Neutral Citation No: [2020] NIFam 9 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **KEE11284** *Delivered:* **10/07/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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OFFICE OF CARE AND PROTECTION

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IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

BETWEEN:

ZA

Plaintiff;

-and-

BY

Defendant.

IN THE MATTER OF K (A MINOR)

HAGUE CONVENTION (ARTICLE 13 GRAVE RISK EXCEPTION: PROTECTIVE MEASURES: JUDICIAL LIAISON)

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KEEGAN J

Introduction

[1] This is an application brought by the plaintiff for return of the child K to the Netherlands under the provisions of Article 12 of the Hague Convention 1980 as enacted by the Child Abduction and Custody Act 1985.

[2] The identities of the parties have been anonymised in order to protect the interests of the child to whom this judgment relates. Nothing must be published or reported which allows this child or any related adults to be identified in any way.

[3] Ms Lee Brown BL appeared for the plaintiff. Ms Deborah Harvey BL appeared for the defendant. I also appointed the Official Solicitor to represent the interests of the child and Ms Murphy BL appeared instructed on behalf of the Official Solicitor. I am grateful to all counsel for their oral and written submissions

which were of very high quality and for the level of agreement that was reached at an early stage in this case.

[4] The application by originating summons in this case is dated 28 April 2020. As a result of this it is obvious that the matter came to the court during the Covid 19 pandemic. Initial directions were issued by the court and a hearing took place remotely by Sightlink to set case management. It was then agreed that this case would be heard by way of a socially distanced court on a hybrid basis in that the plaintiff would link from the Netherlands. Ultimately, the case proceeded on that basis on 26 June 2020. The original date of 5 June 2020 was vacated due to some time being taken for the translation of documents. However, it is clear that all parties worked hard to keep this case broadly within the time frames required for a hearing of Hague Convention cases and I commend the instructing solicitors in particular for the efficiency they applied which allowed this to be achieved.

The Application

[5] By the originating summons dated 28 April 2020 the plaintiff sought:

(1) A declaration that the removal of the minor child K aged 5 years to Northern Ireland on 14 March 2020 was and is wrongful and in breach of the rights of custody of the plaintiff pursuant to Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction 1980 (the Hague Convention) as enacted by the Child Abduction and Custody Act 1985 (the 1985 Act) and pursuant to Article 2(11) of the Council Regulation (EC No. 2201-2003 of 27 November 2003 (Brussels IIR)).

(2) A declaration that the courts in Northern Ireland do not have jurisdiction in matters of parental responsibility regarding this child.

(3) An order that the child K be returned to the plaintiff in the Netherlands, member state of origin, pursuant to Article 12 of the Hague Convention and Article 11(2) to (5) of Brussels IIR.

Agreed position paper

[6] In advance of the case being listed for hearing counsel narrowed the issues considerably and presented the court with an agreed position paper. In this position paper counsel confirmed that the plaintiff sought the return of the child K, aged 5 to the Netherlands. The defendant opposed the return on the grounds that there is a grave risk that return would expose the child to physical or psychological harm or otherwise place him in an intolerable situation. The following issues were agreed:

(1) The plaintiff had rights of custody which were being exercised immediately before the child's removal (satisfying Article 3A of the Convention).

(2) The child was habitually resident in the Netherlands immediately before his removal and retention (satisfying Article 3A of the Convention).

(3) The child is under 16 years old (satisfying Article 4 of the Convention).

(4) The removal date was 13 March 2020 and therefore a period of less than one year has elapsed since the wrongful retention (satisfying Article 12).

(5) The retention was wrongful under Article 3 and Article 12 of the Convention and Article 10 of Brussels IIR.

(6) The Netherlands retains jurisdiction (Article 10 Brussels IIR).

[7] Counsel also set also set out the nature of the issues in dispute as follows:

(1) The veracity of the allegations contained within the defendant's affidavit.

(2) Whether those allegations, if true, placed the child at grave risk.

(3) If grave risk is established, whether the protective mechanisms available in the Netherlands are adequate to secure the protection of the child after his or her return.

(4) Whether the court should exercise its discretion not to return the child.

