Case No: BH19C00227

IN THE FAMILY COURT SITTING AT BOURNEMOUTH

Courts of Justice
Deansleigh Road
Bournemouth
BH7 7DS
Date: 29.5.19

Before:
HIS HONOUR JUDGE DANCEY
Sitting as a section 9 Judge

- -

Between:

Dorset Council	**Applicant**
- and -	
E (mother)	**1st Respondent**
-and-	
B, C and D	**2nd Respondents**
(by their children's guardian Jackie Riccitelli)	
-and-	
The Central Authority of the Slovak Republic	**Intervener**

Helen Frith (**Dorset Council**) for the **Applicant**
Anthony Hand (instructed by **Aldridge Brownlee**) for the **1st Respondent**
Andrew Skinner (instructed by **Battens**) for the **2nd Respondent**
The Intervener was not represented

Hearing date: 14 May 2019

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JUDGMENT

His Honour Judge Dancey:

Introduction

1) These care proceedings concern three of the four children of the mother, B, a girl aged 8, C a boy aged 7 and D a boy aged 2. A fourth child A, a boy now aged 9, lives with his maternal grandfather (MGF) in Slovakia. The mother, the father of A, B and C (F), the father of D (G) and all the children are Slovakian nationals.

2) In previous care proceedings brought by Kent County Council in 2016 relating to B and C, Theis J decided that the children were not habitually resident here (the May 2016 judgment). The children returned to Slovakia on 17 August 2016 and were subsequently returned to the care of their mother. She then moved again to England with the children in March 2018 with a then settled intention to remain here.

3) On 15 March 2019 B, C and D were removed under police protection powers in accordance with section 46 of the Children Act 1989 and Dorset Council (then Dorset County Council) started a section 47 investigation after a video came to light apparently showing the mother assaulting B.

4) All parties agree for the purpose of these proceedings that the children are habitually resident here. However, the Slovakian Central Authority (SCA) as Intervener, supported by the mother (represented by Mr Hand), requests transfer of the proceedings to the Slovakian courts pursuant to Article 15 of B11R. The request is opposed by the local authority, Dorset Council, represented by Ms Frith, and by the guardian on behalf of the children who are represented by Mr Skinner.

5) I heard submissions on 14 May. SCA was notified of the hearing but indicated it would not be represented at the hearing. I have however received and considered carefully full written submissions by the Head of the Centre for the International Protection of Children and Youth of SCA.

6) At the conclusion of submissions I reserved judgment. This is that judgment.

Background

7) Because the court has to take account of all the circumstances when considering an application for transfer under Article 15, it is important to have some understanding of the lives of these children so far, and in particular the lack of stability and permanence and risks they have experienced.

8) The children were born in Slovakia, save B who was born in England. F's current whereabouts are not known. It seems he has spent time in England. G was not identified as D's father by the mother until her response to threshold filed on 13 May 2019. When she told G she was pregnant he apparently left and has not been heard of again.

9) The mother identifies with the Slovak Roma community from which her mother came, although she does not speak Roma very well. Her first language is Slovak. The foster carers report that all three children speak English very well, probably 90% of the time, and D tells B and C to speak English if he hears them

speaking Slovakian. Sometimes B speaks Slovakian to C if he is struggling to understand something. The foster carers think English is D's first language.

10) Mr Hand told me that the mother first came to England when she was 13 (she is now 30). She lived in Kent until she was 18. She did not have a formal education here but attended a centre for immigrants. Slovakia was not at that time an EU member state.

Theis J's judgment May 2016

11) Mr Hand told me the mother agrees with the chronology set out in the May 2016 judgment of Theis J. Theis J started that judgment by describing the case as "deeply troubling". What immediately follows is taken from the May 2016 judgment.

12) The relationship between the mother and F began in 2008 and was marked by frequent separation and alleged violence. F had been largely based in this country and the mother came here and then fled back to Slovakia, usually having alleged violence by F. F also occasionally returned to Slovakia only to flee back here following allegations of violence there.

