Raethel was asked by the Court to report under Section 29A. When that report was received in February 1999 it recorded that the mother's condition had deteriorated even further and that this situation was having detrimental affects on the girls, particularly C. - whose school held real concerns for her.

[9] It is clear from the early reports that the mother had been a positive and competent parent in her care of the girls during their early years and that they had a strong attachment to her. They were however clearly aware of her drinking problems and were distressed when

she rang them in an intoxicated state or let them down making contact with them. The 1999 report recorded that Ms C. had attended a number of programmes to attempt to abstain from alcohol and to address her benzodiazepine addiction, but that she had not remained at them. She had a further young baby, T., and was pregnant to her partner from whom she had separated and in respect of whom she had obtained a protection order. Such were the concerns for the child T., there were reports to Children and Young Person Service by one of the alcohol addiction services. Furthermorethere was a report of three suicide attempts by the mother in the year preceding the report.

[10] The report reiterated the children's positive relationship with their father and stepmother. Likewise, with the step-siblings, despite the recognised problems of reconstituted families with children in close age range. The children were observed to interact "happily and positively". Unfortunately by this time the report also disclosed that what had been previously a positive relationship between the maternal grandparents and the father and his partner had deteriorated. Again it is useful to quote from some portions of the conclusions of the second report:

(1) There is a positive relationship between the girls, their father, N., and his partner, K.A. The girls are part of a highly functioning and nurturing environment.

(2) The girls have a regular sibling relationship with K.A.'s children and there is evidence that the children work together well most of the time.

(3) The children have a strong loyalty to their mother and have a primary attachment to her. The effects of their mother's drug and alcohol misuse for a lengthy period of time is altering this relationship to the point where there are times where they assume the parenting/caring role and the role of responsible persons within the household.

(4) The pattern of broken appointments for access, ambivalence about the girls' needs and resentment towards the girls' caregivers (father and partner) are characteristic features of addicted parents and are causing distress and disruption in the girls' lives and in the attempts by their father to provide consistent and good parenting for these children.

(5) The children are keen to visit Australia but express reservations and concerns about being away from their mother. Should the family be permitted to relocate, the girls will need support from all concerned to achieve the separation without guilt or long term emotional harm.

(6) . . .

(7) . . . The maternal grandparents have always played a significant role in the children's lives and it is important that this should continue.

(8) . . . It is likely that the maternal grandparents are the persons who would be asked to assume responsibility for the girls if they are visiting New Zealand in the near future.

[11] My purpose in outlining this background is to bring a context to the types of influences which bear on the girls' current expression of their wishes.

More recent background

[12] Following that second psychological assessment in 1999 a consent order was made in March 1999 permitting the father to take the children to live with him in Australia, and providing for access at least once per year in New Zealand at his cost. The final two

provisions of the consent orders must also be noted. The first was that for the purposes of the Hague Convention the children's habitual residence was to be Australia for so long as they resided there. The second provided:

Notwithstanding the previous condition it is a further condition of such orders that the Family Court of New Zealand shall be the jurisdiction in which all guardianship disputes over the children (other than their wrongful retention or removal) are to be resolved between the dates of these orders and 3l/12/2005.

[13] On 8 January of this year the girls travelled to New Zealand to stay with their grandparents and spend time with their mother. They were due to be returned to Australia on 28 January. When parting from their father (as they described to the psychologist) they were sad to leave their Dad and he them but they were expecting to see him in three weeks.

[14] On 28 January Mr and Mrs C. advised the applicant father that they would not be returning the girls because the girls were so distressed and did not wish to return. Mr and Mrs C. made application for and were granted interim custody on 29 January 2002. Mr and Mrs C. in their affidavit described that the children had:

. . . made disclosures about physical violence, the feeling of isolation, verbal abuse and a fear of their father.

[15] Initially, the most serious allegation made by the girls was that Ms A. had slapped C. and pushed her around. The girls also suggested to their mother that they had on one occasion planned to run away (the evidence later disclosed that although they had made some preparations to run away and had left a note, in the way that children do, that they were then called down for dinner and the plan did not proceed).

[16] The girls further complained that they were treated unequally in relation to Ms A.'s children, that they did not have free access to the refrigerator and, more importantly, that they did not believe their father supported their relationship with their mother.

[17] Of concern is that as this matter has proceeded over the three month period leading up to hearing, the allegations made by the girls via their grandparents, and directly to the psychologist have grown, not only in number but there has been an escalation of seriousness.