[8] At the hearing I heard oral submissions from all parties. The only point in issue was application of the Article 13(b) exception. It was clear that Ms Harvey and her client had considered the law in this area in some detail and so Ms Harvey realistically focussed on the issue of protective measures. She did not embark on any forensic analysis of the allegations and counter allegations contained in the affidavits. The case therefore proceeded in an attenuated way.

[9] Ms Harvey also asked if a decision could be given that day as that would assist her client. Acceding to this request I was able to give an oral decision after hearing the submissions. This was to the effect that a return order should be made. However, I said that that would only be on the basis of protective measures actually being put in place in the Netherlands. Subsequent to my ruling the parties have confirmed a number of matters in a draft order which has set out the protective measures that would be in place in the Netherlands prior to and upon a return

order. Suffice to say that I consider that these arrangements meet the requirements of the Convention and Brussels IIR. I will highlight these matters later on in my judgment. First I turn to the legal context.

The Hague Convention

[10] The 1980 Hague Convention ("the Convention") was adopted into our domestic legislation by the Child Abduction and Custody Act 1985. This was to accord proper recognition to the principle that a child's interests must be protected in international disputes between estranged parents. In particular, the purpose of the Convention is to protect children "from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence as well as to secure protection for rights of access." The Convention is a forum treaty and provides for summary return to the courts of the habitual residence of the child.

[11] In *Re E (Children Abduction: Custody Appeal)* [2011] UKSC 27 the Supreme Court reiterated the fact that whilst the best interests of the child or children concerned is a primary consideration this does not mean that the welfare of the child or children must be propelled to a level where it becomes the court's paramount consideration. The court stressed the point that these are summary proceedings. The policy of dealing with cases with expedition is reflected in the fact that the court hearing a Hague Convention case does not conduct a welfare hearing.

[12] Article 3 of the Convention provides:

> "The removal or the retention of a child is to be considered wrongful where –
>
> (a) It is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
>
> (b) At the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

[13] Article 12 of the Convention provides the mechanism for return. It reads as follows:

> "Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith."

[14] Article 13 of the Convention also reads:

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
>
> (b) There is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

Council Regulation 2201/2003, Brussels 11 R

[15] Article 11 of Brussels IIR also refers to the return of the child and contains the following provisions:

> "(2) When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.
>
> (3) A court to which an application for return of a child is made as mentioned in paragraph (1) shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law without prejudice to the first sub-paragraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

> (4) A court cannot refuse to return a child on the basis of Article 13(b) of the Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return."

The Article 13(b) exception

[16] In this case the exception referred to in Article 13(b) of the Convention was the critical point at issue. All counsel accepted that this exception requires a high level of proof as articulated in the various authorities and that the burden lies on the person opposing return to substantiate the exception. I also bear in mind that there is a residual jurisdiction not to order return depending on the circumstances of a particular case. This flows from the House of Lords decision of *Re M (Abduction: Zimbabwe*) [2007] 3 WLR 975.

[17] The test in relation to grave risk that was set out in the arguments emanates from the case of *Re E (Children)* [2011] EWLR from paragraphs [32] to [36] as follows:

> "32. First, it is clear that the burden of proof lies with the person, institution or other body which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will of course be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.
>
> 33. Second, the risk to the child must be grave. It is not enough, as it is in other contexts such as asylum, that the risk be real. It must have reached such a level of seriousness as to be characterised as grave. Although grave characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as grave while a higher level of risk might be required for other less serious forms of harm.
>
> 34. Third, the words physical or psychological harm are not qualified. However, they do gain colour

from the alternative or otherwise placed in an intolerable situation. As was said in *Re D* [2007] 1 AC 619 at para 52:

> 'Intolerable is a strong word, but when applied to a child must mean a situation which this particular child in these particular circumstances should not be expected to tolerate.'

Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. Mr Turner accepts that, if there is such a risk, the source of it is irrelevant, for example where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.

35. Fourth, Article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home. Mr Turner accepts that if the risk is serious enough to fall within Article 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.

36. There is obviously a tension between the inability of the court to resolve factual disputes

> between the parties and the risks that the child will face if the allegations are in fact true. Mr Turner submits that there is a sensible and pragmatic solution. Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues."

