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[12/04/2001;Family Court at Christchurch (New Zealand);First Instance]
M. v M., 12/04/2001, transcript, Family Court at Christchurch (New Zealand)

IN THE FAMILY COURT

HELD AT CHRISTCHURCH

FP 009/1315/99

IN THE MATTER of the Guardianship Amendment Act 1991 and the ratification thereby of the Hague Convention of the civil aspects of international child abduction

BETWEEN The Chief Executive of the Department for Courts as New Zealand Central Authority ex parte B.W.M. Applicant and R.L.M. Respondent

Hearing: 19 and 20 March 2001

Judgment: 12 April 2001

Appearances: Miss I Mitchell for Applicant; Mr S Hembrow for Respondent

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RESERVED JUDGMENT OF JUDGE J S BISPHAN

This case concerns L.M. born 4 August 1986, N.M. born 27 March 1989, E.M. born 1 July 1991 and H.M. born 1 July 1991. The New Zealand Central Authority on behalf of the children's father seeks their return to the United States of America. The respondent, the mother of the children, opposes their return. I will refer to the parents, Mr and Mrs M., as "father" and "mother" respectively. The children were all born in the USA and are citizens of that country. Mr Hembrow on behalf of the mother conceded that the pre-conditions contained in s12(1) have been met and that the issue before the Court is that contained in s13 (1)(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."

Reference was made to the children's objections to return. Mr Hembrow did not proffer these as a separate ground under s13(1)(d) and indeed the children were not represented and I was not required to interview them. Mr Hembrow asked the Court to take the "objections" into account when assessing whether the grounds under s13(1)(c) were made out, and also in the exercise of the Court's discretion as to whether the children should be returned or not.

The grounds contained in s13(1)(c) must be established to the satisfaction of the Court by the mother and if established, the Court has a discretion as to the making of any order for return. There is no suggestion from either counsel that the children should be split up even though to some extent their individual circumstances must be addressed. The case proceeded on the basis that either all the children should be retained in New Zealand or all the children should be sent back to the USA.

Prior to the hearing on an interlocutory application, I ruled that three late affidavits could be filed on behalf of the applicant with the right reserved to the mother, if new matters were raised for her to give or call oral evidence in respect of those new matters. In the event three affidavits were filed by the applicant on the morning of the hearing. As a result the mother gave brief oral evidence and was cross-examined. She also called Mr Anderson an attorney from the USA who likewise gave brief oral evidence. There is a great deal of affidavit evidence on file which I have read.

The Narrative

The relevant factual narrative is in many respects not in dispute. I propose to resolve any conflicts only where it is necessary and relevant. I was able to observe the mother giving very brief evidence in respect of restricted matters. Quite properly, the mother was not cross-examined in respect of other matters. Of course I was unable to see and hear the father as he did not appear and indeed could not appear because he is in jail in the USA. I must do the best I can from the affidavit evidence on file. The father is an attorney and the media in the USA have given the case a high profile. From the affidavit evidence I am satisfied that the father takes an intense, almost obsessive, approach to this case as well he might. He proclaims his innocence in respect of sexual abuse of his children and yet he is serving thirteen years imprisonment. His family members, particularly his mother (the children's grandmother) and his brother M. have also understandably shown a keen interest in the case. The mother also has shown an intense interest in the case as well she might. She believes with justification that all four of her children have been sexually assaulted by the father with some of the assaults being serious. For her part she has shown a readiness to involve the authorities in charging both the paternal grandmother, and a former family friend with offences arising out of their conduct in respect of matters surrounding this case. Against that background I must exercise care in respect of the evidence.

The mother and father were married in the USA on 5 April 1980. The mother was born in New Zealand and still has family in Christchurch, New Zealand. She went to the USA to study at university and there met the father. They separated on 9 August 1996, and the children remained in the actual care of the mother. On 4 September 1996 a consent order was made in the District Court, Loudoun County, V., which dealt with a number of matters concerning the children but relevantly ordered that the father was to have visitation rights in respect of the children, subject to supervision by four named persons. In May 1998 the mother alleged that she had been assaulted by the father. As a result the mother and father and the children undertook counselling. It was as a result of the counselling that the four children alleged serious sexual assaults by the father on them. The assault by the father on the mother is acknowledged (at least in part) as having occurred but the father has at all times denied the sexual assaults. The father was charged and visitation by him ceased. The Loudoun County Department of Social Services undertook an investigation of the alleged sexual abuse and found that it had occurred in respect of L. and N. but was "unfounded" in respect of H. and E. As a result of trial by jury on or about 10 March 1999 the father was convicted of sexual offences against L., N. and H. No evidence was proffered in relation to E. The father was sentenced to thirteen years imprisonment, non parole.

