FAMILY LAW ACT 1975

IN THE FAMILY COURT OF AUSTRALIA

AT ADELAIDE **No. AD 1580 of 1993**

BETWEEN:

THE POLICE COMMISSIONER OF SOUTH AUSTRALIA

(State Central Authority)

AND

Ms H (Wife)

CORAM:	**Judicial Registrar Forbes**
DATES OF HEARING:	**29.6.93 & 3.8.93**
DATE OF JUDGMENT:	**6.8.93**

JUDGMENT

APPEARANCES:

Mr A Moss (instructed by Crown Solicitor) appeared on behalf of the State Central Authority

Miss M Ross (instructed by JR & JR Alderman) appeared on behalf of the wife

CATCHWORDS: *Child Abduction – Hague Convention on Child Abduction – Habitual residence at time of removal – Rights of custody – Grave risk*

1. The application is that the child X otherwise known as Y born in 1990 be returned to England forthwith. The application is made under the provisions of the Convention on the Civil Aspects of International Child Abduction and the Family Law Regulations which give effect to the convention; namely, the Family Law (Child Abduction Convention) Regulations. The application was filed on 12th February 1993 and is brought by the Police Commissioner of South Australia as the relevant State Central Authority. The respondent to the application is the mother of the child. She is the wife of Mr H who resides in England. He is the father of the child. I shall refer to the respondent as "the wife" and to the father as "the husband".

2. They first met in June 1989 when the wife was on holiday in the United Kingdom. The wife was born at South Australia in 1964. She was born of parents who had come to Australia from Italy in 1956 and who took Australian citizenship when she was 10 years of age. The husband was born in England in1965 and had lived there save for an unknown period when he lived in Spain. Following their having first met, the wife returned to Australia in July 1989 and by arrangement with the husband then joined him in England in November 1989 when they commenced to live together as man and wife. For these purposes the wife travelled on an Italian passport which she has retained and which is currently held by the Registrar under an order of this court. They married in September 1990. The wife was then 26 years of age and the husband was 25 years of age. A month after the marriage the child Y was born. The wife says that the relationship was in difficulty from almost the outset. The husband concedes marital problems from early in 1991. In January/February 1991 the wife left the husband and with the child went to live with the husband's parents for about a month. The wife alleges violence on the part of the husband together with a heavy intake of alcohol, financial irresponsibility and of frequent absences from the home. The husband, for the most part, denies these allegations. The wife says she became very lonely in England and that she had few friends. The wife says that the husband's conduct did not change when she returned to him. The husband denies almost every allegation which the wife makes as to his relationship with her, his involvement in the home and with the child and the financial difficulties which were being experienced.

3. At all events and by early 1992 the marital relationship had deteriorated and the wife was insisting on returning to Australia. The parties agree that they discussed moving to Australia. The wife concedes that for the purposes of the discussions she failed to tell the husband of moneys

she had in Australia ($1,500.00) being the proceeds of a superannuation payout.

4. I should also interpolate to say that the wife, on moving to England, had left a freehold home in Australia which was registered in her sole name. The home was tenanted. It had a substantial equity.

5. The wife says that in May or June 1992 she applied for and got a British passport for the child. She concedes she did not tell the husband of this as he had previously indicated his objection to her removing the child from England for the purpose of a holiday with her mother in Italy. The husband confirms his refusal and says that he feared that the child, once gone, would never be returned to England. The wife concedes that the passport was obtained without the husband's signature although the wife did use the husband's documents of which he had no knowledge.

6. The parties finally separated in August 1992 when the husband left the wife at the premises in London. The wife says that shortly before the separation she had a conversation with the husband during which he acknowledged a selfishness of attitude on his part in requiring that she remain in England and indicated a willingness to sign whatever documents would be necessary for her to travel to Australia. The husband denies this conversation. The wife says that the husband retracted his offer the next evening and indicated that he was willing to look after the child in the event that the wife left England.

7. The wife concedes that shortly after separation she booked an airline ticket for herself and the child to travel to Australia. She did not tell the husband. On 25th September when she was due to board the plane she was stopped as the child did not have a visa to enter Australia. On advice she then sought Australian citizenship for the child. This apparently was an immediate avenue that would enable the child to travel to Australia. The wife says that in the statutory declaration accompanying the application she alleged that the child had not seen the husband since the separation. The wife also deposes in these proceedings to having in fact seen the husband each week or thereabouts following the separation when he would come to her premises and give her L50.00. She concedes that on some of these occasions the husband would see and spend time with the child. The contradictory statements by the wife on this matter as appear in her affidavit leads me to infer that I should accept what the wife says as to the husband having had contact with the child and to accept that the wife gave a false statement when making an application for an Australian passport.