The Background Facts

[18] The parties to this case are married parents of K. The plaintiff is a Dutch national, the defendant from Northern Ireland. The parties met whilst the defendant was working in the Netherlands. They married on 23 December 2013. They then decided to have a baby. The defendant was the birth mother and accepts that the plaintiff is also a parent, named on the birth certificate, with rights of custody under Dutch law. The plaintiff and the defendant lived together as a family in the Netherlands until 1 January 2020 when they finally separated. K was enrolled and attended school in the Netherlands. Upon the marital separation, the plaintiff moved out of the marital home and the defendant remained there with K. Contact was arranged between the plaintiff and K which appeared to be on a regular basis. On 13 March the plaintiff had contact. The next day when she returned to see K the defendant and K had left. Later that day the plaintiff managed to speak to the defendant's father who confirmed that his daughter and K were in Northern Ireland. This move was clearly without the plaintiff's consent.

[19] The relationship between the plaintiff and the defendant was characterised by domestic violence. There is a dispute about the level of culpability of each of these two parents for the domestic violence which I will come to. However, it is clear that the plaintiff has been convicted of an assault on the defendant in early 2017. This was a nasty incident during which the defendant sustained a bite and for which the plaintiff was convicted. Also, K was in the home at the time and woke during the altercation. The defendant removed the plaintiff from the home and thereafter the couple engaged in therapy. The defendant says that a decision was reached to leave Holland after that and so by agreement the defendant and K came to Northern Ireland in November 2017. However, there was a reconciliation between the parties and the defendant and K moved back to the Netherlands in April 2018.

[20] After the move back to Holland, there were further incidents. It is also clear that Social Services in the Netherlands have become involved with this family and have been involved with this family for some time. In March 2019 the police attended at the family home following a complaint from a neighbour and police referred the matter to Social Services. This was to a limb of Social Services which dealt effectively with whether or not there could be safety maintained at home called "Veilig Thuis". This branch of Social Services became involved with the family. It also refers to the fact that by letter of 4 July 2019 K was enrolled for speech therapy and an issue was raised about K engaging at school and about potential bullying. He had therefore been referred for a behaviour assessment. In September 2019 a further incident occurred between the parties when the plaintiff injured her hand. On 20 December 2019 the plaintiff again left the house after an altercation between the parties. The incident which caused the separation was on 1 January 2020. There is video evidence submitted in relation to this which depicts the incident in the early hours of 1 January 2020 after which the parties separated. In this video the plaintiff shrugs the child off her and tells the child to "fuck off" twice. The plaintiff does not dispute this.

[21] Following the separation the plaintiff pursued court proceedings in the local court in Leiden. The petition for provisional arrangements is dated 21 February 2020 and sets out the plaintiff's proposal that K would live with the defendant for the duration of the divorce proceedings in the former matrimonial home and that the plaintiff would simply have contact on specified days and times. The proceedings were on-going therefore when the defendant unlawfully removed K from the Netherlands on 13/14 March 2020. The defendant left mid proceedings after a period of discussions between the parties about long term arrangements. The defendant was not satisfied with the plaintiff's suggestions and she also states in her affidavit that she was not happy with her lawyer's advice.

[22] On 19 March 2020 the plaintiff filed an amended petition for provisional arrangements effectively asking that the socially rented marital home be allocated to her. This was granted. On 31 March 2020 Veilig Thuis Social Services made contact with the plaintiff in relation to the development of the child. On 15 April a petition for divorce was issued by the plaintiff in the Netherlands and the last judgment of the court in the Netherlands is dated 30 April 2020 when judgment was given on plaintiff's petition.

[23] On the 30 April 2020 the court noted that the defendant's solicitor had withdrawn as he was unable to make contact with her and the court granted the plaintiff the right to occupy the marital home and excluded the respondent from the home. The court was aware of the return proceedings issued in this jurisdiction and declined to make any orders about the care of K on the basis they did not know if and when K might return to the Netherlands. That remains the position in this case in that there is the prevailing order of the Dutch court of 30 April 2020.

Consideration

[24] I have considered two affidavits from each party. Neither party requested that I hear oral evidence in this case that is of course the usual procedure in a Hague Convention case. Having examined the evidence, it is clear from those that there is a large measure of consensus about the nature of this relationship. First, it is clear that the plaintiff has been convicted of an assault on the defendant. Second, the plaintiff has also accepted the use of abusive language directed towards the child. Third, both women accept that their relationship was fraught with problems fuelled by alcohol and cannabis use.