13) Theis J noted records of referrals to Kent County Council when the mother had been in the UK, with allegations by her that F had physically abused and threatened to kill her in 2009, a midwife referral about domestic violence in 2010 (with the allegations being withdrawn shortly thereafter), health visitor concerns, also in 2010, about domestic violence and control by F, in August 2011 the family being homeless and living in a car and in February 2012 the mother reporting police involvement following violence by F in Slovakia and him fleeing back to the UK.

14) Theis J had information from SCA that parental rights in A had been entrusted to MGF in January 2011 reportedly because of neglectful care by his parents. MGF was imprisoned in October 2011. In May 2012 the care of A was entrusted to the Crisis Centre, with B and C joining him in August 2012 following orders made by the Slovakian court. The main reason was that the mother had escaped the household due to an alleged physical attack, robbery and threats by F. In September 2012 A and, in December 2012, B and C returned to the care of the mother, since when the family had been supported by social services in Slovakia and MGF.

15) At the time of the proceedings before Theis J in 2016, A was living with MGF. MGF was concerned at the mother's move to the UK in December 2015 and put himself forward to care for B and C (and was prepared to travel to the UK for assessment).

16) The hearing before Theis J in May 2016 was to determine whether the court here had jurisdiction based on habitual residence. It became clear that the local authority could not prove habitual residence and the issue became one of continuation of the emergency orders which had been made under Article 20 of B11R pending the return of the children to Slovakia and institution of proceedings there. Theis J made findings in that context. I note, however, that the findings came at the end of a three day hearing during which Theis J heard oral evidence from the mother, F and his brother.

17) Theis J recorded that the mother had flown into the UK on 20 December 2015 on single flight tickets with nowhere to stay and saying variously that they had come for a holiday or that she was looking for work. The mother had, within a short time of arrival, contacted F to seek his support. He was himself without an address or work and unable to provide any practical or financial help.

18) The family came to the attention of the authorities on 11 January 2016 when there were reports of the children being left alone in a car. According to one of the mother's accounts the father was driving them to the seaside to drown them but ran out of petrol. The mother had bruising which she attributed to dental treatment. F's brother paid for some accommodation. He described the state of the children as "awful".

19) On 25 January 2016 the mother presented with B and C at A&E in Kent saying that they had been kept by F against their will since 9 January. She made allegations of repeated physical and sexual abuse of her and physical violence against the children. The hospital reported the children as being in a neglected state, smelling of urine and appearing unkempt and hungry. C was distressed and wary of adults and shaking.

20) The mother had bruising on her body, scratches on her neck and a bite mark on her abdomen. DNA confirmed recent sexual contact between the mother and F.

21) C had multiple bruising throughout his body (face, trunk and extremities) and a comminuted fracture of the right distal humerus, requiring urgent surgery. This was thought by the consultant paediatrician to be very much suggestive of non-accidental injury.

22) Although B did not have any signs of physical injury, there were concerns about her behaviour, including spitting, kicking and punching at staff and her family. There was evidence of poor attachment between the children and their mother.

23) The children were placed with foster carers. The mother's initial twice weekly contact was reduced to once weekly following concerns about the mother's failure to engage with the children and the children's wish not to attend contact with their mother.

24) In interview with the police and in her statements for the proceedings the mother described in detail violent behaviour by F towards her and the children. She said C received slaps "all the time" but he did not do anything to B. In a further police interview in April 2016 the mother said that she was not sexually assaulted by F and what took place was consensual.

25) F denied the allegations but was unable to explain C's injuries.

26) In a joint visit with the children on 21 April 2016, B described being beaten by her mother and C being beaten by F. She said MGF was aware of this and did nothing. C described being kicked by F who also beat him and hurt his arm.

