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Case No: FD21P00128

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between :

A

Applicant

- and -

A

Respondent

Ms Samantha Ridley (instructed by **Lyons Davidson**) for the **Applicant**
Mr Brian Jubb (instructed by **MSB Solicitors**) for the **Respondent**

Hearing dates: 18 May 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application under the Child Abduction and Custody Act 1985 for an order pursuant to Art 12 of the Hague Convention on the Civil Aspects of International Child Abduction (hereafter the 1980 Convention) directing the summary return of G, who is now 12 months old, to the jurisdiction of the Republic of Ireland. The application is brought by the father of G, KA (hereafter ‘the father’). The father is represented by Ms Samantha Ridley of counsel. The mother of G is TA (hereafter ‘the mother’). She is currently in this jurisdiction with G. She is represented today by Mr Brian Jubb of counsel.
2. Within the context of the application under the 1980 Convention, the mother makes the following concessions before this court:
 - i) G was habitually resident in the Republic of Ireland;
 - ii) The father had rights of custody in respect of G which he was exercising;
 - iii) G was removed by the mother from the Republic of Ireland without the consent of the father, and that, consequently, the removal was unlawful;
 - iv) The provisions of Article 12 of the Convention apply, subject to whether the mother is able to establish a case within the ambit of Article 13(b).
3. Within the context of these concessions, and where there has been a wrongful removal of G from the jurisdiction of the Republic of Ireland for the purposes of Art 3 of the 1980 Convention, this court is now required to order the summary return of G to the jurisdiction of the Republic of Ireland unless the mother can demonstrate that one of the exceptions provided by the 1980 Hague Convention is made out.
4. In this case, the mother relies solely on the exception provided by Art 13(b) of the 1980 Convention, namely that to order the summary return of G to the Republic of Ireland would result in a grave risk of exposure to physical or psychological harm or otherwise place G in an intolerable situation. In seeking to make good that exception, the mother makes extensive complaints regarding the conduct of the father and his family during the course of their short marriage. However, the mother’s *primary* case is now that, by reason of the conduct she alleges against the father and his family, were she to return to Ireland she would be living in fear of extreme violence, that within this context were the court to order the return of G to the jurisdiction of the Republic of Ireland she would not be able to return with him and that, in consequence, G would thereby be placed in an intolerable situation for the purposes of Art 13(b).
5. With respect to the conduct on which the mother relies as the foundation of this position, and in summary, the mother’s case is that the father has been physically and emotionally abusive to her, and that members of the father’s family have likewise been physically and emotionally abusive to her, over the course of her marriage to the father. For his part, the father denies each of the allegations made by the mother and relied on by her to make good the exception under Art 13(b) of the Convention.

6. In determining the issues in this matter I have had the benefit of reading in full the trial bundle lodged in this case, which bundle include the statements from the applicant father and from the respondent mother. The mother's statement is extensive and exhibits to it an extensive collection documents. I have also had the considerable assistance of the written and oral submissions of Ms Ridley and Mr Jubb.

BACKGROUND

7. Whilst the mother's statement is extensive, and I have considered its contents carefully and in full, the background to this matter can be summarised shortly for the purposes of this judgment.
8. The parents were married in May 2019 and G was born in April 2020 in the Republic of Ireland, where both parties accept he is habitually resident. Both the mother and the father come from the Irish Traveller community and are cousins. The father has always lived in Ireland and is a 'settled traveller'. The mother was born in Ireland but moved to the United Kingdom with her parents when she was a child.
9. The parties' respective accounts of their relationship are highly divergent and it is difficult to identify even common themes in the accounts they each offer to the court.
10. On the mother's case, her marriage to the father was from the outset detrimental to her physical and emotional wellbeing, both by reason of the actions of the father and the actions of the father's family. Whilst the mother has provided a highly detailed statement which sets out in minute detail the course of the parents' relationship, the following central allegations are levelled by the mother at the father and his family:
 - i) The father's family was 'notorious' and had enemies that wished to cause the family harm.
 - ii) The father subjected the mother to intimidating behaviour by keeping the television at high volume, waking the mother late at night and driving dangerously whilst the mother was in the car.
 - iii) The father engaged in controlling behaviour with respect to the mother, including looking through her phone, controlling the manner in which she communicated with her family, monitoring her movements on CCTV and maintaining control of the family's finances.
 - iv) The father and his family engaged in emotionally abusive behaviour of the mother including calling her names.
 - v) On one occasion the father threatened to headbutt the mother and on one occasion did headbutt the mother.
 - vi) On 7 December 2020 the father attempted to force the mother out of Ireland without G by driving her to Belfast port under false pretences.
 - vii) The mother was assaulted by the paternal grandmother on 7 December 2020. On the same occasion the paternal grandfather threatened to beat the mother, to cut her throat and throw her at the back of a field.