8. As to the question of contact the husband goes further and says that following separation he had frequent contact, at least as much as 3 times a week during September 1992 with the wife and child and he says that the wife knew of his address and place of work and could have contacted him at either place had she chosen to do so.

9. The wife does not say but it would seem that the purpose of making an application for Australian citizenship for the child was to enable a passport to issue for her. Indeed, the statutory declaration would seem to relate to the passport application, for where on the passport application particulars are sought as to the consent of the father the words *"No contact with father"* have been written on the application. The matters contained in the statutory declaration would seem to be confirmatory of that allegation. The statutory declaration also contains the wife's assertion that the husband consented to a British passport having issued for the child. As can be seen this is also a false statement.

10. At all events the wife obtained the necessary documents from the Australian authorities and re-booked a flight for herself and the child. The child's birthday fell on the day before she was due to leave England. The husband and his parents visited the child on her birthday. The husband stayed the night. They disagree as to what caused the husband to remain at the wife's premises. They agree the wife said nothing of her departure, either the night before or the day when she was due to leave. The wife concedes (very fairly, I think) that she did not tell the husband of her intended departure: "because I knew he would try to stop me".

11. The 2 letters which the wife concedes she wrote to the husband, the first on the day of her departure and the second on 12th November 1992, both acknowledge sorrow and regret on the part of the wife as to the manner of her taking the child out of the country.

12. The wife deposes to having returned to reside in her home in South Australia which she is sharing with her mother and of having renewed acquaintances with old friends. She says her house is worth $90,000.00 and that it is subject to 2 mortgages on which is owing a total of $49,000.00. She says the mortgage installments are $724.00 per month of which her mother contributes $400.00 per month. The wife says she receives a Family Allowance and Supporting Parent's Benefit, in all, an income of $219.30 per week. The wife says English is her spoken language but she has some difficulty with it as she was required to speak Italian during her

early life when at home or socially. The husband confirms the wife's difficulties in this respect.

13. The wife says her health was poor on her return to Australia and she says this was due to her intolerable situation in England. She says that after she returned to her flat at London on 25th September 1992 (the first attempt to leave) she found that it had been broken into and she was required to secure the return of her belongings from the neighbour. In her letter to the husband written at the time of her ultimate departure the wife makes mention of feelings of insecurity and paranoia as a result of the break-in. The wife, however, makes no mention of having reported the break-in to the authorities nor as to the circumstances in which she discovered that her belongings were with the neighbours.

14. The first point taken by the wife is that she says she was not habitually resident in England at the time of her departure from Heathrow Airport on 16th October 1992. She says the child, being a child of tender years, takes what is the habitual residence of the mother for these purposes. The factual matters upon which the wife relies can be seen by what she alleges in paragraph 53 of her affidavit where she says:

> "Throughout most of the time I .was staying in England I hated living there, mainly because of the extremely poor conditions in which I was living, my loneliness and the husband's abusive and neglectful treatment of me. I always considered Australia to be my home and longed to go back there as the husband well knew."

15. The wife says that whilst she was actually resident in England she would have preferred to be living in Australia. She says she had a home in Australia and had wanted to return to Australia from a time very early in the marriage.

16. It is said for the wife that her intention can be sufficient to determine her habitual residence and that support for that proposition can be got from *Police Commissioner of South Australia v B,* a judgment I delivered on 4th June 1993.

17. Reliance is placed upon the well-known statement which I quoted of Lord Scarman in *R v Barnet London Borough Council; Ex parte Nilish Shah* (1983) 2 AC 309 at pg 343 where he said:

> "Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that 'ordinary resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration."

and the comments of Lord Brandon in *C v S (A Minor) (Abduction)* (1990) 2 FLR 442 House of Lords (which I also quoted) as saying:

> "if he or she leaves ... with a settled intention not to return ... but to take up residence in country B instead, such a person cannot, however, become habitually resident in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so."

18. Counsel for the Central Authority argues that it is not enough to look at a person's intent without also looking at the place of residence of the person. He also says that the child was born in England and had always lived in England before her departure.