[25] The only real point at issue in this case is that the defendant does not accept any responsibility for domestic violence. There are allegations and counter allegations in relation to this which will have to be resolved at another stage. However, it is not necessary to undertake this exercise given the fact that some of the evidence is uncontroversial and significant admissions have been made by the plaintiff. In particular, the plaintiff accepts her violence towards the defendant in the past and she accepts directing abusive language towards the child and aggressive behaviour in his presence. On the basis of the evidence the plaintiff presents with obvious and serious issues which have clearly impacted upon her care of K. In my view this type of behaviour does reach the high threshold required and amounts to a grave risk of, if not physical harm, psychological harm and an intolerable situation. My view is supported by the Official Solicitor who makes the case that such behaviour would amount to a grave risk of harm or intolerable situation for a child. That fact is recognised in the arrangements made upon separation whereby the defendant assumed day to day care. It remains the case that the plaintiff is not seeking to change that position and that any return to the Netherlands for K would be to the care of the defendant. I could not countenance anything else on the basis of the evidence I have considered. There is no evidence that the plaintiff has breached orders or failed to abide by arrangements. It is also fair to say that the defendant supported the plaintiff throughout her probation.

[26] This case comes down to the protective measures which are available to guard against the risk. That is because of the provisions of Article 11(4) of Brussels 11R which prohibit refusal of return if protective measures can be put in place in the receiving State. There are clearly already a range of protective measures available and these have been confirmed in evidence *vis a vis* the Dutch authorities. One measure is that the plaintiff would move out of the matrimonial home. Also, the defendant would have custody of the child pending the divorce and custody proceedings in the Netherlands and social services would have an input. In addition certain practical issues were raised in relation to arrangements which required further exploration as follows.

Court directed queries and responses

[27] In order to satisfy myself in relation to the protective measures and practical arrangements I requested further information. This resulted in helpful responses from the Dutch Central Authority in relation to social service involvement and travel documents as follows (with names redacted):

Response regarding social service involvement

> "1. As there currently is no child protection measure applicable to K, there is no social worker or social team involved with him.
>
> 2. What the Dutch Child Care and Protection Board (the Board) can do before the arrival of K is to initiate the 'soft landing' procedure, which entails that after an official request by the Northern Irish judge via the Central authorities, the Board will contact the mother in the Netherlands and if possible also the mother in Northern Ireland, request the mother in the Netherlands to register herself at the Center for Children and Youth so that help and support for the protection of K on a voluntary basis can be initiated. Then, a meeting will be held with the mother and/or mothers, after which a safety plan will be made. If the Board, who will be attending this meeting, has grave concerns, she can (immediately) request a temporary supervision measure at the Dutch Court. In the Netherlands, the perspective is to first resolve the concerns regarding the child with the parents on a voluntary basis, unless there are grave concerns that necessitate immediate child protection measures. As the child has not been under any child protection measure and no Dutch child protection organization has been involved with the family before the removal of the child to Northern Ireland, such obligatory child protection measures cannot be placed upon a child outside of the Netherlands beforehand.
>
> 3. If the judge orders the return of K and requests the soft landing to be initiated, we will contact the Board immediately, after which the above mentioned procedure will be followed. Moreover, we would like to note that based on the Hague Abduction Convention Member States trust upon each other's child protection system.

4. As mentioned in our previous correspondence with the Northern Ireland's Central authority, no child protection organizations were involved with K before the relocation, the Board has no information regarding the mentioned remedial educationalist/child psychologist.

Regarding the financial and immigrational questions, there are no Dutch Covid-19 travel restrictions for Dutch citizens who have been in Northern Ireland. Furthermore, as Ms BY has been living in the Netherlands for 18 years and her situation is not different from when she separated from her ex-wife, we do not see why she would not be able to return and live in the Netherlands again with K.

The question regarding her financial compensation/child care are not questions the Dutch Central authority can help with. As the mother has been living in the Netherlands for 18 years, we are positive she is able to contact the right institutions and find the answers she seeks.

I hope this information is helpful and we will await an official request by your Central authority in case the provisions of soft landing for K's return are deemed necessary, after which we will make an official request to the Board."