- viii) The mother was required to live in a cold and unsafe environment with G. The father failed to share in the care of G.
11. On the father's case the marriage was initially successful before beginning to deteriorate towards the end of 2020. The father contends that on 3 November 2020 he spoke to the maternal grandmother in an attempt to seek help with respect to the ailing marriage. The father says that thereafter the mother took G to England without his consent on 6 November 2020 but that the parties ultimately agreed that this would be a break for them and the father travelled to England on 4 December 2020, the family returning to Ireland together on 6 December 2020. The father accepts that, following an argument on 7 December 2020, he drove the mother to the port at Belfast whilst G was cared for by the father's sister, he says after the mother expressed a wish to return to England. The father says the mother then changed her mind and did not want to leave without G.
12. Upon the parents returning home on 7 December 2020, the father accepts that an altercation occurred between the mother and the paternal grandmother. Exhibited to the statement of the mother are pictures of injuries to her eye and to her leg that the mother states were caused by the paternal grandmother. The paternal grandmother exhibits to her statement pictures of scratches and swelling to her face, which the paternal grandmother states were caused by the mother. Each blames the other for instigating the assault. Each say they acted in self-defence. The Gardai were called as a result of this altercation. The Gardai escorted the mother to a refuge with G. The mother alleges that a car was thereafter driven at her near the refuge by an unidentified assailant. There is no mention of this incident in the evidence provided by the refuge.
13. Whilst an attempt has been made to secure disclosure from the Gardai of the materials associated with them being called on 7 December 2020, a transcript of the 999 call is not yet available. At the pre-trial review on 6 May 2021 the mother accepted that the final hearing should proceed even if the documents sought had not been received. The court does have a police report from the Gardai which makes clear the mother requested to leave the location at which the altercation occurred and was taken to a Women's Refuge with G. The report also records that the version of events provided by the mother and the paternal grandmother changed numerous times as between them, that no offences were disclosed and that no complaint was forthcoming from the mother.
14. On 8 December 2020 the mother travelled to England with G, removing him from the jurisdiction of the Republic of Ireland without the father's consent. The father was informed of the removal after the event by the maternal grandfather. The father has travelled to England on four occasions. The father contends that the mother has refused to allow the father to spend any meaningful time with G. The father issued his application for a return order on 26 February 2021, which application was served on 3 March 2021.
15. As I have noted, the mother contends in her statement that the father's family is 'notorious' and had enemies that wished to cause the family harm. Within this context, the mother further asserts that the father's family is well connected in the Republic of Ireland and that if she is compelled to return to that jurisdiction the father and his family will locate her and force her to return to the paternal family. The mother further asserts that having fallen foul of family customs and etiquette within the traveller community, she remains at risk of cruel and abusive treatment by the father and other family

members. Indeed, the mother now goes so far as to contend that her life will be at risk from the father and his family were she to return to the Republic of Ireland.