19. Articles 3 and 4 of the Convention require that the habitual residence of the child be determined as at a time immediately before the unlawful removal. In *Police Commissioner of South Australia v B* I was required to consider the meaning of the term habitual residence but in a different context. In that case the mother had lived with the child in New Zealand for 13 months prior to the unlawful retention in Australia and the child had otherwise lived in Australia. She was nine years of age and had been born in Australia. The argument was that the child's habitual residence should be determined by a consideration of where she had lived all her life. The question of the child or the parents' intentions was not an issue. In that case I came to the following conclusion:

> "The commentators agree that habitual residence as a criterion was chosen by the member States so as to afford protection to children who are ordinarily resident within the State. As the expression suggests this is not a state of affairs which could be achieved in a day and the expression, I think, accepts that there would be continuity as to habitation. To include the period sought by the father would seem unwarranted on the authorities and contrary to the spirit and intention of the Convention."

20. The argument in this matter is different. What is said here for the wife is that she, from a very early time, longed to be in Australia and hence, because of her pre-existing ties in Australia, a family and a house and things of that nature, that Australia is her habitual residence. But there is no support for that proposition, to be found in *Police Commissioner of South Australia v B,* nor in any of the authorities referred to in it.

21. The facts in this matter are that the mother travelled to England in November 1989 to take up cohabitation with the husband. She married him in September 1990 and had a child by him in October 1990. She lived in England from November 1989 to October 1992. From early 1991 at least she was unhappy with her marriage. She was also homesick. She considered her circumstances, including her accommodation at London unsatisfactory. From very early in the marriage she says she desired to return to Australia. Nevertheless, I think her

desires in that regard must be considered in the context of her actual circumstances. To my mind, neither her residence in England was so temporary, nor her circumstances, so unsettled that it could be said that she was not habitually resident in England.

22. As can be seen I have considered habitual residence upon the basis that the child would take the habitual residence of the mother. That is the wife's submission based upon the age of the child and of the history of the child having always lived with the mother. On the other hand the Central Authority argued that as the child was born in England and had lived her life in England that her habitual residence was that of England before she was taken. The wife, in support of her argument, relies upon *C v S* supra, presumably where Lord Brandon at pg 454 D says:

> "The fourth point is that, where a child of J's age is in the sole lawful custody of the mother, his situation with regard to habitual residence will necessarily be the same as hers."

23. *C v S* is an unusual case. The father in that matter at the time of the removal by the mother of the child from Western Australia had no rights of custody under the law of Western Australia at that time. That situation had ramifications for the determination of what constituted an unlawful retention but it may also have had the effect of qualifying 'sole lawful custody' to the peculiar status which the mother enjoyed in that matter.

24. Lord Donaldson MR in the Court of Appeal had said (at pg 449):

> "It must be pointed out that the case with which we are concerned is unusual in that the mother is an unmarried mother and, under the law of Western Australia, the father has no rights whatever until the court gives them to him. But, in the ordinary case of a married couple, in my judgment, it would not be possible for one parent unilaterally to terminate the habitual residence of the child by removing the child from the jurisdiction wrongfully and in breach of the other parent's rights. Accordingly this decision cannot be applied to the ordinary case of the married couple."

25. The child is young but the convention is specific in directing its attention to the habitual residence of the child. A child of this age does not bring with it considerations as to attitude or wishes. The mother says that the habitual residence of her and the child should be one and the same. There may be matters upon which a finding that the child has the habitual residence of the husband should be considered but I do not understand that to be the argument of the Central Authority. The birth of the child in England, and her having lived continuously in England for 2 years, persuaded me that the child was habitually resident in England at the time of her removal.

26. The next matter requiring consideration is the question of whether the husband had rights of custody in the child at the time of her removal. As a matter of law it is conceded that the husband in this matter has the same rights of custody as the father in the matter of *Police Commissioner of South Australia v Temple* (1993) FLC 92-365. In that regard Murray J at pg 79,827 said:

> "For retention to be considered wrongful, there must be the two prerequisites as set out in Art. 3. Regardless of how the Australian courts may define custody, the only definition to which I can have regard is that in Art. 5(a). Moreover I must construe it having regard to the purpose of the Convention, which, as has been propounded in numerous authorities, is to impose an almost absolute duty on the Court of a Convention country to return a child wrongfully removed or retained in another Convention country.
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> Therefore I must look at the husband's rights of custody arising by operation of the law in England and then ascertain whether he was actually exercising them either jointly or alone, or would have exercised them but for the retention.
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> Counsel for the Central Authority tendered various extracts from the *Children Act 1989* already referred to with some textbook commentary thereon. Section 3 of this Act defines "parental responsibility" as "all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". It is agreed that each party had shared parental responsibility at all relevant times during the parties' separation. Each party still has shared parental responsibility. It would also appear that "parental responsibility" properly encompasses the prima facie duty to allow the child to have contact with other persons having parental responsibility *(Re KD (A Minor) (Ward: Termination of Access)* [1988] AC 806).
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> Section 1 of the *Child Abduction Act 1984 as* amended provides criminal sanctions should one, e.g. a child's mother, remove that child from England without the consent of the father if he has parental responsibility.
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> The husband, therefore, as a person with parental responsibility, has the right under English law to give or withhold consent to S's removal from England. It follows that the husband has a right to determine the child's place of residence *(C v C (Minor: Abduction: Rights of Custody Abroad)* [1989] 2 All E.R. 465 at 471), and I hold accordingly.
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> I am further of the view that as at the date of S's retention, the husband had not abandoned that right although he took no steps to alter the status quo.
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> Without abandonment of that right, I am of the view that the husband must be actually exercising it. The Macquarie Dictionary defines "actually" as "an existing fact; really". The husband's right to determine S's removal from England was an actual or existing fact at all relevant times. I do not see how, in any event, he could abandon that right without the knowledge of the wife's decision to

retain S permanently - something which did not occur until the 31st July."

27. The wife argues that the husband had abandoned his rights of custody in that he failed to take an interest in the child or to otherwise provide for her, financially and otherwise. The husband disputes this. He says he maintained regular contact with the child and provided the wife with regular maintenance.

28. At paragraph 79 of her affidavit the wife says:

> "The husband visited me again on 15th October 1992 for the child's birthday. His parents also visited that evening. The husband stayed for the night because he had been drinking. I did not tell him of my plans to leave the following day because I knew he would try and stop me."

29. I think this evidence contains important concessions on the part of the wife. It demonstrates the interest which the husband and his parents were taking in the child and of the wife's willingness to have them in her home, even overnight so far as the husband is concerned. It also acknowledges the wife's appreciation of the husband's attitude as to seeing his child. The matter to which the wife deposes to in paragraph 79 of her affidavit together with her concessions as to the maintenance which the husband paid (voluntarily, it would seem) and his seeing the child lead me to conclude that the husband did not abandon his rights of custody in the child.

30. It follows then and for the purposes of the convention, I find that the wife unlawfully removed the child when she left England on 16th October 1992. Under the terms of the convention the onus is then upon the wife to satisfy the court as to any of the matters raised in sub-regulation 16(3). Regulation 16(3)(a) refers again to 'rights of custody' when it says:

> "the person, institution or other body having the care of the child in the convention country from which the child was removed was not exercising rights of custody at the time of the removal of the child and those rights would not have been exercised if the child had not been removed, or had consented to or acquiesced in the child's removal;"

31. I do not think this provision takes the wife's position any further. I have already determined that the husband has a legal right of custody under English law which he had not abandoned at the time she left. I cannot find any support on the facts for a determination that he would not have exercised his rights of custody had the wife not removed the child. I would think the contrary to be the position.

32. The wife argues that sub-regulation 16(3)(b) applies. That says:

> "there is a grave risk that the child's return to the applicant would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;"

33. The wife says that at the time of her departure from England she was under severe stress and that she was physically unwell.

34. She says she was impoverished financially and living in accommodation, if not a district which was unsuitable to her and the child. It is said for the wife that she would be exposed to physical harm and the risk, albeit slight, of the child suffering psychological harm should not be overlooked if the child is ordered to return to England.

35. The mother concedes that she would accompany the child back to England if that is to be the order.

36. Specifically the wife says that the accommodation at London was unsuitable for her and the child. She says her neighbours were undesirable and the accommodation and district were unsatisfactory for young children. The husband denies much of this. He says the neighbours remain friendly, that there is a sufficient and satisfactory playing area for young children and that the flat has been redecorated. The husband has resumed occupancy of this flat and offers to give it up to the wife for her use and enjoyment on an indefinite basis. Otherwise he offers the wife accommodation in a flat in East Sussex. This is the flat referred to in his undertaking filed 2nd August 1993. I presume it is one and the same as the premises at East Sussex which is referred to in the Lord Chancellor's letter dated 24th June 1993.