27) Theis J found, justifying the continued exercise of interim care orders under Article 20:

    a) that the mother's decision to bring the children here without proper plans or arrangements in place, and inability to give a consistent and coherent account of what had happened to them since arrival, was reckless and contrary to their best interests, putting them at risk of significant harm;

b) the mother had shown no real recognition, or understanding, of the damaging effect of her actions on the children;

c) her behaviour during contact, when she had not been able to relate to the children or show them emotional warmth, continued to cause the children emotional harm;

d) on the information available it was clear that neither parent could protect B or C or act in their best interests and if the children were returned to their care they would very likely be physically and/or emotionally harmed again by their parents.

Return to Slovakia August 2016

28) There was then some delay resulting from a misunderstanding over the order made by Theis J in May, so that the children did not in fact return to Slovakia until 17 August 2016. In a second judgment (endorsed as being given on 28 July 2016 but apparently, from its context, given shortly after 17 August 2016) Theis J noted:

a) that there was no longer support from the Slovakian social services for the children to be placed with MGF as an interim arrangement;

b) assessments and proceedings would continue in Slovakia upon the children's return there;

c) the local authority had expressed concern, where the court had determined that there was no jurisdiction but there remained a real risk of harm, with arrangements for their protection being made under Article 20, that there was no clear mechanism within B11R on placement of a child within a receiving state to ensure they were not placed at further risk of harm;

d) as a consequence of this concern the court had approved an interim care plan at a hearing on 28 July 2016 which involved a UK social worker accompanying the children to Slovakia where, with the agreement of the Slovakian authorities, they would be placed in institutional care.

29) I also note that Theis J commended both the authorities here and in Slovakia for the creative, co-operative and constructive way in which they approached the case, which ensured that there was limited delay in the children returning to Slovakia with the benefit of a clear legal framework that ensured their protection.

30) On 27 October 2017 judgment was given by the Slovak court. Following a number of conferences, visits and contact in the community the court was satisfied that the mother was able to care for the children. B had expressed a wish to live with her. The judgment, which runs to 7 paragraphs, does not mention the judgment or findings of Theis J. As a result B and C were returned to the care of the mother, who was by then looking after D, then aged 6 months. A remained in the care of the MGF as he does now.

Return to the UK March 2018

31) The mother has told Children's Services that she had to remove the children from foster care in Slovakia because they were being physically abused by their foster carers.

32) On 5 September 2018 the mother and the children presented to Derby Children's Services requesting assistance. She told them that she had returned to the UK in March 2018 and had initially lived in Bradford.

33) On 11 September 2018 the mother told the authorities that she had been a victim of human trafficking and the children's passports and birth certificates had been stolen. She gave further detail about the alleged theft in her response to threshold of 13 May. A decision by the immigration authorities whether the mother has been trafficked has yet to be made.

34) On 1 October 2018 the mother and children were placed in a safe house in Dorset by the Salvation Army.

The current proceedings

35) On 13 March 2019 a referral was made by a member of the public indicating that he had seen a video of a young girl being assaulted. This started a section 47 investigation. On 15 March the video was seen by the Police and Children's Services. It clearly shows, as the mother accepts, B being assaulted by her mother in the presence of the other children. The incident was videoed by a third party (H) who has made a police statement saying beatings were not an isolated occasion and it happened a lot.

36) On 15 March the mother was arrested and interviewed under caution. She said she was play fighting with B (playing out how the police in Slovakia act and telling B to scream). A charging decision has yet to be made.

37) The children were removed and placed with foster carers, initially under section 46, with emergency protection orders being made on 18 March 2019 under Article 20 and interim care orders on 26 March 2019. The children remain in foster care. Down to very recently B and C were refusing contact with their mother. I understand C has now attended three contacts with his mother, alongside D.

38) The mother is living locally and has recently secured work.

39) At the hearing on 26 March I made a declaration by agreement that the court had jurisdiction based on the children's habitual residence being here.

