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[27/11/2002; Court of Appeal (England and Wales); Appellate Court]
Re S (A Child) [2002] EWCA Civ 1941

IN THE SUPREME COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE FAMILY DIVISION

Royal Courts of Justice

27th November 2002

Before LORD JUSTICE THORPE, MR JUSTICE SCOTT BAKER, MR JUSTICE MUNBY

In the Matter of re S. (A Child)

Mr M Everall QC & Mr P Wright (instructed by Messrs Prichard Joyce & Hinds, Kent, Brb Iay) appeared on behalf of the Appellant; Mr H Setright QC & Ms J Johnston (instructed by Messrs R Gordon-Roberts Laurie & Co, Llangefri) appeared on behalf of the Respondent.

LORD JUSTICE THORPE: This is an appeal from a judgment of Bracewell J given in the Family Division on 24th September, refusing the mother's application under the Hague Convention for a return order of the only child of the parties, S, who is now 7 years of age.

The parents are respectively 28 and 29. The father is Welsh, living in Anglesey, and the mother is German, living in Frieburg. They met and cohabited in Germany in the mid 1990s and S was born in Germany on 31st July 1995. He is a German national with a German passport. The parties married on 27th September 1996. The marriage was of short duration, failing at the beginning in 1998 when the mother moved to a women's refuge.

Divorce proceedings led swiftly to decree nisi on 13th August 1998 and on 15th February 1999 a residence order was granted to the mother with a contact order to the father and to his parents in the Llanfegni County Court. Shortly thereafter the mother and S moved to Bristol but by the autumn of 2001 they were back in North Wales.

On 8th February 2002 the mother took S to Germany to stay with her parents. Seven days after her arrival she wrote a letter to the father, in which she said:

"I would like to tell you right now that I have decided to stay with S in Germany. Things are a lot better financially for us here than in England. Yourself Kirsten, Chloe and Jack are very welcome to come and see [S]. My parents will offer you and your family free accommodation. Your parents are allowed to 'phone here every fortnight. However, I think they should apologise in writing for the harsh words directed towards me. After a written arrangement it would be possible for [S] to come and visit you. You can call every weekend

and [S] will ring you back every fortnight. I would like your opinions on this, in writing, in German. Yours sincerely."

The next communication is a more formal one from solicitors in Bangor writing on the mother's instructions. They recorded the mother's wish to return to live in Germany, so that she could enjoy the support of her family. They sought the father's agreement to permit the mother and S to reside in Germany on a permanent basis. They went on to put forward their suggestions for contact. They asked the father to state whether he would be agreeable to the suggested arrangements, alternatively, to put forward some suggestions of his own.

The letter was not answered and on 20th March it is plain that the parents spoke direct on the telephone and agreed an Easter Holiday visit for S, to commence on 29th March and to end on 6th April. On that very day the father faxed the mother what was in effect his assurance of S's return. The fax reads:

"I am writing in reply to the recent telephone conversation on 20th March regarding [S] to confirm that I will return him, at the end of his Easter holidays, a day or so before he returns to school."

The letter from the mother's solicitors, written on the following day, 21st March, opens with this paragraph:

"We are pleased to note that you have made contact with Mrs Owen indicating that you do not have any objection to her and [S] residing permanently in Germany, subject of course to both of you being able to agree arrangements for contact. Mrs Owen has provided us with a copy of your fax to her, dated 20th March, in which you confirm that you will be returning [S] at the end of his Easter holiday break with you. We also note that you have put forward a request for contact with [S], during the school holidays as follows..."

There then is set out the calender of school holidays from the spring term break through to the Christmas holidays. What effectively the father was seeking was an arrangement under which S would spend all his school holidays in Wales. The counter proposal from the mother was that the school holidays should be, broadly speaking, shared equally between them, to enable the mother to have time off with S and to take him away.

The Easter visit to Wales passed off without incident. In a letter from the mother's solicitors, of 16th April, that fact was noted together with the mother's report to her solicitors that the father had informed her that he would prefer to deal with matters relating to S directly with her without the involvement of solicitors. However, they closed the letter by asking for his confirmation that the mother's counter proposals contained in their letter of 21st March were agreed. When no response was received, the mother's solicitors wrote a strongly worded letter, pressing for a written acceptance. That led to a significant development, namely the arrival of solicitors on the scene for the father. They wrote a letter of 15th May, in which they pressed for a completed agreement on the father's contact proposals, threatening proceedings otherwise.