37. It is said for the husband that his offer of accommodation is that it be rent free. It is also said that the supporting parent's benefit which the wife currently receives from the Department of Social Security can be paid to her for a period not exceeding 12 months whilst she is overseas. The parties agree that this would represent an income of $166.00 per week. The wife says that the accommodation offered by the husband is unsuitable and unsatisfactory. In that event there is evidence that suggests she should test her eligibility for accommodation with the local council. The offer of the husband to give over his own accommodation is accompanied by an offer to contribute whatever maintenance he can afford. In addition the information furnished by the Lord Chancellor's Office per their letter dated 24th June 1993 suggests the wife should also test her eligibility for a pension or benefit from the English Government. As it is the wife is not without a capacity to borrow against or sell her property in Australia so as to have funds to enable her to provide for herself (including as to accommodation if she

considered that appropriate) in the period that would be necessary for her to re-settle in England. In these circumstances I do not accept that there is a grave risk that the child would be placed in an intolerable situation if she is ordered to return to England. See *B v B (Abduction)* (1993) 1 FLR 238 at pgs 243-247 inclusive.

38. The wife has provided evidence of Dr J, an ophthalmologist, of her having in December 1992 been found to be suffering a viral infection (herpes simplex virus) in the right eye. This was associated with inflammation inside the eye and intensive treatment was required over several months. He says that stress, or a rundown condition are factors which can lead to a reoccurrence of the disease and she has had several reoccurrences already. I have no doubt the wife can continue to receive satisfactory treatment for this condition in England. On the evidence I am not satisfied that the disease of itself constitutes a grave risk as to the child returning to England. Nor have I any reason to think that the illnesses of which the child was suffering when seen by Dr C on 19th October 1992 are continuing.

39. It follows that I am not satisfied by a consideration of matters as to the health of the child or her mother that a grave risk exists that the child would be exposed to physical harm or psychological harm or that the child would be placed in an intolerable situation.

40. Much has been said in the documentary material as to the quality of life which the wife and the child can enjoy in Australia. The wife's isolation, loneliness and standard of living if she is required to return to England are also emphasised. Nevertheless it is not for this court in this application to make decisions as to what is in the best interests of the child. The very purpose of this application is to invoke a convention whose primary purpose is to ensure that children are returned so that the courts of England can make that determination in their municipal proceedings. I refer again to *B v B* supra at pg 244 at E where Sir Stephen Brown said:

> "Subparagraph (b) commences with the words 'there is a *grave* risk that his or her return would place the child ... in an intolerable situation'. This submission was supported by reference to various decisions of the court to the effect that it is a strict test. Further, he cited the recent decision of *Re A (Abduction: Custody Rights)* [1992] Fam 106, sub nom *Re A (Minors) (Abduction: Acquiesence)* [1992] 2 FLR 14, in which the Master of the Rolls considered the context in which the return of a child to the country from which he had been unlawfully removed should be approached. Lord Donaldson MR said at pp 550F and 29B respectively:
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> > 'In considering the first issue, the court of country B should approach the matter by giving the fullest force to the policy which clearly underlies the Convention and the Act, namely that wrongful removal or retention shall not confer any benefit or advantage on the person (usually a parent) who

has committed the wrongful act. It is only if the interests of the child render it appropriate that the courts of country B rather than country A shall determine its future that there can be any exception to an order for its return. This is something quite different from a consideration of whether the best interests of the child will be served by its living in country B rather than country A. That is not the issue unless Art 13(b) applies. The issue is whether decisions in the best interests of the child shall be taken by one court rather than another. If, as usually should be the case, the courts of country B decide to return the child to the jurisdiction of the courts of country A**,** the latter courts will be in no way inhibited from giving permission for the child to return to country B or indeed becoming settled there and so subject to the jurisdiction of the courts of that country.

But that will be a matter for the courts of country A.'"