Response regarding travel documentation

"I have had contact with the Dutch Ministry of Foreign Affairs and they have informed us of the following regarding a travel document for K.

An emergency document, a laissez-passer, for the duration of the journey of K from Northern Ireland back to the Netherlands can be requested at the Honorary Consul in Belfast. In general, such a request is made on location, however the mother in the Netherlands can send the necessary documents for the request to

LON-CONS@minbuza.nl, and CC'd with the department that we, the Dutch Central authority, are in contact with in the CC, namely: DCV-

CA@minbuza.nl. The practical finalization can be done when the laissez-passer is issued.

The necessary documents for the request of the laissez-passer are the following:

1. A filled and signed application form: (https://www.nederlandwereldwijd.nl/documenten/publicaties/2018/05/30/passport-application-form). In general both parents with parental authority have to sign this form, but perhaps with the decision of the judge the signature of the mother in the Netherlands will be sufficient;

2. A picture of K;

3. The application for the return of K;

4. Copy of the dated passport of K;

5 A payment of GBP 44.50, the department will discuss how this could be done from the Netherlands."

Judicial Liaison

[28] With the agreement of all parties I also engaged in judicial liaison with the Hague Network Judge to ensure that the court proceedings in the Netherlands would progress as smoothly as possible. Counsel submitted the following questions which I transmitted to the Hague Network Judge along with some core documents:

- Can a listing date be confirmed now in respect of the application to determine arrangements for K's residence and contact? That listing date should be after the child's anticipated return in week commencing 3 August 2020. Can a copy of that notification of listing be sent directly to the Court in Northern Ireland?

- Can the application to vary the order of 30 April 2020 in respect of the occupation of the property be determined urgently to allow the child to be returned in the week commencing 3 August 2020? Can a copy of that order be sent directly to the Court in Northern Ireland?

- If necessary, can an order issue that enables the 'laisser-passer' temporary travel document for K to be signed by the Plaintiff, Ms ZA, only and that the signature of the Defendant is dispensed with?

[29] A response was received as follows from Judge HM Boone, Hague Network Judge:

> "In response to your email I can inform you the following. We have seeked contact with the representative of Plaintiff in the Netherlands Coby Koorn, LLM, and suggested her to file a motion for injunctive relief at our Court as soon as possible. Provided that a consent statement of BY is attached and that all documents are correct and complete, the court will decide within one week as of the date of filing. As soon as the motion is filled, we will notify you the date on which the judgement will be set.
>
> Furthermore, we have informed the Board of Child Protection about this case and they will provide assistance upon the child's return in the Netherlands.
>
> Kind regards"

[30] Drawing all of this together I come to the final disposal in this case. In doing so I wish to highlight some points of practice which arose in this case and which may also apply in other cases in this area. The first point relates to the efficacy of protective measures. Given the facts of this case where domestic violence features so heavily I am particularly alert to the need for the measures to actually be in place prior to return. Traditionally, undertakings have been offered to courts in Hague Convention cases. However, these are based upon trust. Given the circumstances of this case it is clear to me that the protective measures must actually be in place in the receiving country prior to and upon return.

[31] The other issue that was raised in this case was the effect of the Covid 19 pandemic. I have applied the principles underpinning the Convention first and then considered practical arrangements. Ms Harvey did not raise Covid 19 as a factor to be taken into account in the Article 13(b) consideration however it has affected the practicalities of return travel. I was told that there is free travel in the next couple of weeks and there would not be quarantine put in place. Happily, these practical issues have been resolvable and the travel plans are now agreed.

Conclusion

[32] The parties have confirmed the following:

(i) That the order will not take effect until the plaintiff obtains a further order in the Dutch court in relation to housing arrangements. In other words she will

need to apply to vary the order of 30 April 2020 whereby she was allowed to reside in the house.

(ii) The order will also not take effect until the plaintiff agrees to orders being made in the Dutch court. This process is now in train and the timescales are acceptable.

(iii) The order will not take effect until there is confirmation that Dutch Social Services will immediately become involved again upon the child's return to the Netherlands.

(iv) The parties will cooperate in relation to the travel documentation for the child.

(v) The defendant is satisfied as to financial arrangements.

(vi) Travel will take place in week commencing 3 August when direct flights resume from Belfast and this is in keeping with public health regulations.