After the father went to jail the paternal grandmother and M. became involved, or attempted to become involved with the mother and children and as a result, both those persons had what are known in the USA as "stay away orders" imposed on them. Both were arrested but charges against them have not proceeded. The paternal grandmother had been arrested on a charge of assaulting the mother. M. was accused of making threats against the mother and was also indicted on charges of bribery and conspiracy to obstruct justice. In his affidavits he states that those charges arose from money that the mother solicited from him and his family in exchange for dropping the charges. Surprisingly this is not referred to by the mother and the outcome of those bribery and conspiracy to obstruct justice charges in relation to M. is not known to me. I assume that they were either dropped or not proceeded with.

In early 1999 the mother applied to the Loudoun County District Court for permission to leave the USA with the children. On 14 May 1999 the proceedings were before Judge Chamblin in the Circuit Court Loudoun County, Leesburgh, Virginia. The Judge, without appearing to make any formal orders, enjoined the mother and the children from leaving the USA, directed surrender of passports and a hearing. On 29 July 1999 in an oral judgment the Judge granted the injunction preventing the children from going to New Zealand. The formal order was signed by the Judge on 16 August 1999. By that time the mother and the children (on fresh new Zealand passports) had left the USA and arrived in New Zealand on 17 August 1999. I am satisfied that the order was effective as at 29 July 1999 and that the mother was in breach of the order when she left the USA.

The father then on 8 February 2000 escaped from jail but was soon recaptured and shortly thereafter in April 2000 it is alleged that he formulated a plan to arrange for L. and N. to be re-abducted from New Zealand. It is in this respect that there is a conflict in the evidence. The mother and her witnesses allege that this was a genuine attempt to get the children back to the USA whereas the father describes it in his affidavits as a non-event and a fantasy that he was living. Charges were laid against the father and a Mr C. arising out of this. Mr C. was a fellow inmate who was about to be released from prison. He was to make arrangements for the abduction of the children by going to New Zealand with his sister, uplift the children and take them back to the USA and have them placed with the paternal grandmother. A letter in the handwriting of the father and also the contract with Mr C. are exhibited to the mother's affidavit as Exhibit "G". Reference to this is in Mr B.'s affidavit dated 1 March 2001 and Mr A.'s oral evidence. Mr A. confirmed that airline tickets had been purchased from Washington to Los Angeles. The charges against Mr C. were "nolle prossed" as Mr Anderson put it, because the prosecution did not wish to further involve the children who were, of course, by this time in New Zealand. Mr C. indicated that he would not have gone on with the kidnapping plan but was more interested in getting the use of the father's BMW car. Mr C. did not provide an affidavit or give evidence. I am quite satisfied from the affidavits and the evidence I have heard that this was a serious attempt by the father to set in train arrangements to have the two boys, L. and N., taken back to the USA from New Zealand. Its chances of success were probably slim but I am satisfied it had been set in motion. Airline tickets were purchased. Both the father and Mr C. were indicted. The father's charge in this respect appears to have been dealt with in a plea bargain over the escaping charge. The father pleaded guilty to that charge and received five years imprisonment concurrent with his then existing sentence and the remaining charges were again "nolle prossed".

Were the paternal grandmother and M. involved in a conspiracy with the father over the abduction? Again there is a conflict. Mr Basham's evidence was that they were "unindicted co-conspirators" who were not charged because they might have been required to give evidence against the father. Both the paternal grandmother and M. deny such involvement.

A perusal of the letter to Mr C. and the contract arrangements, Exhibit "G" to the mother's affidavit dated 7 September 2000, would indicate that neither the paternal grandmother nor M. were unlawfully complicit in the arrangements, although it is clear the two boys were to go into the grandmother's care. On page 4 paragraph (E) of Exhibit "G" the father writes:

"... are going to call their Nanna in the US and tell her we are on our way to meet her in Los Angeles. Tell the boys to tell Nanna that they are coming to the US voluntarily. Dad didn't do anything wrong to them, they want to get him out of jail. Can Nanna come to LA to meet them?"