40) The local authority's amended threshold seeks findings (in summary):

    a) that the mother assaulted B witnessed by C and D;

    b) about the allegations made by B and C to Kent Police (including that the mother failed to secure medical attention for C's broken arm until 7 days later and man-handled him by his broken arm);

    c) that at that time C was suffering from anaemia due to nutritional deficiency;

    d) the children witnessing domestic violence perpetrated by F on the mother;

    e) lack of continuity of care (as outlined above);

    f) neglect of D's dental care, relying on a letter from his dentist;

    g) when the police protection powers were exercised, D's bottle had insanitary visible organic growth in the mouthpiece.

41) B and C were ABE interviewed on 1 April. They both gave accounts of physical violence from their mother.

42) A decision whether a separate fact-finding hearing would be needed was put back until the mother's response to threshold. That was, as I say, not received until 13 May. She only dealt in her response with the videoed assault, saying that prior to the incident which was videoed there was play acting which is not shown; however the play got out of hand and B assaulted the mother and it went out of control with the mother hitting B too hard.

43) It seems there remain a number of areas of factual dispute that are likely to require that findings of fact are made (either at a separate hearing or a final hearing).

The legal framework

44) The general rule under Article 8(1) Council Regulation (EC) No 2201/2203 (BIIR) is that jurisdiction lies with the courts of the Member State in which the child is habitually resident.

45) Article 15 of BIIR reads in full (emphasis added):

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the interests of the child:

    a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State to assume jurisdiction in accordance with paragraph 4; or

    b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

    a) upon application from a party; or

    b) of the court's own motion; or

    c) upon application from a court of another Member State with which the child has a particular connection. In accordance with paragraph 3.

    A transfer made of the court's own motion or by application of another member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

    a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

    b) is the former habitual residence of the child; or

    c) is the place of the child's nationality; or

    d) is the habitual residence of a holder of parental responsibility;

e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of the property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

   If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or (b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

46) I have been referred to a number of authorities dealing with the question of Article 15 transfer: *AB v JLB (Brussels II Revised: Article 15)* [2008] EWHC 2965 (Fam) (Munby J); *Re I (A Child) (Contact Application: Jurisdiction)* [2009] UKSC 10; *Re MP (Fact-finding hearing: Care Proceedings: Art 15)* [2013] EWHC 2063 (Fam) (Theis J); *Re K (A Child)* [2013] EWCA Civ 895; *Re E (A Child)* [2014] EWHC 6 (Fam) (Munby P); *Re M (A Child)* [2014] EWCA Civ 152; *Leicester City Council v S & Ors* [2014] EWHC 1575 (Fam) (Moylan J); *Re J and W (Children: Brussels II Revised: Article 15)* [2014] EWFC 45 (Pauffley J) *Re N (Children) (Adoption: Jurisdiction) (AIRE Centre Intervening)* [2016] UKSC 15; *Child and Family Agency v JD (R intervening) Case C 428/15)* [2017] 2 WLR 949; *CFA v J* [2018] EWHC 1581 (Fam) (Williams J).

47) SCA also referred me to three unreported decisions, two High Court (*Derby CC v P* (2014) and *Stoke on Trent Council v H* (2016)) and one by the family court *Derby MBC v B* (2016).

48) From these authorities I derive the following principles which apply when the question of transfer under Article 15 arises:

a) Transfer under Article 15 is an exception (my emphasis) to the general principle under Article 8: *Re M* (Lewison LJ).

b) Three questions must be determined by the court:

   i) whether the child has a particular connection with the other Member State – this is a simple question of fact to be determined in accordance with Article 15(3);

   ii) whether the court of the other Member State would be better placed to hear the case or part of it – this is an exercise in evaluation, to be undertaken in light of all the circumstances of the case;

   iii) whether transfer to the other court is in the best interests of the child – again this is evaluation in light of all the circumstances: *AB v JLB* (Munby J).

c) The discretion to transfer only arises if all three questions are answered in the affirmative: *Re M* (Ryder LJ).

d) Although exercise of the power to transfer is discretionary, it would be difficult to imagine a situation where the power was not exercised if all three questions have been answered in the affirmative: *Re M* (Munby P).

e) Questions 2 and 3 are intimately connected: *Re M* (Ryder LJ).