16. The mother also makes allegations in her statement that the Gardai were somehow influenced in the way they acted towards her by the father's reputation. Within this context the mother contends that, notwithstanding that they responded to the 999 call on 7 December 2020 and transported the mother and G to a Women's Refuge, the Gardai cannot protect her. The mother further asserts that were G to be returned to Ireland she would be homeless and would have no means of supporting herself.
17. Within this context, the mother contends that even were the court to order the return of G, she could not bring herself to accompany him. In such circumstances, the mother contends that a return to the jurisdiction of the Republic of Ireland would be intolerable for G. Whilst it is conceded on behalf of the mother by Mr Jubb that there is no evidence before the court that G has suffered harm or been at risk of suffering harm in the care of the father or the paternal family, and that it is the case that the paternal family has not been the subject of social services' attention in the Republic of Ireland or of police attention before 7 December 2020, the mother relies on the following indices of intolerability were G to return without her:
 - i) The father is not able to safely care for G;
 - ii) G would be "taught to be feared";
 - iii) G's basic needs would be neglected;
 - iv) G would be exposed to emotional and physical abuse directly, and indirectly by witnessing it;
 - v) He would be separated from his primary carer.
18. The father has offered number of protective measures and his mother, as a person against whom the mother makes allegations, has also offered a number of undertakings to the court. The protective measures proposed by the father are as follows (the father having provided evidence that he is able to fund those undertakings that require him to expend money):
 - i) The father will not instigate or support any civil or criminal proceedings arising from G's removal from the Republic of Ireland;
 - ii) The father will pay for the cost of the travel for the mother and G to return to the Republic of Ireland;
 - iii) The father will pay for the travel of the mother and G from the port or airport to their accommodation;
 - iv) The father will not attend at the port or airport following the return of the mother and G to the jurisdiction of the Republic of Ireland;
 - v) The father will not harass, pester, molest, interfere, threaten or use violence against the mother whether by himself or any third party;

- vi) The father will not remove the child from the mother's care, save for the purposes of contact, pending an on notice hearing of the court in the Republic of Ireland;
 - vii) The father will not attend at any property at which the mother and G are staying in the Republic of Ireland pending an on notice hearing following their return;
 - viii) The father will not apply for any without notice orders following the return of the mother and G to the jurisdiction of the Republic of Ireland and any application to the Irish Court will be on notice;
 - ix) If the mother does not wish to stay with friends or family relatives in the Republic of Ireland upon a return, the father will obtain and pay for appropriate accommodation for the mother and G for a maximum of 4 months until such time the mother is able to obtain social housing or claim housing benefit in Ireland.
 - x) The father will pay all outgoings in relation to a rental property for the mother for a period of 4 months or until she is able to claim benefits;
 - xi) The father will pay to the mother the sum of 150 Euros per week for 3 weeks or until receipt of benefits, whichever is the sooner;
 - xii) The father will pay the appropriate sum by way of child support for G following his return to the Republic of Ireland.
19. In addition, and as I have noted, the paternal grandmother has indicated that she will offer the following undertakings to the court:
- i) The paternal grandmother will not harass, pester, molest, interfere with, threaten or use violence against the mother, whether by herself or by instructing or encouraging any third party;
 - ii) The paternal grandmother will not attend any property in which the mother and G are staying in the Republic of Ireland pending an on notice hearing following their return.
20. In circumstances where it was not clear until the receipt of the mother's statement that she intends not to return to the Republic of Ireland with G if the court were to make a return order, on behalf of the father Ms Ridley made clear that the father is prepared to offer the following additional protective measures were the mother not to return to Ireland following a return order made by this court:
- i) The father will travel to England to ensure that a phased handover of G to his care can take place.
 - ii) The father will promote contact between G and the mother, including funding the mother's travel between England and the Republic of Ireland.
 - iii) The father will engage in any welfare proceedings before the court in the jurisdiction of the Republic of Ireland.

- iv) The father will co-operate with any welfare assessments that are deemed necessary in the Republic of Ireland.
21. The mother has not provided details of any protective measures she would seek and contends that there are no protective measures that could ameliorate the risks she contends for having regard to the conduct of the father and his family that she alleges.

THE LAW

Art 13(b)

22. As I have noted, the mother seeks to establish that the exception provided by Art 13(b) of the 1980 Convention is made out in this case. Art 13 of the 1980 Hague Convention provides as follows with respect to the exception relied on by the mother:

“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:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.”

23. The law in respect of the defence of harm or intolerability under Art 13(b) was examined and clarified by the Supreme Court in *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144. The applicable principles may be summarised as follows:
- i) There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.
 - ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.