"I have already explained to Nanna that you both are friends who are escorting the kids legally from NZ where they were visiting their mother's relatives ... "

Whilst there are other references in the letter which indicate that the paternal grandmother was involved, they are equivocal as to any criminality and overall I am not satisfied that she was so involved. In the letter written by the father to the paternal grandmother which is Exhibit "A" to the Basham affidavit dated 1 March 2001 the father writes:

"Before you read this letter from me please understand that everything that I am going to ask you to do is legal and the right thing to do."

Significantly in relation to M. the father writes:

"I would also prefer (although I leave it up to you) not to share any of this with M. because I still don't believe that he is fully on my side or convinced of my total innocence - he will just confuse you at this point even though he means well. I suggest that we keep him out of it."

M. also denies any involvement and again I am not satisfied that he was so involved.

Reference was made by the mother in paragraph 27 of her affidavit of 7 September 2000 to an application by the paternal grandmother for sole custody of the children. The mother particularly noted a request for the return of the passports that in her words:

"... would have been essential to the applicant's plan to have the children kidnapped in New Zealand by his accomplice C.C. if they were to be removed from New Zealand."

The mother now acknowledges that there was no application made in respect of the passports. The application for custody was made on 1 May 2000 which draws the inference that the paternal grandmother may have been complicit in the abduction attempt. Indeed the father's plan which was compiled in April 2000 refers to "Nanna's custody order". The paternal grandmother does not mention this custody application in her affidavits although she mentions the fact that she was awarded grandparental visitation rights in September 1999. The father in his affidavit of 21 October 2000 deals with the matter thus:

"... agree that my mother did apply for temporary custody of the M. children after they were taken unlawfully to New Zealand. She did so at my request so that the New Zealand Court could be assured that the children would be properly cared for until my release should the Court order the return to the United States of the children and the respondent chose not to return herself."

From all this evidence I remain satisfied about the genuineness of the father's attempt to abduct the two boys back to New Zealand but I am not satisfied as to the paternal grandmother's complicity as alleged by the mother. The paternal grandmother was to be

involved if the children came back from New Zealand but I do not find that she was involved in any criminal conspiracy to so abduct the children.

A mutual friend, J.H., who has filed an affidavit and was also a supervisor of the visitation of the children by the father, had approached both L. and N. on 27 February 1999. The mother alleges that Mr H.

"... accosted the children and effectively tried to get them to change their evidence on the appeal. He pushed L. in the chest and squeezed him hard on his right arm."

A complaint was laid by the mother with the police and Mr H. was arrested but the matter did not proceed and the charges were dropped. Mr H. and a D.Y. who has also filed an affidavit do not agree with the mother's version. I prefer Mr H.'s evidence when he says:

"I asked to speak with L. and N. about their father and if they realised he was in jail. Both boys indicated that they were not permitted to speak about their father because their mother told them not to. I respected their position and wished them both well in their school year. With Mrs Y. present I placed my arms around both L. and N. and gave them a friendly hug to say goodbye. At no time did I coerce either L. or N. to get them to change their testimony ..."

This evidence is confirmed by Mrs Y.

The children have remained in New Zealand with their mother and the father has remained in prison in the USA. On 27 July 2000 the Loudoun Department of Social Services conducted an appeal hearing in respect of its previous decision. The mother was not present; neither were the children who of course were in New Zealand by that time. The outcome of the hearing was that the disposition "Founded - sexual abuse" in relation to L. and N. was amended to "Unfounded". There are also affidavits on file from Dr Samenow who is a clinical psychologist involved with the family since 30 September 1996. His opinion now is:

"There is therefore some indication that the children's allegations are not credible and that the allegations of sexual abuse emanated from their mother who has since left the country with the children."

Alex Levay a lawyer acting for the father in respect of a writ of habeas corpus has also filed an affidavit. He has had the taped interviews of the children used for the criminal prosecution of the father re-examined, with a view to providing a basis for throwing doubt upon the children's allegations. It is not my role to assess this evidence but I simply comment that there is now a body of opinion which might throw doubt upon the validity of the father's convictions and throw doubt upon the occurrence of sexual abuse. The position however is that this Court must accept that the father has been convicted of sexual abuse against the three named children and that conviction stands. The father seems to have exhausted his direct criminal appeal rights but is not without further avenues of "appeal".