[18] By the time of the hearing it was being reported that the children were now saying that they would either commit suicide or stab K.A. if they were forced to return to Australia or would run away from their home there.

[19] Because this is a Hague Convention matter the evidence before me was of course restricted. The only witness available for cross-examination was the psychologist who prepared the assessment which was limited to those issues arising out of the Section 13 defences raised.

[20] The applicant father was unable to be present for economic reasons. He had previously travelled to New Zealand to attempt to see the girls and take them back with him. He was however unable to see the girls until the day before he left when access to him was finally organised and insisted upon by counsel for the children. However there is affidavit evidence from the father and stepmother in Australia responding to many of the allegations. They are stunned and of course somewhat hurt at the girls' complaints. It is quite clear that they have struggled, and not always succeeded, to provide the positive and nurturing environment earlier described by the psychologist. Not only have they had the problems of lack of finance in raising a family of four together with the need to pay for the annual visits of the girls to

New Zealand, they have also had to deal with the fact that these are seriously traumatised children who are missing their mother and their maternal grandparents a great deal. That adds to the usual difficulties experienced in any reconstituted family and is undoubtedly going to give rise to many complaints from both the adults and children involved in such a relationship. The question is how much "air time" is given to those complaints and what sort of response has been given to C. and S. when they have made complaints, over the past few months.

[21] It is of course perfectly understandable that these grandparents who have frequently in the past needed to act as "rescuers" to the children when they were in the care of their mother, should respond so sympathetically to them now. However, there is a great risk that if one allows children to believe that some niggling complaint is serious or indeed "tragic" that that is going to allow the complaint to assume much greater importance in the mind of the child, rather than simply assisting them to simply get on with a difficult situation of having parents in two different countries, as best they can.

[22] The other piece of background information which needs to be recounted is that the children's mother, almost immediately before their return to New Zealand in January underwent a detoxification programme and says that she has now been alcohol free for 3-4 months.

[23] As set out by Ms Raethel in her third report to the Court on 21 March 2002:

The girls have had to grapple from an early age with the reality that for the past five to six years their mother has not had the emotional and physical capacity to care for them. This is a hard fact of life for such young children. It is also highly distressing for the maternal grandparents who see far less of them than they would if the children were resident in New Zealand.

[24] The psychologist then points out the lengthy period that Ms C. has had to avail herself of programmes in the past and the recent steps taken by her. She has this to say:

However this must be set in the context of at least seven previous detoxification programmes, approximately five suicide attempts, between 5-10 drink driving convictions and the loss of custody of all four of her children due to her serious problems.

There is no doubt the girls have been buoyed by the progress made by their mother. This is clearly a significant issue for them and one of the underlying factors in their express wish to remain in New Zealand.

. . .

The girls' expressed wish to return to live in New Zealand is clearly a function of a desire to live closer to their mother. They are expressing unrealistic expectations of being able to live with her in the near future if they do remain here.

[25] For the sake of completeness I should add that in the present proceedings it was made clear by both counsel for the mother and counsel for the grandparents that there was no intention that the mother become a primary care giver for these children if they were allowed to remain in New Zealand. It was accepted as common ground that the mother was simply not in a position to parent the girls at this time.

Legal principles

Objects of the Hague Convention

[26] What has been referred to as "the Hague Convention" in this case is The Hague Convention on the Civil aspects of International Child Abduction, enacted in New Zealand law by means of the Guardianship Amendment Act 1991.

[27] Its objects are now well understood and are succinctly stated by His Honour Fisher J in S v S [1999] 3 NZLR 513, 518:

a to secure the prompt return of children, wrongly removed to or retained in any Contracting State, and

b to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Section 12

[28] There was a concession at the outset of this case that s 12 had been satisfied by the applicant and therefore that the onus moved to the respondents to establish one of the defences set out in s 13, and to persuade the Court to exercise its discretion in their favour.

[29] It is equally well understood that the issue to be determined is one of forum not custody determination on the merits.

Section 13 defences

13. Grounds for refusal of order for return of child

(1) Where an application is made under subsection (1) of section 12 of this Act to a Court in relation to the removal of a child from a Contracting State to New Zealand, the Court may refuse to make an order under subsection (2) of that section for the return of the child if any person who opposes the making of the order establishes to the satisfaction of the Court -

. . .

(c) That there is a grave risk that the child's return -

(i) Would expose the child to physical or psychological harm; or

(ii) Would otherwise place the child in an intolerable situation; or

(d) 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 the child's views;

. . .