- iii) The risk to the child must be ‘grave’. It is not enough for the risk to be ‘real’. It must have reached such a level of seriousness that it can be characterised as ‘grave’. Although ‘grave’ characterises the risk rather than the harm, there is in ordinary language a link between the two.
 - iv) The words ‘physical or psychological harm’ are not qualified but do gain colour from the alternative ‘or otherwise’ placed ‘in an intolerable situation’. ‘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’.
 - v) Art 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child’s immediate future because the need for protection may persist.
 - vi) Where the defence under Art 13(b) is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child’s situation would become intolerable, in principle, such anxieties can found the defence under Art 13(b).
24. In *Re E*, the Supreme Court made clear that in examining whether the exception in Art 13(b) has been made out, the court is required to evaluate the evidence against the civil standard of proof, namely the ordinary balance of probabilities whilst being mindful of the limitations involved in the summary nature of the Convention process (which include the fact that it will rarely be the case that the court will hear oral evidence and, accordingly, rare that the allegations or their rebuttal will be tested in cross examination). Within the context of this tension between the need to evaluate the evidence against the civil standard of proof and the summary nature of the proceedings, the Supreme Court further made clear that the approach to be adopted in respect of the harm defence is *not* one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as grounding the defence under Art 13(b). Rather, the court should assume the risk of harm at its highest and then, *if* that risk meets the test in Art 13(b), go on to consider whether protective measures sufficient to mitigate harm can be identified.
25. As I have observed in a number of cases, the methodology articulated in *Re E* forms part of the court’s general process of reasoning in its appraisal of the exception under Art 13(b) (see *Re S (A Child)(Abduction: Rights of Custody)* [2012] 2 WLR 721), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.

26. In determining whether protective measures can meet the level of risk reasonably assumed to exist on the evidence, the following principles can be drawn from the recent Court of Appeal decisions concerning protective measures in *Re P (A Child) (Abduction: Consideration of Evidence)* [2018] 4 WLR 16, *Re C (Children) (Abduction: Article 13(b))* [2019] 1 FLR 1045 and *Re S (A Child) (Hague Convention 1980: Return to Third State)* [2019] 2 FLR 194:
- i) The court must examine in concrete terms the situation that would face a child on a return being ordered. If the court considers that it has insufficient information to answer these questions, it should adjourn the hearing to enable more detailed evidence to be obtained.
 - ii) In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance.
 - iii) The issue is the effectiveness of the undertaking in question as a protective measure, which issue is not confined solely to the enforceability of the undertaking.
 - iv) There is a need for caution when relying on undertakings as a protective measure and there should not be a too ready acceptance of undertakings which are not enforceable in the courts of the requesting State.
 - v) There is a distinction to be drawn between the practical arrangements for the child's return and measures designed or relied on to protect the children from an Art 13(b) risk. The efficacy of the latter will need to be addressed with care.
 - vi) The more weight placed by the court on the protective nature of the measures in question when determining the application, the greater the scrutiny required in respect of their efficacy.
27. With respect to undertakings, what is therefore required is not simply an indication of what undertakings are offered by the left behind parent as protective measures, but sufficient evidence as to extent to which those undertakings *will* be effective in providing the protection they are offered up to provide.
28. Finally, with respect to the impact of a parent indicating to the court that they would refuse to return with the child should the court make a return order, I examined that issue in *AT v SS* [2015] EWHC 2703 (Fam) in which I observed as follows at [47]:
- “[47] Thus, accepting the imperative need to maintain fidelity to the aims of the Convention, it is important in cases where a parent refuses to return that, in determining whether a defence under Art 13(b) is made out, the primary focus of the court remains on the question of the risk of harm or intolerability to the child rather than the conduct of the abducting parent. Within this context, it is important again to bear in mind that Art 13(b) looks to the situation as it would be if the child were returned forthwith to his or her home country and that the situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that

the child will not be called upon to face an intolerable situation when he or she gets home. The significance for the situation the child will face upon return of a parent's refusal to return must in each case be evaluated in the context of the protective measures that can be put in place to mitigate the impact of the same.”

And, applying these principles to the facts in *AT v SS*, at [58] to [64]

“[58] Leaving out of the equation for the moment the fact that it is the mother's own conscious refusal to return to Holland with S that will result in the situation that will face S on his return, can it be said that the separation of S from his mother and primary carer, and his placement in foster care in Holland, will expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation upon his return having regard to the protective measures that can be put in place such that the defence under Art 13(b) is made out in this case. In my judgment it cannot.

[59] The Supreme Court has emphasised that for a defence under Art 13(b) to be made out the risk of physical or psychological harm must have reached such a level of seriousness as to be characterised as "grave" (*Re E (Children)(Abduction: Custody Appeal)* at [33]). The Supreme Court has also made clear that words 'physical or psychological harm' gain colour from the alternative 'or otherwise placed in an intolerable situation' in Art 13(b). 'Intolerable' is a strong word, but when applied to S must mean a situation which S, in his particular circumstances, should not be expected to tolerate. Examples of situations it would not be reasonable to expect S to tolerate on his return are being subjected to physical abuse or neglect or being exposed to the harmful effect of seeing and hearing the physical or psychological abuse of his mother (*Re E (Children)(Abduction: Custody Appeal)* at [34]).