[33] A comprehensive draft order was submitted by counsel dealing with all matters. On the basis of this, I shall order the return of the child pursuant to Article 12 of the Hague Convention. I do not consider that I should refuse to return the child on the basis of grave risk of psychological, physical harm or an otherwise intolerable situation because protective measures will be put in place in the receiving country. I have considered my residual discretion but I do not consider that it is appropriate to refuse return given the arrangements in place and the need to respect the purpose of the Convention and to observe comity among Contracting States. The protective measures are comprised in the draft order which I have approved and which I attach in Schedule 1.

Postscript

[34] I am grateful to the Hague Network Judge Boone who confirmed the following arrangements in the Netherlands by email of 17 July 2020:

> "In the Hague Judicial Liaison case I am happy to inform you about the latest developments.
>
> This Monday Plaintiff issued an application for interim relief at the Hague District Court regarding the use of the marital home at [address] and the arrangements for K's care (residence and contact). Today the Court's judgement is set on today.
>
> The judgement provides for:

- the right of Defendant (BY) to use the marital home at [address] including the contents and that Plaintiff (ZA) had to leave the marital home and is not allowed to enter is;

- the application in respect of the arrangements for K's care shall be heard at a hearing to be set in august;

Furthermore, I inform you that Plaintiff (ZA) started divorce proceedings this April. Future arrangements for K's care can be determined in those court proceedings, should the parties so desire.

If you have any further questions, please let me know.

Best regards"

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Before THE HONOURABLE MRS JUSTICE KEEGAN

On Friday the 10th day of July 2020

RETURN ORDER

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

AND

IN THE MATTER OF K, aged 5 years, a Minor

Between

ZA

Plaintiff

and

BY

Defendant

WHEREAS the case is in the list this day for consideration via Sightlink due to the Covid-19 situation,

NOW UPON HEARING Counsel for the Plaintiff, Counsel for the Defendant and Counsel for the Official Solicitor, and upon reading the documents filed in this matter,

AND WHEREAS the Plaintiff has brought an application under the Child Abduction and Custody Act 1985 for an order requiring the return of, K, the child, to The Netherlands;

AND WHEREAS K, the child, is habitually resident in the Netherlands;

AND WHEREAS the Court has appointed the Official Solicitor to the Court of Judicature in Northern Ireland to represent the interests of the child;

THE COURT ORDERS THE RETURN OF THE CHILD AS FOLLOWS

1. The Court having received information from the Central Authority is satisfied that there exists no covid 19 travel restriction impediment to the child's return to the Netherlands. The child K shall be returned to the Netherlands in the week commencing 3 August 2020 by direct flight from Northern Ireland to the Netherlands;

2. The Court, having been provided with information from the Dutch Child Care and Protection Board via the Central Authority, now requests the Dutch Child Care and Protection Board to initiate their procedures to ensure a 'soft landing' for K as set out in the letter of 1 July 2020 from the Central Authority;

3. At the request and upon the consent of all parties, the judicial liaison procedure will be invoked to notify the judicial authorities in the Netherlands of the conclusion to these proceedings with a request that the hearings and court listings necessary to implement this order are expedited to enable the child's return in the week commencing 3 August 2020;

4. The 'laisser-passer' emergency Dutch travel document for the child shall require the signature of the Plaintiff only;

5. The Order for the child's return is subject to the following conditions being met prior to the child returning to the Netherlands:

    i. Before the child's return, the Plaintiff shall obtain an interim order from The Hague Court, Single Chamber, varying the order issued on 30 April 2020, so that the Defendant, BY shall have the right to use the marital home at [address 1], including the contents, and that the Plaintiff ZA has to leave the marital home and is not allowed to enter it. The long-term occupation of the marital home shall be considered together with the long-term arrangements for K by a

court of competent jurisdiction in the Netherlands. A copy of the Dutch Court Order shall be lodged in Court;

ii. Before the child's return, the Plaintiff shall issue an application in respect of the arrangements for K's care (residence and contact) in the appropriate court in the Netherlands and shall provide a copy of the notification of the first court hearing date.