(3) On the hearing of an application made under subsection (1) of section 12 of this Act in respect of a child, a Court shall not refuse to make an order under subsection (2) of that section in respect of the child by reason only that there is in force or enforceable in New Zealand a custody order relating to that child but may have regard to the reasons for the making of that order.

[30] Although two defences were formally pleaded, namely s 13(1)(c) and s 13(1)(d), counsel for both respondents and for the children accepted that the latter was the stronger defence and that to a certain extent even a finding under the "(c)" ground would rest on the "(d)"

defence being established and contributing to the "(c)" grounds. That is a concession I consider properly made.

Grave risk defence

[31] A review of the decisions suggest that children making far more serious complaints than are these children have still been returned to their country of origin see KMH v The Chief Executive of the Department for Courts [2001] NZFLR 825, A v Central Authority for New Zealand [1996] 2 NZLR 517 (CA), Re The M Children (Hague Convention) (2001) 21 FRNZ 67.

[32] The rationale behind return in these circumstances, is that, as stated in the A v Central Authority decision (supra) at page 524:

An order returning a child to another jurisdiction is not an order returning a child to a parent, and the child remains the responsibility in the first instance of the Central Authority of that other jurisdiction.

[33] Counsel for the respondents and for the children were at pains to point out to me that whilst each of the complaints made by the children might individually appear trivial that it was the overall picture that must be considered and indeed that it must be considered through the eyes of the children.

[34] Relevant to this submission and to the second defence are the provisions of art 12 of United Nations Convention on the Rights of the Child (UNCROC). They read:

Article 12

(1) States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[35] I am satisfied that in this case the children's views were obtained and very capably, indeed forcefully, advanced by their appointed counsel. In addition in obtaining the psychological report which also sought to ascertain the children's views, as well as commenting on the "grave risk" defence, a more complete picture of their position has been obtained.

[36] The weight to be attached and the interpretation of those views will be discussed later in this decision.

[37] The girls list a litany of complaints against the father and stepmother in Australia. These are conveyed through the affidavits of the first respondent grandparents in a list which (neatly) reads from "A to Z". Whilst some of the complaints are acknowledged and are of considerable concern. such as the stepmother slapping one of the girls in the face 18 months ago, most of the complaints are of a far more minor nature. Certainly I do express considerable concern about the suggestion that the children's contact and relationship with their New Zealand family is not being fully promoted and supported by their father and

stepmother. This is a serious matter particularly when viewed in the context of the girls' fragility about their mother or perhaps I should say their view of their mother's fragility.

[38] In the course of investigating the basis for a "grave risk" defence, the psychologist spoke with all of the parties and had this to say:

In summary, the writer believes that there have been issues over the past 5 years that arise in many families and would be particularly heightened in a blended family of this nature. Family counselling would be a positive approach to easing the girls back into the family.

And later

Over time more incidents have been recounted by the girls which have become more extensive and more serious. It is important to recognise the present climate in which the children are living and the clear data to support their involvement in "building a case" to stay in New Zealand. In this situation there is a strong possibility that the girls are so aware of the need to make their case as strong as possible that events are being added as time goes by which were clearly not important to them or not remembered by them at the beginning of the process.

(Emphasis added.)

[39] The decision of Damiano v Damiano [1993] NZFLR 548, 554 is often quoted in discussing the level of risk physical or psychological harm.

The test is not whether there appears to be unacceptable risk of physical or psychological harm. The risk is promoted to a much higher threshold. ("Grave") and ("exposed") import the most serious of situations.

[40] Even if everything which the girls have divulged were absolutely true I do not consider that the s 13(1)(c) defence could be said to have been established to prevent the girls' return to the country of their habitual residence.

Children's objection defence

[41] In this regard counsel have referred me to a number of the cases which have discussed the proper approach to be taken. In Clarke v Carson [1995] NZFLR 926, children of 11 and 8 were considered to be of sufficient maturity to have their views taken into account. S. and C. are 12 and 10 years respectively and are assessed by the psychologist to be of average maturity for their chronological age.

[42] The tension between the Hague Convention and the UNCROC Convention (art 12) is, at a superficial level, amply demonstrated by this case. The convention directs their return, unless their expressed objection is accepted and acted upon by the Court. The real question to be answered is whether it be honouring children's rights to be heard, if one allows them to operate merely as the mouthpieces of adults. Its seems to me that to do so would, in fact, derogate from their rights to be heard and considered independently.