To that letter there was but a bare acknowledgment. So they wrote again, on 14th June, saying that unless they had a substantive response, proceedings would be issued. However, on 17th June, they wrote to confirm an oral agreement between the parents, to the effect that the father would, in the end, accept the sharing of S's school holidays, much as the mother had counter proposed. That drew a letter from the mother's solicitors of 19th June confirming the detail of S's summer holiday in Wales, as a result of which S arrived with his father on 26th June.

However, on 3rd July the father's solicitors issue proceedings in the and Caernarfon County Court seeking an interim residence order and giving notice to the mother's solicitors of a first hearing that they had obtained before a judge on 10th July, seemingly a brief appointment for directions. The father sought his residence order ultimately on the grounds of his concerns for S's welfare on arrival on 26th June. But that case was not mentioned in the father's solicitor's letter of 3rd July and no statement was filed prior to the first appointment.

Perhaps, surprisingly the judge in the Caernarfon County Court, His Honour Judge Hughes, gave two full days to consider the father's application. I suppose he was able to do so because the mother came in response to the challenge and was before the court by solicitors and counsel and was available to testify. But there are unsatisfactory aspects of a full scale investigation of merit issues on oral evidence without prior preparation by the filing of statements, without investigations by a Children and Family Reporter and without disclosure of relevant documents.

That the proceedings on 10th and 11th July were intended to be only partially determinative of the issues in dispute is indicated by the fact that Judge Hughes set the case over for further consideration on 9th August, directing, in the meantime, that the mother issue an application to relocate with S to Germany, that further evidence be filed by the parties and that a Children and Family Reporter attend the adjourned hearing. Perhaps curiously, for the investigation on fuller evidence on 9th August only 2 hours were allowed. The judge in the interim said that S should stay with his father.

The mother duly issued her application to relocate on 17th July. Significantly, on 22nd July, she applied to the court in Frieburg for an order for the return of S. That resulted in an order drawn on the following day to the effect that S had been wrongfully retained in England and Wales, and that he should be returned forthwith to Germany. It is always dangerous to criticise the order of the court in another jurisdiction without full appreciation of the circumstances, but I note that the court in Frieburg adjourned the issues over to 22nd August. It would seem to me preferable had the orders that were made without notice to the father been held in abeyance until he had been served and had some opportunity to participate at the adjourned hearing.

On the same day that the mother applied to her local court she applied to the central authority in Germany for the return of S under the provisions of the 1980 Hague Convention.

The German central authorities transmitted the request to the central authority in London, who arranged for the issue of an originating summons under the Child Abduction and Custody Act 1985 on 5th of August. That resulted in the stay of the proceedings in the Caernarfon County Court, essentially an obligatory stay under the terms of Article 16 of the Convention.

On 12th August Bennett J gave directions for the trial of the mother's originating application and, pursuant to those directions, the father filed his affidavit in opposition on 19th August. It was on that evidence that the application came for trial before Mrs Bracewell J on 24th September. She refused the order for return, lifted the stay on the proceedings in the Caernarfon County Court and refused permission to appeal.

A notice of application for permission was lodged in this Court on 7th October and on the 24th I made a paper order ensuring an expedited hearing of the application on notice with appeal to follow. We heard submissions in the appeal yesterday and implicitly granted permission at the outset.

So I turn now to the development of the case in the court below. The father was represented by Mrs Johnston, who challenged the fundamental foundation of the mother's Hague application, namely that at the material date in July 2002 S was habitually resident in Germany, by invoking section 41 of the Family Law Act 1986.

This was a novel submission, and it is convenient, at this stage, to record what that section states. Section 41(1), in so far as material, is in these terms:

"Where a child who -

(a) has not attained the age of sixteen, and

(b) is habitually resident in a part of the United Kingdom or in a specified dependent territory,

becomes habitually resident outside that part of the United Kingdom or that territory in consequence of circumstances of the kind specified in subsection (2) below, he shall be treated for the purposes of this Part as continuing to be habitually resident in that part of the United Kingdom for the period of one year beginning with the date on which those circumstances arise.

(2) The circumstances referred to in subsection (1) above exist where the child is removed from or retained outside, or himself leaves or remains outside, the part of the United Kingdom or the territory in which he was habitually resident before his change of residence -

(a) without the agreement of the person or all the persons having, under the law of that part of the United Kingdom or that territory, the right to determine where we he is to reside, or (b) in contravention of an order made by a court in any part of the United Kingdom.