The Law

Counsel have provided me with a number of cases. I do not propose to deal extensively with the well known principles of this legislation. A summary is set out in S v S (1999) 18 FRNZ at p257:

"(a) The Hague Convention has both normative and remedial roles. The interests of children are normally promoted by demonstrating to potential abductors that inter-State abductions are futile and by promptly returning children who have already been abducted.

(b) Once it is shown that a child has been removed from a Convention country in the circumstances described in s 12(1) of the Guardianship Amendment Act 1991, the Court must order a return unless the case falls within one of the s 13 exceptions and also warrants the exercise of a discretion against return.

(b) In assessing both the scope of the s 13(1)(c) exception, and the proper approach to the discretion conferred by the introductory wording of s 13(1), there is a strong presumption in favour of returning the child.

(c) The Convention is concerned with the appropriate forum for determining the best interests of children, not with determining their best interests per se. Consequently, where the legal system of the country of habitual residence can be relied upon to give paramountcy to the interests of the child, a Convention application may not be used as an occasion for rehearsing those matters which would be relevant if and when custody and access issues fell to be determined.[(1999) 18 FRNZ 248, 258]

(d) Nevertheless the Convention would not have included the s 13(1)(c) exception unless it were contemplated that in some exceptional cases it would be in the greater interests of the child that return should be refused.

(e) It will not be sufficient to satisfy s 13(1)(c) that allowing the applicant parent custody of, or access to, the child would gravely risk physical or psychological harm or otherwise place the child in an intolerable situation. The absconding parent must go on to show why the legal system of the habitual residence country would fail to protect the child against that risk pending the outcome of custody and access issues there on their merits.

(f) The Court must pay regard to the wishes of a mature child whether the wish be to stay or return. The weight to be attached to such wishes will turn upon age and maturity, the reasons given by the child, possible influences upon the child, competing considerations and all the surrounding circumstances.

(g) Even where the case falls within one of the s 13 exceptions there is a discretion to make or refuse an order for return.

(h) The discretion to make or refuse an order is not unfettered. It must be exercised in the context of the Convention and the Act in which it is incorporated."

A v A [1996] NZFLR 529 sets out important principles:

"Where the system of law of the country of habitual residence makes the best interests of the child paramount and provides mechanisms by which the best interests of the child can be protected and properly dealt with, it is for the Courts of that country and not the country to which the child has been abducted to determine the best interests of the child."

And further:

"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."

The relevant principles are succinctly summarised in KMH v Chief Executive Ex parte JWP 11.8.2000, Young J, HC Christchurch, AP No 15/00 at pages 9 et seq. At paragraphs 35 and 36 the Judge said:

"The underlying purpose of the Hague Convention and the New Zealand legislation which implements it is to require the return of abducted children to their home jurisdiction.

This is not to say that the welfare and interest of an abducted child are irrelevant. Section 13 (1)(c) and (d) in particular mean that the interests of the child who has been abducted must be addressed. But this must be in the context of the legislation and the Hague Convention as a whole. The approach which is taken to Hague Convention cases is that where the legal system in courts of the home jurisdiction make the best interests of the child the paramount consideration it is usually for the courts of that country and not the country to which the child has been abducted to decide where the best interests of that child lie. This is exemplified by the decision of the Court of Appeal in A v A [1996] NZFLR 529. To put this another way it is going to be an exceptional case where the abducting parent can resist the return of the child to the home jurisdiction."

As to s13(1)(c) the assessment of risk of harm is a question of weighing possibilities, probabilities and even certainties of the occurrence or situation happening. This is almost invariably based on what has happened in the past. In other words the Court must assess what might happen prospectively from what has gone before and then assign the degree of risk. A high probability might constitute a "grave risk"; a certainty would. The assessment process is far from an exact science and in the end is a matter of judgment. Included in this assessment of risk is the consideration referred to in A v A (supra). At page 536 the Court said:

"In most instances where the best interests of the child are paramount in the country of habitual residence the Courts of that country will be able to deal with any possible risk to a child, thus overcoming the possible defence of the abducting parent."

It follows that if the prospective risks of harm to which the child might be exposed by the return are those from which the children will be protected by the Court of the country of habitual residence, the grounds in s13(1) almost inevitably will not be made out; the reason being that it will not be possible or at the least extremely difficult to elevate those risks into the "grave" category.