41. Sir Stephen Brown at pg 245 refers to the comments of Balcombe LJ in *Re A (Abduction: Custody Rights)* [1992] Fam 106, a matter which like *B v B* has similar features to this matter. Balcombe LJ at pg 118 and 119 said:

"'The judge also rejected a submission on behalf of the mother that there was a grave risk that to return the boys to Australia would place them in an intolerable situation. If the judge had accepted that submission, that would have unlocked the door to the exercise of his discretion under Art 13(b). The argument relied on to support that submission is set out in the judgment in the following passage:

"The argument there is that on their arrival there is no home and there is no financial support forthcoming from the plaintiff who himself lives on State benefits. That is in contrast to the security that the mother has achieved since her arrival in this jurisdiction. Here she has the support of her parents. She is in a position to sign a lease immediately for the rent of a suitable home. There is a letter from the school showing that the children have apparently settled in well to a Church of England primary school. Therefore it is said that the situation on their return would be intolerable and pointless."

The judge rejected this argument:

"I have reached the clear conclusion that the mother has not established a sufficiently grave risk of a sufficiently substantial intolerable situation. The fact is that between July and September 1991 the whole family was dependent on State benefits. In this jurisdiction equally the mother and children are dependent on State benefits. On their return, they would again be entirely dependent on Australian State benefits, but that can hardly be said, in itself, to constitute an intolerable situation."

This submission was revived before us. Nevertheless, I am quite clear in my mind that the matters (largely financial) upon *which* the mother seeks to rely as constituting an intolerable situation in Australia come nowhere near to

establishing what the Hague Convention requires by that phrase. In my judgment, the judge was entirely right on this point.'"

42. The English Courts in the exercise of their jurisdiction have permitted a custodial parent to take a young child from the country. See *AvA*(1980) 1 FLR 380. They have also refused leave. See *Tyler* (1989) 2 FLR 158. The point is that it is for the English Courts to make that decision. As Balcombe LJ said in *Re E (A Minor)(Abduction)* (1989) 1 FLR 135 at 142 said:

> "I stress once again that the whole purpose of this Convention is not to deny any hearing to a father in the circumstances of this father; it is to ensure that parties do not gain adventitious advantage by either removing a child wrongfully from the country of its usual residence, or, having taken the child with the agreement of any other party who has custodial rights to another jurisdiction, then wrongfully to retain that child. The purpose of the Convention, and of the Act which embodies it as part of the law of this country, is to ensure that the right court should deal with that sort of issue."

43. This application was filed on 12th February 1993. It first came on for mention on 17th February 1993 when consent orders were made as follows:

> "By Consent:
>
> (b) That the child not be removed from Adelaide in the said State pending the determination of the application made pursuant to the said Convention and Regulations.
>
> (c) That the names of the mother and the child be placed on the Pass Alert System operated by the Australian Federal Police.
>
> (d) That the mother deliver to this Honourable Court or the Police Commissioner of South Australia her passport and any current passport relating to the child and that the aforementioned passports not thereafter be released until further order."

44. An order was also made by consent that the wife file answering documents within 21 days and it was adjourned for further directions on 12th March 1993. On that date it was adjourned for a pre-hearing conference on 29th April 1993. The file discloses that the pre-hearing conference set for 29th April 1993 was rescheduled to 20th July 1993. Subsequently it was determined that a pre-hearing conference would not be required and the matter was first listed to be heard before me on 30th June 1993 but by arrangement with the parties the matter was brought forward to 29th June 1993. That was done so as to give some opportunity for the matter to be concluded as I would have otherwise been absent from the Registry until 2 August 1993. The matter did not conclude. During the period of the adjournment the reasons of the Full Court in *Temple*, a judgment delivered

on 25th June 1993 have been published. In view of that judgment it would seem to me inappropriate to impose conditions as to the return of the child. The husband offers undertakings. They relate to his providing the costs of air fares for the wife and child to return to England and as to accommodation. I will act on the offer as to an air fare as I do not think that will create any undue delay in the giving effect to the order for return. As to the undertaking in respect of accommodation I shall do no more than note that it has been given. It may be the wife will change her attitude and give consideration as to the offer. In the circumstances it may be an appropriate fallback position for her.

45. I would propose orders in the following terms:-

> Upon the court noting the undertaking of [Mr H] of …, London … that he will:
>
> (a) provide accommodation for the wife and child at …, East Sussex, …, or at the abovementioned flat in London and that he will permit the wife and child to reside at either of such premises on an indefinite basis; and
>
> (b) pay to the State Central Authority sufficient moneys to enable the wife and child to travel by air from Adelaide to London:-
>
> Order that the child X otherwise known as Y born in 1990 be forthwith returned to England.