(3) A child shall cease to be treated by virtue of subsection (1) above as habitually resident in a part of the United Kingdom or a specified dependent territory if, during the period there mentioned -

(a) he attains the age of sixteen, or

(b) he becomes habitually resident outside that part of the United Kingdom or that territory with the agreement of the person or persons mentioned in subsection (2)(a) above and not in contravention of an order made by a court in any part of the United Kingdom..."

Mr Wright who represented the mother below, submitted that section 41(3) was of no application because the only order was a residence order in the mother's favour, with a contact order to the father. Although section 13 of the Children Act 1989 imposed a general prohibition against removal from the United Kingdom without consent or permission, there was no freestanding prohibitory injunction to that effect.

19. Bracewell J decided that section 41 applied in this brief conclusion:

"The circumstances of the removal and retention of S in Germany plainly come within the ambit of section 41(1) and (2)."

She went on to demolish Mr Wright's response by saying:

"The law is clearly stated in section 13(1)b). It would apply whether or not it was specifically referred to within the order. It follows automatically from the making of a residence order

under section 8 of the Children Act 1989 and, in my judgment, there is no necessity of any kind for it to be recited on the face of the document, because it follows, as day follows night, that a residence order carries with it the prohibition against removal without consent of any one with parental responsibility or without the leave of the court."

She concluded:

"I find therefore that, having regard to terms of section 41, it is not even open to the father, within the specified period of 12 months to agree or acquiesce to the change of habitual residence of the child. That in itself disposes of this case. However, as I have heard arguments about acquiescence an agreement, it seems to me that I should make findings on the evidence on that aspect."

She continued by directing herself as to the law of acquiescence, carefully citing the well-known passage from the speech of Lord Browne-Wilkinson in Re H Ors (Minors) (Abduction; Acquiescence) [1998] AC 72, at 90. She then turned to the case before her saying:

"It is in the context of the framework of law that I look at the evidence in the current case. The correspondence is of great important."

She reviewed the correspondence which I have already summarised, concluding in relation to its developing stages from 8th March to 15th May that no agreement had been reached. Of the Easter contact, she said:

"The contact which took place over the Easter holiday I find was a one-off contact by agreement. It was not part of a comprehensive structure of agreement over a period of time, but was an opportunity to enable [S] to see his father."

Of the crucial correspondence thereafter she said only this:

"The matters continued with further correspondence, which I find still demonstrates that there were negotiations and counter proposals, so that by 14th June, at page 80, the father's solicitors were becoming increasingly concerned as to delay and stated;

'Unless we hear from you within next seven days, we are recommencing proceedings.' The mother's solicitor wrote back on 19th June and the letter demonstrates that there was no agreement between the parties about the extent and frequency of any contact.

Of the summer contact she only said:

"The child visited the father for contact and it was during that period that the father commenced the proceedings in the County Court."

She concluded:

"There were negotiations, but nothing that the father wrote or said could be construed by the mother as demonstrating an acquiescence or agreement, and I am satisfied further that it was never the intention of the father so to do."

By way of further addendum in the final paragraph of the judgment she said:

"In any event, quite apart from the lack of acquiescence and agreement by the father to the change in residence, the mother may well have submitted to the English jurisdiction by giving evidence in the Welsh proceedings and applying for leave to remove the child

permanently from this jurisdiction within the terms contemplated in the case of Re H, at page 89, to which I have already referred. In those circumstances, I find that the mother's application for the return of the child to the jurisdiction of Germany is not well-founded in law and fact and I therefore dismiss her application."

In a characteristically careful and skilful skeleton Mr Everall QC, addresses the issues in the order that the judge addressed them:

1. Did section 41 of the Family Law Act 1986 preclude S being habitually resident in Germany on 12th July 2002?

2. Did the father acquiesce in the change of S's habitual residence from England and Wales to Germany, following his move there with his mother in February 2002.

On the first issue, Mr Everall submits that the judge plainly misconstrued section 41. These are his essential submissions:

(a) Section 41(1) does not apply to removals from the United Kingdom. It does not provide a basis for finding that S was not habitually resident in Germany in July 2002.

(b) Section 41(1) is limited in terms to Part 1 of the Family Law Act, which regulates jurisdiction and recognition between the constituent jurisdictions of the United Kingdom.