Once a ground for refusal has been made out the Court has a discretion as to the return of the children. That discretion must be exercised against the background of the Convention and the Act itself. In S v M [1999] NZFLR p347 at p349 the Judge said:

"I certainly prefer the approach that the discretion is limited and two-fold in nature, that is two broad issues fall for consideration: being the philosophy of the Convention and a consideration of the welfare of the child, but only in relation to having the custody case determined in one country or another."

Grounds for refusal

The onus is upon the mother to satisfy me on the balance of probabilities that a ground has been made out. She, in summary, relies on the following:

a. That the children have been sexually abused by the father.

b. The father does not acknowledge his guilt.

c. That the father has escaped from prison.

d. That the father has devised a plan to re-abduct two of the children, L. and N., back to the United States and was prepared to use a convicted fellow inmate to do this.

e. That the paternal grandmother and M. were complicit in this abduction plan and/or have been involved in attempting to see the children in an effort to get the children to recant.

f. That the father has shown an intensity bordering on obsession to have the children approached with a view to them recanting their evidence of sexual abuse.

At its highest the mother's contention is that there are grave risks if the children are returned to the USA of the father re-abducting them so that they may be induced to recant their allegations of sexual abuse. This could involve family members. There would be grave risks of both physical and psychological harm attendant upon this. The mother further contends that there would be a grave risk of psychological harm on return as the children might be exposed to further official interviews, psychological examinations and possibly having to give evidence again. She further contends that to return the children would place them in an intolerable situation because they would be going back (possibly) to the area where they lived previously where the sexual abuse occurred. There has been wide publicity of the criminal trial and the children have already been teased.

The mother also relies on the evidence of Dr Karen Zelas which is before the Court. Dr Zelas' primary opinion is based on her understanding that the children were harassed by the father's family while living in the USA. She also lays emphasis on the abduction plan, made whilst the father was in prison, putting the children in a potentially grave risk situation. Such a plan would be more easily implemented in the USA. She also refers to evidence of potential physical harm to the children based on past concerns in the USA. On my assessment of the evidence I do not describe what the paternal grandmother, M. and Mr H. have done as harassment. One fraught visit by the paternal grandmother and one innocuous approach by Mr H. does not constitute harassment of the children. Apart from possible physical harm befalling the children, if a further abduction took place in the USA, I do not find that the children are at risk of any physical harm. Further, to the extent that Dr Zelas' opinions are based on what the mother has told her, requires the Court to be careful because there has been no personal input from the father.

I am not satisfied that there are grave risks as alleged by the mother. Risks of further sexual abuse by the father were not stressed and I discount them in view of his current circumstances. The father's abduction plan was to get the children (or at least two of them, L. and N.) back to the USA. If the Court ordered the return of the children that would achieve what the father was seeking. Once the children were back in the USA there would seem to be less cause to have them further abducted. The only risk of physical harm to the children might arise if they were further abducted by the father in the USA. There is not a strong likelihood that that would happen. On my findings the risks of the paternal grandmother, M. and Mr H. approaching the children to get them to recant their evidence are not significant. There may be more likelihood of the father employing others for that purpose but there is not a grave risk of that happening. Quite apart from the foregoing the risks of harm relied on by the mother seem to me to be all matters which in terms of A v A (supra) the children will be protected from by the USA authorities. Certainly there is no evidence before me that they will not be so protected. In all the circumstances I do not find that a return to the USA would expose the children to a grave risk in respect of all the foregoing alleged harms.

Dr Zelas refers to the children having to "live with the threat of such events occurring", (the events being what has relevantly happened in the USA including the abduction plan) as placing the children in an intolerable situation. She also states:

"Aside from any intrinsic characteristics of their development or personality they have been subjected to life events which have had a significant impact upon them emotionally and psychologically and a return to living in an unreasonably stressful environment would risk deterioration in their levels of functioning, together with acute psychological disturbance."