f) The starting point when inquiring into question 2 is the principle of comity and cooperation between Member States – courts and child protection services in other Member States are to be taken as no less competent than those here: *Re K* (Thorpe LJ) and *Re M* (Ryder LJ).

g) Following on from f), differences in practice and principle relating to measures taken in different Member States to meet risk and/or the needs of a child including the use of non-consensual adoption is not a basis under Article 15 to decide questions 2 or 3: *Re M* (Ryder LJ).

h) It must follow from g) that the fact that another member State does not use non-consensual adoption (or that adoption takes a different form) is not relevant either.

i) Questions of fact that might inform the evaluation whether a court is better placed to hear the case might include the availability of witnesses of fact, whether assessments can be conducted and by whom (ie whether an assessor would need to travel to another Member State and whether that is lawful or professionally appropriate) and whether one court's knowledge of the case gives an advantage (as a result for example of judicial continuity between fact-finding and evaluation): *Re M* (Ryder LJ) (and, I would add, bearing in mind that a judge conducting a fact-find is normally part-heard).

j) The evaluation of the child's best interests under Article 15(1) is limited to the issue of forum. It is different from the substantive question in the proceedings which is about best outcome for the child. It depends not on a profound investigation of the child's situation and upbringing but upon the sorts of considerations which come into play when deciding upon the most appropriate forum: *Re I* (Baroness Hale); *Re M* (Ryder LJ).

k) In *Re N*, Baroness Hale said (para 44):

> "The question remains, what is encompassed in the "best interests" requirement? The distinction drawn in *Re I* remains valid. The court is deciding whether to request a transfer of the case. The question is whether the transfer is in the child's best interests. That is a different question from what eventual outcome to the case will be in the child's best interests. The focus of the inquiry is different, but it is wrong to call it "attenuated". The factors relevant to deciding the question will vary according to the circumstances. It is impossible to be definitive. But there is no reason at all to exclude the impact upon the child's welfare, in the short or the longer term, of the transfer itself. What will be its immediate consequences? What impact will it have on the choices available to the court deciding upon the eventual outcome. This is not the same as

> deciding what outcome will be in the child's best interests. It is deciding whether it is in the child's best interests for the court currently seised to retain it or whether it is in the child's best interests for the case to be transferred to the requested court."

l) In *Re N* the Supreme Court held that the first instance judge was wrong to decide that the Hungarian Court was better placed to hear the case without considering (a) that the short-term consequence of transfer was removal of the children from their settled placement in England where they had lived for some time to a foster placement that they did not know in an unfamiliar country with an unfamiliar language, (b) that the long-term consequence would be to rule out one possible option for their future, namely remaining in their present home on a long term legally sanctioned basis, whether through adoption, special guardianship or ordinary residence order.

m) In *CFA v J* Williams J referred to the decision of the CJEU in *Child and Family Agency v JD* (which, because it did not deal with the interpretation of best interests from the perspective of the requested state, he said was not binding but of interest and weight):

   i) Article 15(1) is "a special rule of jurisdiction" which "must be interpreted strictly".

   ii) a court seeking transfer has to be able to rebut the "strong presumption" in favour of jurisdiction remaining in the state of the child's habitual residence;

   iii) the court must determine whether transfer would provide "genuine and specific added value with respect to the decision to be taken in relation to the child as compared with the possibility of the case remaining before that court";

   iv) the court may take into account differences of procedure but not substantive law in the other state;

   v) determination of best interests requires that the court must be satisfied that transfer is not liable to be detrimental to the child's situation;

   vi) so the court must assess any negative effects that transfer might have on the familial, social and emotional attachments of the child or on the child's material situation;

   vii) the court must also consider the impact on the child of transferring jurisdiction as well as not transferring.