(c) Only sections 2(2)(a) and (3) of the 1986 Act have any application to international cases.

(d) Section 41 is a deeming provision for the purposes of Part 1 of the Act.

(e) Habitual residence for the purpose of the Hague Convention is a question of fact to be decided by reference to all the circumstances of the case. Even if there were some local deeming provision in relation to habitual residence in this jurisdiction, it could not disapply the provisions of the Hague Convention incorporated into English law by the Child Abduction and Custody Act 1985 and critically Article 16.

(f) The purpose of section 41 is to avoid internal jurisdiction and conflicts within the United Kingdom. It cannot avoid external jurisdiction conflict. That can only be achieved by international treaty, in this instance, the 1980 Hague Convention.

On the second issue Mr Everall also invokes the speech of Lord Browne-Wilkinson. He too submits that the correspondence is all important, together with the conduct of the parties. He submits that the judge fell into obvious and serious error in focussing on the father's solicitors letter of 14th June rather than their letter of 17th June. He strongly submits that a fair review of the acts and words of the parties must result in the conclusion that the father subjectively acquiesced within the definitions of Lord Browne-Wilkinson, at 89G and 90F. If the father was not sincere in his acts and deeds between February and 26th June 2002, then his conduct in enducing the mother to send S for contact on 26th June only to issue proceedings on 3rd July, brings him within the exception to the general rule, developed by Lord Browne-Wilkinson at page 89 between D and G.

Mr Setright QC, in his response, naturally elevates the defence of the judge's conclusion on the father's acquiescence above his defence of the judge's conclusion on the impact of section 41. He emphasises the heavy burden on a party seeking to raise the defence of acquiescence. He submits that the judge was fully entitled to conclude that the father had never clearly committed himself to accepting that S's future would be in Germany. He submits that if the

judge fell into any error then, at the least, his client is entitled to a full reinvestigation on oral evidence.

In relation to section 41 Mr Setright relies on the long title to the Act which includes "to amend... the Child Abduction and Custody Act 1985." He submits that there was little challenge to the application of section 41 to this case, and that the argument rightly centred on whether section 13 of the Children Act 1989 was effectively embodied in a section 8 Residence Order.

The resolution of this appeal depends on the answers to the following questions:

1. Does section 41(1) have any application in this case?

2. Did the father give his acquiescence to the mother's unilateral relocation to Germany?

3. If the judge was wrong in her answers to questions 1 and 2, is it necessary to remit the case for retrial on question 2?

4. Has the father raised any defences to the application for return that require remission to a Family Division Judge for trial?

A number of things might be said by way of introduction to the first question. First, the Family Law Act 1986 has attracted judicial and academic criticism almost from the outset. Practitioners have found it extremely difficult to unravel and to apply to individual cases. The arrival of Brussels Regulation II in March 2001 made indisputable what was already a strong case for the reform of the 1986 Act. The issue was addressed at the second United Kingdom family justice conference in October 2001. Professor Lowe presented a paper which revealed many deficiencies and errors in the 1986 Act (the paper was subsequently published at 2002 Family Law Journal 39). At the conclusion of the conference it was accepted by the Lord Chancellors officials that legislation was required, although the content of a Bill would have to wait the outcome of negotiations as to the content of the proposed Brussels Regulation IIA. In the event the member states became deadlocked in those negotiations and accordingly the much needed modernisation of this area of our law has been deferred.

Second, neither I nor leading counsel in this case are aware of any previous reliance on section 41 in the context of an application brought under the Child Abduction and Custody Act 1985. Credit goes to Miss Johnston for conceiving an ingenious if ultimately erroneous submission.

Third, I have considerable sympathy with Bracewell J who was faced with a novel point, based on a particularly obscure statute, no doubt without much prior warning. She did not have the advantage that we have enjoyed of full skeletons from leading counsel of ultimate expertise in the field of child abduction. She was asked to focus on section 41(3) without the necessary prior focus on Article 41(1). It was in these circumstances that she was led into error. Section 41 is of no application in determining questions of habitual residence under Article 3 of the Hague Convention. I accept all Mr Everall's submissions on the point. Essentially, section 41(1) is a deeming provision that applies only to part one of the Family Law Act. The orders to which Part 1 applies are defined in section 1. The orders relevant to this jurisdiction are:

"(a) a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order; and

(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children-

(i) so far as it gives care of a child to any person for provides or contact with or the education of a child; but

(ii) excluding an order varying or revoking such an order."