In other words the children will have fear arising out of their experiences in the USA and knowledge of the abduction plan which they will carry with them to the USA where they will be rekindled and magnified. This risk of harm seems to fall into a different category from those already described, and might be seen as "inherent" in the children. They are aware through their mother that the abduction plan was hatched. She cannot be criticised for telling the children of it. That they have fears at the present time is evident from Dr Zelas' interviews. The children do not specifically articulate fears of further sexual abuse but indirectly refer to it. H. has fears: "If Dad sends Nanny and M. over and kidnap me" and other fears arising out of her family life in the USA. E. has fears and sadness over her grandmother and over the kidnapping plan and fears about her father. N. has shame over the sexual abuse and is angry about his father and scared of seeing him and is "mad" with his grandmother and M. L. has fears about his father getting out of jail and talking to him. He has concerns over the kidnapping plan. I am satisfied a return to the USA would rekindle and enhance those fears and bad feelings. Some of the fears may not be objectively soundly based but I accept that the children genuinely hold them. That is the psychological harm they will suffer. They will be returning to the country where the sexual abuse took place and they will know that they will be closer to the father and his family. The exposure under the section is in effect greater exposure. The harm will not be a creation of the return to the USA but an exacerbation of fears and shame already held. Some of the fears were held before the children left the USA and some were generated in New Zealand. I find that the risk of psychological harm is limited in that way. Whether there is a "grave" risk is a matter of contention again bearing in mind what was said in A v A (supra). It may be that the children can be protected by the USA courts and authorities from this risk of harm and there is no evidence to the contrary before me but I am prepared to infer from the very nature of the prospective harm that they cannot be so protected.

I am satisfied the risk of harm is not solely a consequence of the abduction to New Zealand.

I am prepared to accept that there is a high probability (almost inevitability) of the harm happening. I find that this ground has been made out.

Section 13(1)(c) is so drafted that the intolerable situation referred to in s13(1)(c)(ii) must be something apart from the other harm referred to in s13(1)(c)(i). I prefer to categorise the enhanced fears as psychological harm rather than placing them in the category of "intolerable situation" as Dr Zelas seems to do.

Mr Hembrow submitted that a return of the children to the USA, particularly if they went back to an area close to where they were formerly living, would involve them in being singled out by other children as the target of teasing because of the sexual abuse they have suffered at the hands of their father. This has already happened in the USA before the children left for New Zealand.

In relation to N. Dr Zelas refers to this at page 6:

"Mother states that N. carried a lot of shame regarding the sexual abuse. He was deeply distressed when people found out about it through the newspapers and a boy at school said "Your father's f. you"".

Whilst there has been undue publicity in the USA in respect of this case it is not likely that it would be repeated upon the return of the children. It is now a year and a half since the children were in the USA. Memories will have faded. I cannot find any grave risk of an intolerable situation in this regard, and again this is a matter to be dealt with by the USA courts and authorities.

In summary I find that the only substantive ground which has been made out is that there is a grave risk that the children's return to the USA would expose them to psychological harm in that their pre-existing fears will be exacerbated by such a return to the USA. I am satisfied all the children will, by and large, be affected in similar ways although obviously the older two boys will have more depth of perception and greater understanding.

Dr Zelas refers to the children's "objections" in her report. She has dealt with each child individually. The children are aware of the abduction plan. H.'s preference is to live in New Zealand, as is E.'s. E. does not have any great objection to returning to the USA provided she lives "not next door to Daddy though". N. prefers to live in New Zealand and said that if his mother decided to go back and live in the USA "I wouldn't want to go - but if Mum went I'd probably go". L. is ambivalent about returning to the USA. He stated to DR Zelas "I kinda want to and I kinda don't". Dr Zelas noted that none of the children objected to returning to their country of origin per se. In all the circumstances the children are unlikely to express a wish to return to the USA. They will tend to follow their mother's lead.

The Discretion

All relevant circumstances must be considered in the exercise of the discretion but the following assumed importance:

a. The ground of grave risk of psychological harm, has been made out and weighs in favour of retaining the children in New Zealand, but I must take account of the limited nature and extent of the likely psychological harm as I have found. This reduces the weighting of this factor.

b. I note the objections expressed by the children against a return. They are moderate and do not have much influence on me.

c. The underlying purpose of the legislation which requires the return of abducted children to their home jurisdiction weighs heavily in favour of a return.

d. The American Courts, both Criminal and Family, have been seized of the parents' litigation intermittently since the parents separated and such involvement has continued past the mother's departure from the USA. If there is to be further litigation involving the children (and I accept that is not essential to my considerations) then clearly the appropriate forum is the USA. The mother was in breach of a Court order when she brought the children to New Zealand. These factors again weigh in favour of a return.

e. The mother has indicated that she will return to the USA if the children are ordered to return. She may face contempt proceedings despite undertakings given by the father and other family members.

In the exercise of my discretion I find that the factors in favour of a return outweigh those favouring retention. I now order a return of all four children to the USA. Costs are reserved.

J S Bisphan

Family Court Judge

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