49) As to practical matters:

a) The question whether there should be a request under Article 15 should be considered alongside other jurisdiction issues at the earliest opportunity *Re M*: (Munby P and Ryder LJ).

b) In every case with a European dimension the court must consider whether to exercise the power to transfer under Article 15: *Re J* (Pauffley J).

c) Article 15 contemplates a relatively simple and straightforward process requiring an appropriately summary process. "Too ready a willingness to go into the full merits of the case can only be destructive of the system enshrined in BIIR and lead to the protracted and costly battles over jurisdiction which it is the very purpose of BIIR to avoid.": *Re M* (Munby P).

d) The court should set out explicitly, both in its judgment and order, the basis on which it has or has not decided to exercise its powers under Article 15: *Re E* (Munby P).

e) Because Article 15 envisages transfer of all or part of the proceedings, it is open to the court to deal with fact-finding and then transfer for assessment and evaluation, as Theis J did in *Re MP*:

> "Whilst at the earlier hearing the balance of the relevant considerations tipped in favour of the proceedings remaining here, that was heavily influenced by the availability of factual witnesses here and the benefits of this court, with substantive jurisdiction, determining the factual foundation of the proceedings without delay. Now that has been done and with the additional information that has helpfully been provided by the Slovakian Central Authority I am satisfied that the balance now tips in favour of the Article 15 request being made."

f) Social work assessments in other jurisdictions must be carried out by social workers of that jurisdiction, not English social workers, including independent social workers. The SCA refers me to the decision in *Stoke on Trent Council v H*:

> "There is … an advantage to a Slovakian court being responsible for directing and ultimately evaluating those assessments and being more attuned to the cultural issues that may arise. The point is also made, which is a fair one, that family members are more likely to be able to challenge any adverse assessment of them if the proceedings are in Slovakia."

g) There are two mechanisms for transfer under Article 15(1). More commonly, the seised court transmits its request to court or authority in the other Member State; or the seised court can invite the parties to introduce a request before the other Member State within a specified time. If the other Member State declines jurisdiction, or does not assume it within six weeks, jurisdiction remains with the seised court.

The parties' submissions

50) All parties agree on the answer to question 1, that the children do have a particular connection with Slovakia. The focus of submissions has therefore been on questions 2 and 3 - whether the Slovakian court would be better placed to hear the case and whether transfer there would be in the children's best interests.

51) At paragraph 17 of its submissions the SCA sets out a number of matters which it says points towards transfer:

a) The relatives of the children (including their brother A) and extended family live in Slovakia. There are family members who are prepared to support the children on their return there.

b) An assessment of MGF in Slovakia has started and can be completed by professionals who have full understanding of the issues involved. MGF and his partner have reasserted their serious interest in taking on the care of the children. They have 'appropriate conditions' for the children's immediate care and are ready "to take the necessary steps to get custody of the children immediately".

c) In all likelihood, a transfer is likely to increase the range of permanency options available.

d) Slovakia is the place of the children's nationality and their former habitual residence and that of their parents. They have lived in Slovakia for a "relevant part" of their lives and the country, language and surroundings will be wholly familiar to them. The children could "benefit from their origin and family life with sibling ties and develop family ties". Transfer would acknowledge their heritage.

e) The family would receive support from Slovakian Social Services.

f) Under the heading "Emotional" – the children have not been in the care of Dorset Council for very long and have not made strong relationships with their respective foster carers. Breaking these ties will not have an impact on the children emotionally.

g) The courts of Slovakia are best placed to hear the remaining part of these proceedings and it is in the best interests of the children to transfer the proceedings there.

52) The SCA goes on to say that placement of the children for adoption in England would contravene the best interests of the children and Art 8, relying on *Olssen No 1 v Sweden* (1988): "taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child".

53) On behalf of the mother, Mr Hand adopted these points. I asked him, in relation to point c), how transfer would increase the range of possible outcomes. If the thinking was that transfer would enable placement with family in Slovakia, I could not see how that was not a possible outcome if the proceedings remained here, the question being one of how family assessments there would be carried out. Mr Hand did not seek to argue that point further.

54) Mr Hand accepted that obtaining instructions from the mother had not been straightforward. She did support the request for transfer by SCA and therefore the requirement for acceptance by another party under Article 15(2) is fulfilled.