6. Upon the Court being satisfied that all conditions set out at paragraph 5 above have been met and the parties having been notified of same, the Defendant shall, within 3 days, provide confirmation of flights booked for the return of the child in the week commencing 3 August 2020;

7. The parties have leave to disclose all documents filed in this Court to:

(a) any legal representatives of either of them in the Netherlands;
(b) any court in the Netherlands seised of any proceedings relating to the child referred to in this order;

8. Both parties shall enter into mutual undertakings as set out in the Schedule attached hereto.

9. There shall be no order as to costs between the Parties. The costs of the Plaintiff and of the Defendant, assisted persons, be taxed forthwith in accordance with the provisions of Schedule 2 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

10. Liberty to apply.

SCHEDULE

Undertakings provided by the Plaintiff:

a. The Plaintiff will forthwith issue an application for interim relief in the Dutch Courts seeking to determine the future residence and contact arrangements for K. If required the Plaintiff will also seek the permission of the Dutch Courts for the 'laisser -passer' emergency travel document for the child to be obtained without the Defendant's signature;

b. Service of any proceedings to be issued by the Defendant in The Netherlands in respect of K may be effected by serving the proceedings on the Plaintiff's lawyer, Coby Koorn;

c. The Plaintiff shall not remove the child from the Netherlands pending any decision of the Dutch Court in respect of his future;

d. The Plaintiff will not seek to remove K from the Defendant's care save by any Order of a competent Court in the Netherlands;

e. The Plaintiff shall not make or pursue any criminal complaint and shall withdraw any complaint already made against the Defendant arising out of the circumstances of K's unlawful removal from the Netherlands to Northern Ireland;

f. The Plaintiff will make available to the Defendant accommodation at [address 1] Netherlands on a temporary basis to enable the Defendant to seek alternative accommodation for the longer term. The Plaintiff will allow the Defendant sole occupation and peaceful enjoyment of that accommodation, and will seek a variation to the Order of 30th April 2020 so that the Defendant may resume occupation of that property, to the exclusion of the Plaintiff. The Plaintiff will surrender the key and post box key and the Plaintiff will arrange for the Defendant to be met at the door to the accommodation by a neighbour (named) who will give the keys to the Defendant;

g. The Plaintiff will notify *Veilig Thuis* and/or the Dutch Child Protection Board of the expected return of K and seek such assistance from them for their family as may be available and appropriate;

h. The Plaintiff will co-operate with the process of obtaining new travel documentation for K's return to the Netherlands.

Undertakings provided by the Defendant:

a. The Defendant will accept service of any proceedings issued in the Netherlands by the Plaintiff and confirms that service may be effected by email to [email address], by service at her last known address in Northern Ireland of [address 2], and in the Netherlands by service at [address 1] Netherlands. The Defendant will promptly co-operate with any request and return such documents to the Court as is required of her;

b. Until her departure for the Netherlands with K, the Defendant shall not remove K from Northern Ireland;

c. The Defendant will reside with K at [address 1] Netherlands. The Defendant will advise the Plaintiff of the time of her intended arrival at the accommodation so that the Plaintiff can make the necessary arrangements for the keys to be handed over to the Defendant by the neighbour;

d. Having returned to the Netherlands the Defendant will not remove K from the Netherlands without the permission of the Dutch Court;

e. The Defendant shall permit the Plaintiff to have video contact with K and direct contact as agreed between them directly or with the assistance of Veilig Thuis or as directed or ordered by the Dutch Court;

f. The Defendant will accompany K to the Netherlands in accordance with the Return Order. The Defendant shall be responsible for the booking of all flights, and all financial expense associated with same. The Defendant shall provide the Plaintiff's Solicitor (via her Solicitor) with proof of a flight booking within 3 days of the Court confirming that the conditions set out in the order have been met;

g. The Defendant will promptly co-operate with the process of obtaining new travel documentation for K to return to the Netherlands. This undertaking shall be treated as the Defendant's consent to the 'laisser-passer' emergency travel documentation being obtained without the Defendant's signature.

Mark Hamill
Proper Officer

Time Occupied: 10 July 2020 20 mins

Copies served on:-

Kelly & Corr Solicitors

Francis Hanna & Co Solicitors

The Central Authority Northern Ireland by Email

The Official Solicitors Office by Email

Please check that this Order has been accurately transcribed. The Family Judge has indicated that any application for amendment must be made within 1 week of receipt of the Order.