Section 41 regulates any jurisdictional or enforcement conflicts between the constituent jurisdictions of the United Kingdom. It has no application to conflicts between this jurisdiction (as the major constituent jurisdiction of the United Kingdom) and any jurisdiction that is not a constituent jurisdiction of the United Kingdom. Questions of habitual residence in relation to Article 3 of the Hague Convention are to be determined by reference to the international jurisprudence, recorded on the Permanent Bureau's INCADAT website. Any local deeming provision would derogate from a member state's due observance of its obligations as a party to the convention.

I turn now to the second and third questions. The first thing to be said is that the judge fell into manifest error. No analysis of the all important correspondence could be complete or above criticism without concentration on the crucial letter of 17th June from the father's solicitors. Again, I have considerable sympathy for the judge. Whoever compiled the trial bundle ordered the letter of 17th June to precede the letter of the 14th. Thus it was easy for her to read the mother's solicitor letter of 19th June, as written in response to the letter of the 14th and to overlook the letter of the 17th. There is also force in Mr Everall's submission, however, that the judge did not give sufficient significance to the mother's conduct in facilitating S's two holiday visits to Wales during the school holidays.

Is a retrial a necessary consequence as Mr Setright submits? I think not. First, the all important communications are in the agreed correspondence. Mr Setright says that his client now seeks to dispute the oral agreements asserted by the mother. But that is not the case he presented below. In relation to the correspondence all he said in his affidavit of 19th August is:

"Following the move to Germany I received correspondence from solicitors acting on behalf of the Plaintiff. I consulted my solicitors who in turn replied setting out my position. I believe that the correspondence makes my views and position clear. Where the Plaintiff solicitors state that I agree to [S] staying in Germany then I wish to make it clear that this is not true. I wanted [S] to return to this country. My solicitors' letters further evidence this. I did not consent nor agree to [S] going to live in Germany. The correspondence appears at pages 5-29 of the bundle."

Furthermore, the oral agreement is recorded in a letter from his solicitors and must surely reflect his instructions. This Court is clearly in the same position as a trial judge. The task is to apply the guidance given by Lord Browne-Wilkinson in Re H to the communications between the parties and their solicitors and to their actions established by the affidavits.

These then are for me the salient considerations. The letter of 21st March records an oral agreement that S would live permanently in Germany, subject to future agreement as to contact arrangements. The agreement was reached the previous day, when arrangements for an Easter holiday in Wales were settled. The father faxed the mother what was in effect his guarantee to return S in good time for the summer school term. The absence of any written confirmation from the father led the mother's solicitors to write what the judge rightly criticised as an insensitive letter, threatening the father with dire consequences if he did not agree their counter proposals for contact. That attracted a solicitors letter which was written

in similar vein, that is to say threatening dire consequences if the mother did not accept something close to the father's original contact proposals.

But there are significance acknowledgments upon which those proposals were advanced. In paragraph 2, the father's solicitors wrote:

"We would firstly inform you, quite firmly, that the peremptory manner in which your client fled the country taking [S] with her, could have led to an immediate application for a return of the child under the Hague Convention. This is still an option which is open to our client. However, our client realises that he must be pragmatic in the matter. But your client must herself realise that [S]has an extended and loving family in Wales and that he has a close attachment to this country. That attachment must not be left to wither... Our client is only asking for the school holidays. Our client furthermore does not wish any more disruption to come to his son's life as he has had enough such disruptions already having lived in several homes, attended six schools and coping with three languages."

In the next paragraph, they wrote:

"Our client will allow [S] to reside in Germany if agreement is made on his terms, and if these terms are not met, he will pursue the issue of residence through the court."

My final emphasise is on a passage from the first paragraph on the second page to this effect:

"Your client agreed to abide by our client's reasonable request if he agreed to [S] staying in Germany. Can you please confirm therefore that S will be allowed to come to Wales this coming summer under the new agreement."

It is unfortunate that that letter received only a bare acknowledgment. The two solicitors were local and a telephone discussion or a meeting should have been enough to bridge what was a gap and not a gulf. The chaser of 14th June, threatening the issue of proceedings without more ado, was dispatched on a Friday. Over the weekend the parents talked on the telephone and reached an agreement. So, on Monday 17th, the father's solicitors faxed confirmation that their client accepted the mother's counter proposals. This important letter is in very clear terms:

"We understand that our clients have once again discussed the matter. Our client is willing to agree to contact on broadly the terms set out in your letter to him of 21st March."