55) Mr Hand supposed that the mother would want to make the following points:

a) Life for her in the UK has proved harder than she envisaged and he confirmed that it is now her settled intention to return to Slovakia.

b) There is limited state support for her here.

c) The welfare of the children is wrapped up in her welfare.

d) Support given by the state and wider family in her homeland for herself and the children would be preferable.

e) She would bitterly oppose the potential option of forced adoption.

f) We cannot adopt a patriotic view of the merits of our care or judicial systems.

g) These children are young Slovakians who should return home at the earliest opportunity.

56) Mr Hand accepted that any fact-finding hearing should be conducted in the place where the matters to be investigated happened. Set against that, he says, is that welfare assessments are better carried out where the family resides.

57) The primary allegations for the purpose of a fact-finding hearing are, says Mr Hand, those of B against the mother. The primary evidence is captured on video which is portable. The local authority have yet to obtain a statement from H, although they may rely on her police statement. She could give evidence in Slovakia by video link.

58) To avoid delay, Mr Hand urged transfer now rather than after any fact-finding hearing (given that a fact-finding hearing has yet to be set down). The difficulty with transfer after fact-finding is, he points out, that the case is part-heard and should be heard by the same judge (although he accepted there are obvious necessary exceptions to that around non-availability of the same judge).

59) Mr Hand says that a strong point in favour of transfer is that the Slovak authorities will be best placed to undertake the necessary assessments of the wider family in Slovakia; fact-finding is a relatively simple process, welfare assessment is more complex. It would be, he said, inherently unsatisfactory for this court to try to manage what was going on hundreds of miles away.

60) Ms Frith, for the local authority, relies heavily on the need for a fact-finding hearing to be carried out here, an opportunity not available to the court in 2016. The matters to be determined go beyond the allegations of assault of B which led to the children being removed. In order to prove threshold the local authority would need to rely on witnesses based here. Absence of findings here, both in 2016 and 2019, would not assist the Slovakian court in its assessment of risk.

61) Secondly, she says, there is an ongoing police investigation. It is in the interests of the children for that to be determined effectively. That is less likely if the family are out of the jurisdiction.

62) Thirdly, the Slovak authorities are undertaking enquiries and their assessments will be available to the court here. Geographical location does not limit potential outcomes. ICACU exists just so that there can be co-operation between Member States, including over the carrying out of assessments.

63) Fourthly, the children have had little continuity of care. Following a judgment in May 2016 making clear that the children would not be safe with their mother, they were returned to her by the Slovak authorities in November 2017. Some permanence needs to be established for them. Ms Frith refers to the delay in returning the children to Slovakia in 2016.

64) Mr Skinner, for the children, adopted the local authority's arguments against transfer.

65) The guardian points out that the children are well settled in their foster placement and, in B and C's case, at school. B, at least, is refusing contact with her mother (and until recently, so was C). The children have been here since March 2018. Mr Skinner described a change of placement at the moment as hugely detrimental.

66) Mr Skinner too refers to the findings of Theis J in May 2016 and contrasts that with the brief judgment of the Slovakian court in October 2017 which resulted in the return of the children to their mother and the current situation. Mr Skinner is careful to pay respect to comity and co-operation, but says that the court is required to consider all the circumstances of the case in its evaluation exercise regarding questions 2 and 3.

67) Mr Skinner also relies heavily on the need for judicial continuity between fact-finding and welfare evaluation. At best it could be put, he says, that the Slovakian court would be better placed to hear the welfare stage, but that should await determination of fact-finding.