[43] The question of influence upon the children's wishes is therefore crucial to both the determination of the existence of the objection of the child to return and also to the discretion which remains to be exercised following a finding in respect of any of the defences.

[44] I refer to the oft-quoted views expressed by Balcombe J in Re: S (a minor) (abduction) [1993] 2 All ER 683, 691:

Thus if the Court should come to the conclusion that the child's views have been influenced by some other person, eg the abducting parent, or that the objection to return is because of a wish to remain with the abducting parent, then it is probable that little or no weight will be given to those views. Any other approach would be to drive a coach and horses through the primary scheme of the Hague Convention.

[45] In the KMH decision (supra), although finding that the child had strongly expressed his wishes and had sufficient maturity for them to be taken into account, the Court confirmed the exercise of a discretion to return the child notwithstanding that expression, because of the influence of the abducting parent.

[46] The conduct of the mother and grandparents, in not returning these two girls to their father on the due date, will itself have influenced the process and their views. The children have been, by that action, reinforced in their behaviour and beliefs.

[47] The psychologist was able to clearly point to data from her interviews to support a finding of influences on the children. She referred to the differences between the early portion of her interviews of the children, where she took an unexpected (by them) approach to the assessment. At that point, she was able to gain from them spontaneous positive comments about their situation in Australia. She contrasted this with the more rehearsed responses when questions were asked more transparently later in her interview. Ms Raethel described the girls' responses in this regard as "scripted", rehearsed information. It was clear that it had been thought about and discussed prior to the interview. When attempting to explore what lay below the "rehearsed" statements, the psychologist described how the girls became confused. This confirmed to her that these views did not necessarily emanate from the girls themselves.

[48] The psychologist also pointed to strong similarities between this information and the data presented to her by the mother and by the grandparents. This conflicted with not only the information she obtained from Australia through the father and the stepmother but also with the girls' information in the earlier part of the interview. Ms Raethel went on to say that the "clear and strong antipathy towards the Australian family by grandmother and mother cross matched with the children's strongly expressed views " and furthermore that it predated the presently indicated distress of the children.

[49] Ms Raethel's evidence was that the grandmother kept a daily diary which recorded each of the children's complaints as they were revealed. She considered that the children's comments had been influenced and reinforced by: discussion within the New Zealand family; writing them down, being with their mother, who showed anxiety about their situation; and being interviewed by various people all of whom paid a lot of attention to their concerns. By the conclusion of the assessment the children appeared able to express a recollection of almost everything which had gone wrong in their lives in the last four years. The girls were blaming of their father for the present Court case and wanted him to drop it.

[50] In answer to a question from me the psychologist indicated that there were significant features of the children being alienated from their Australian family. One of the examples of this is the suggestion that they might change their surname from W. (their father's name and the name that they have had all their lives) to C. (their mother's and their grandparents' name).

[51] The sense of alienation also emerged in the pattern of Australia being "all bad" and New Zealand being "all good". This was evident both in the negative denouncements of their father to the psychologist and in their brief interview with me.

[52] It was the psychologist's view that the children are also strongly influenced by their mother's progress over recent months and their unrealistic expectation that they will move to live with her within the foreseeable future if they are able to remain in New Zealand. Ms Raethel went on to say that the children were showing indications of being overly involved in the proceedings and in trying to convince those around them of their wishes. She said it had become difficult to separate out the emotional state of the adults from that of the children. Further evidence of the children's over-involvement in the proceedings is that they had been permitted to read all of the affidavits.

[53] Ms Raethel's evidence was that despite the allegations recently made there was not reason to believe the children were suicidal or overly distressed.

[54] What is unusual about this cases is that the present complaints made by the girls certainly pale into insignificance against the trauma suffered by the girls while they were in the primary care of their mother five years ago. The exposure to domestic violence on a repeated basis and the emotional abuse and neglect associated with being parented by someone who is regularly drunk or under the influence of drugs will undoubtedly have had a significant long-term effect on the girls. When sober their mother was said to be a caring and attentive parent. Therefore the girls in their formative years experienced inconsistency, the forming of hopes and the dashing of those hopes. They also regularly experienced ''rescuing'' from their grandparents, just as they are now experiencing the grandparents as rescuing them from their current dilemma.

[55] The girls have never felt able to attribute responsibility for these experiences to their mother. Rather they have taken a self-blaming or parenting stance in respect of their mother. Even in the present assessment one of the children told the psychologist that she should have been able to stop her mother's previous partner from hitting her mother.