The acceptances of those contact arrangements was beyond argument on the stated premise that S was to live permanently in Germany. The only reservation, namely that the father would like some time with S in the alternate year when Christmas was to be spent in Germany, was an unspecific plea that did not conflict with acceptance. The letter, in response of 19th June, was unhelpful and ungenerous. But it is important in that it confirms the mother's agreement to immediate implementation of the concluded terms: and that agreement expressly stipulated for return by 13th July at the latest. That stipulation was never questioned by the father's solicitors. On the strength of it the mother sent S on 26th June. The letter of 19th June, and the absence of any response, was her guarantee, albeit not as specific as the fax that secured S's return from the Easter holiday. But at Easter the arrangements for continuing contact were still in dispute. When the summer holiday came, all had been agreed. In those circumstances, it is not unfair to say of the father that he sprung a trap by resiling from the agreement and issuing proceedings on 3rd July. It is of significance that he justified his actions not so much by denying the existence of an agreement, but by asserting that S's emotional state and tales of his life in Germany

compelled an appeal for a welfare enquiry. That is often said by the parent retaining the child at the conclusion of an agreed contact visit.

I turn to the fourth question. How did the mother respond to the father resiling from the agreement? She came post haste to contest the father's application for an interim residence order. She herself applied for leave to relocate on 17th July and by 22nd July she had both applied to her local court for an order for return and applied to the Central Authority in Germany for the operation of the Hague convention. I simply cannot see anything to set against those clearest indications of her determination to fight on all available fronts the fathers' wrongful retention. Nothing could be further from a picture of acquiescence.

The inevitable consequence, in my judgment, is a finding in this Court that the father acquiesced in S's relocation and that S was habitually resident in Germany by June 2002. There are no triable defences open to the husband. The mother is entitled to a return order. Arrangements for return and for future contact must be agreed alternatively decided by this Court.

Before leaving this appeal, I add a number of further reflections. First, although we are not required to decide the point, I would express my judgment that Bracewell J was right to dispose of Mr Wright's submissions that a parent with a residence order is not in breach of a court order in relocating unless restrained by some free standing injunction. That seems to me to be a sensible and realistic approach to what is at best a rather technical argument.

Second, the management of this appeal has been impeded by the seeming reluctance of the Legal Services Commission to respond to requests both from the Court of Appeal and from the Central Authority to authorise the instruction of leading counsel for the appellant. Without an investigation I know not what explanation there may be for the breakdown in collaboration. I only, therefore, point out the consequence: because Mr Everall was only authorised at a very late stage, he could not prepare his skeleton argument until the weekend preceding the fixture, with the result that Mr Setright could not embark on his skeleton argument until the day preceding the fixture, with the result that we did not receive his very helpful skeleton until we came onto the bench. I would hope that in future these sort of difficulties can be overcome.

Third, I would observe that heretofore acquiescence has almost always been raised as a defence to a return application. Here it is raised by the applicant for the return order, simply because the wrongful retention that she asserts is preceded by a wrongful removal which she cannot dispute. The finding of acquiescence is reached on a realistic construction of the correspondence and the acts of the parents. For me it is clear finding: but judicial opinion on this primary issue is likely to range across a spectrum from strongly to just persuaded. That may be said to categorise this case as borderline. Certainly no one should construe this judgment as in any way easing the burden on an abducting parent who seeks to assert acquiescence. The authorities both in this jurisdiction and in other jurisdictions are strong and consistent in their support for the underlying principles of the convention, which would clearly be weakened were there to be any shift in the judicial construction of Article 13(a) of the Convention.

Finally, this case is illustrative of many in which the real issue between the parents is not a return order, but the contact arrangements for the left behind parent. Under investment in negotiations, and perhaps mediation, on the detail of future contact arrangements has led to (a) a two day trial in Caernarfon. (b) proceedings in the Freiberg Amstgericht (c) High Court proceedings culminating in the trial before Bracewell J; and (d) This appeal. All that litigation has been at public expense. That history reinforces the need for international

mediation services that can engage the parents across the frontier breached by wrongful abduction. The service Reunite is piloting for European jurisdictions is a welcome innovation.

MR JUSTICE SCOTT BAKER: I agree.

MR JUSTICE MUNBY: I also agree, and would wish expressly to associate myself with the concluding observations of my Lord, Thorpe LJ.

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