Evaluation

68) The following seem to me to be the factors that point towards transfer:

a) The children clearly have a particular connection with Slovakia.

b) It may well be that their long-term futures lie there with extended family. If so, the sooner they are able to return to their homeland and resume its culture, heritage and language, the better. Keeping them in an English placement, using English as first language, may make it more difficult for them to assimilate particularly language, especially so for D who has been here, learning primarily English, for the last 14 of his 25 months.

c) Further, the longer the children remain in placement here, the stronger their emotional ties are likely to become and the more difficult the fracturing of those ties if the children are returned later.

d) Assessment of extended family would have to be carried out in Slovakia. The courts there are better placed to manage that more directly.

e) Further, assessment is likely to include the need for observation of contact between family members (particularly MGF) and the children, which would either necessitate MGF visiting here or contact in the home environment where the children would be.

f) The mother's primary case is for return to the children to her. Her current plan is to return to Slovakia, in which case the same point about assessment would apply to her. That said, the mother's planning has been a matter of criticism and variability and it is far from clear where she will in fact end up. It is probably fair to assume she will go where the children are.

69) The factors against transfer are:

a) There is a clear need to establish what has happened to these children. The court could not carry out that exercise in 2016 because it had no jurisdiction to do so. It does now and there is a strong presumption that

the court should retain jurisdiction so that it can effectively establish the facts.

b) While it would be possible for the Slovakian court to carry out a fact-finding exercise it would be a much more difficult exercise.

c) All the witnesses required in the fact-finding exercise are based here. The reality is that, if fact-finding is required, it is best done here.

d) I also accept it is not in the best interests of the children for a legitimate police investigation to be hampered or even curtailed because the children are returned to another country. The children are potentially victims of crime who are entitled to expect proper investigation and for the truth to be known.

e) Through Member State co-operation, assessments can be undertaken of the wider family in Slovakia and the results considered as part of the welfare analysis either here or there. Assessment of MGF is already underway.

f) I do not have a clear picture what would happen to the children if they were returned. Would they go straight to MGF? Or would they be placed in institutional care first, as they were in August 2016. How many moves would they have? The SCA submissions seems to envisage early return of the children to family. Respect for comity requires that I assume that would only be done following competent social work assessment, including risk assessment. But it is unlikely that assessment would have findings (other than those made by Theis J in 2016) on which to be base assessment of risk so far as placement or contact with the mother is concerned.

g) The children are settled here. The difficulty in that point, in terms of the need for permanence, is that it assumes this is where they will remain. And if they do, and the court decides they are not safe with their mother, the prospect will be for placement outside the family (and the distinct possibility of sibling separation given the likely outcomes for children of their different ages). Those outcomes for the children would of course only result if nothing else would do. At the moment there are family members in Slovakia who are being assessed. And I bear in mind that A is living with MGF who is willing to take on the other children. So, a move at some point is a distinct possibility.

h) The better point about the children being settled here goes back to f) above – I am being asked to uproot them now from their settled placement and schools into the unknown.

Decision

70) This analysis points clearly, in my judgment, against transfer at this stage, essentially for the following reasons:

a) This court is better placed to undertake the fact-finding exercise that would appear to be necessary.

b) The police investigation should continue here with co-operation between the family and criminal courts if charges are brought.

c) This court can re-consider the question of transfer once the fact-finding exercise has been completed.

d) Before re-consideration the court would require much more information than it has at present regarding what would happen to the children on return in terms of placement and assessment so that the court can properly decide whether return would be in the children's best interests. I repeat, this is not to undermine comity of either judicial or social work authorities, but is part of all the circumstances the court must consider. Given the unsettled lives of these children so far, the court would need to have an understanding of plans following transfer to be able to determine best interests.

71) As Theis J said in *Re MP*, it may be that, with the facts found and more information to hand, the balance will the tip in favour of transfer. At the moment the balance is firmly in favour of the case remaining here and the SCA's request is accordingly refused.

72) I direct that the request be registered by the Court Officer in the Central Register of Article 15 requests in accordance with paragraphs 3.4 to 3.9 of the Guidance for the Judiciary April 2016: Transfer of proceedings under Article 15 of Brussels IIa and Articles 8 and/or 9 of the 1996 Hague Convention[1]. The order must contain the information required by paragraph 3.6 of the Guidance.

[1] See guidance at pp 2761-2762 Family Court Practice 2018 Edition