[56] Against this background, it is extremely complicated to interpret the objections of these already fragile and vulnerable children, and one must take account of the influences described by the dynamics of their grandparents' response and the length of time this process and the investigations have taken. It seems to me that by listening so attentively and sharing the girls' distress, their grandparents and mother are, unintentionally, doing a great disservice to these children by undermining the relationship with their father. Their father and stepmother have been the most stable influence in these girls' lives for the past five years.

[57] In summary I consider the following influences bear on the children's current objection to return:

(1) Their love and concern for their mother and (unrealistic) wish for her to parent them in the near future.

(2) The degree of attention and sympathy received in response to their complaints about their life in Australia.

(3) The difficulties of adjusting to a new life in Australia, in circumstances where they miss their maternal family and are members of a reconstituted family on a low income, have had previous traumatic experiences.

(4) The negative relationship between the Australian and New Zealand families and lack of support for the children's relationship with their father as well as the children's perception of the father's lack of support for their relationship with their mother.

(5) The degree of involvement in these actual proceedings, their knowledge of the affidavits and discussion within the family about the proceedings and their wishes.

[58] I have wondered whether in fact these influences are such as to negate the whole notion of an "objection", and therefore fail to establish a s 13(1)(d) ground at all. I think that would be putting it too strongly. It is clear that the children are articulating an objection and given their ages, I think that it has to be said that the defence has in the circumstances been established.

Exercise of discretion

[59] I must now consider whether to exercise my discretion to order the return of the girls to Sydney.

Policy issues

[60] Parents must have confidence in New Zealand Courts to enforce the Convention, or they will not be able to properly operate access agreements or orders between the two countries. Secretary for Justice, ex parte Speechly v Reti (District Court, Kaikohe FP 27/13/98, 12 March 1998, Judge Ryan).

Influence

[61] I have listed the factors, historical and current, which I consider bear on the expression of the girl's views. Because of these influences I do not consider that the views can be given sufficient weight to allow me to exercise my discretion against their return.

Other matters

[62] In considering the exercise of my discretion I have also had regard to the fact that the 1999 consent order provides for the forum for custody disputes to be the New Zealand Family Court. The order also specifically exempts circumstances of wrongful removal or retention. I consider that it would be undermining the intent of those orders, which stated the girls' habitual residence to be Australia, and the Convention itself, to allow the earlier agreement as to forum to affect the exercise of my discretion. Furthermore I do not wish to predetermine any argument which may be raised in respect of future forum. Even if the matter is yet to be determined by the New Zealand Courts it ought to be done so with the girls' continuing to reside in the meantime with their father who is lawfully entitled to their custody.

[63] Arrangements can be made with the Registry of this Court to have an early directions conference concerning the custody application filed in this Court by Mr and Mrs C. Mr and Mrs C. have indicated that they accept the interim custody order obtained by them on 29 January ought to be discharged so that the 1999 orders can subsist while the matter is further considered.

[64] I am aware that not only the respondents but the girls are going to be bitterly disappointed at the decision which I have reached. I also consider, and that view is supported by the psychologist's evidence, that it is going to be almost impossible for the respondents to facilitate the return of the girls to the airport in order for their return journey to their father.

[65] I invite counsel for the children to liaise with the applicant's counsel and the airline authorities to ascertain whether they are prepared to have the children fly home

unaccompanied given the circumstances. If they are not then it will be necessary for the father to return to New Zealand to accompany his daughters back. If that proves necessary, on the application of the applicant I direct that the first respondent must be responsible for the reasonable transport costs of the father, and if the childrens' tickets are unable to be reused for their return tickets also.

[66] If the children are able to return to Australia unaccompanied, I direct that they be uplifted four hours prior to their intended journey by their paternal uncle who has indicated his willingness to assist in the process. Again counsel for children may need to be involved in facilitating this arrangement also.

[67] In respect of the remaining custody proceedings I direct that the Registrar or Family Court Co-ordinator is to seek a report from the Australian social services on the circumstances of the children in Australia. I further direct that the father is to file an affidavit within 30 days outlining the provisions put in place for counselling services for the family, a matter to which he has referred in his affidavit in these proceedings.

Orders

[68] There will be an order discharging the interim custody order of 29 January 2002.

[69] There will be an order for the return of S.W. born 10 April 1990 and C.W. born 6 March 1992 to Sydney Australia.