[60] It is important to remember that every child has to put up with a degree of discomfort and distress (*Re E (Children)(Abduction: Custody Appeal)* at [34]) and that there will be a degree of psychological harm inherent in returning S to Holland. In *C v C (Minor: Abduction: Rights of Custody)* Lord Donaldson MR noted that:

‘We have also had to consider Art 13, with its reference to "psychological harm". I would only add that in a situation in which it is necessary to consider operating the machinery of the Convention, some psychological harm to the child is inherent, whether the child is or is not returned. This is, I think, recognised by the words "or otherwise place the child in an intolerable situation" which cast considerable light on the severe degree of psychological harm which the Convention has in mind. It will be the concern of the court of the State to which the child is to be returned to minimise or eliminate this harm and, in the absence of compelling evidence to the contrary or evidence that it is beyond the powers of those courts in the circumstances of the case, the courts of this country should assume that this will be done. Save in an exceptional case, our concern, i.e. the concern of these courts, should be limited to giving the child the maximum possible protection until the courts of the other country,

Australia in this case, can resume their normal role in relation to the child.’

[61] Within this context, I once again remind myself that the situation which S will face on return also depends, crucially, on the protective measures which can be put in place on his return and that the question of whether the return of S will expose him to a grave risk of physical or psychological harm or will otherwise place him in an intolerable situation must be evaluated in the context of those protective measures.

[62] In this regard, I must assume (the contrary not having been proved) that the administrative, judicial and social services in Holland are as adept at protecting S as the administrative, judicial and social services in this jurisdiction. In particular, I must assume that Holland has adequate procedures for protecting S in foster care, which procedures extend to ensuring that any psychological distress consequent upon his temporary separation from his primary carer is appropriately addressed (*Re S (Abduction: Return to Care)* [1999] 1 FLR 843). There is in any event in this case ample evidence that the social services in Holland are adept in this regard. The Dutch authorities have in the past intervened to protect S when his mother was unable to care for him for a period of time and managed the situation such that S developed well in foster care and was able to return to his mother in due course. Moreover, the mother willingly accepted this intervention and has at no point contended that the placement of S in foster care for a temporary period exposed him to a grave risk of physical or psychological harm or otherwise exposed him to a situation that was intolerable for him. In the circumstances, and accepting that S is now two years older, beyond the demands of comity I am satisfied in this case that adequate protective measures will be put in place to address any psychological distress and emotional upset experienced by S consequent upon his being returned to Holland without his mother and being placed in foster care. The corollary of this is that I must reject Ms Renton's concise submission that, in this case, "the placement is the harm".

[63] In the foregoing circumstances, and in particular having regard to the protective measures that which can be put in place to safeguard S pending the determination of the substantive welfare issues in Holland, in my judgment it cannot be said that the separation of S from his mother and his placement in foster care consequent upon an order returning him to Holland in order that the Dutch court can determine the long term welfare of S will expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation for the purposes of Art 13(b). I of course accept that S will be caused a degree of psychological distress and emotional upset by being separated from his mother and placed in foster care. However, having regard to the protective measures that can be put in place by the Dutch authorities, I am not satisfied that that level of distress and upset will be such as to meet the narrow exception to the obligation to return constituted by Art 13(b). In such circumstances, there being no other basis for making out a defence in this case, I am required to make a return order.

[64] It would also in my judgment be wrong in this case to allow the mother to frustrate the aims of the Convention by relying on a situation which she herself has brought about. However, whilst it is vitally important that the court maintains fidelity to the principles and aims of the 1980 Convention, I make clear that the driving factor in my decision that in this case the defence under Art 13(b) is not made out is my conclusion that the level of distress and upset that will be caused to S by separation from his mother and placement in foster care in Holland does not meet the criteria for establishing that defence.”

DISCUSSION

29. In this case, I have concluded that the mother has not satisfied the court that the separation of G from her care and his placement in his father’s care consequent upon an order returning him to the Republic of Ireland in order that the Irish court can determine the long term welfare of G, as a result of the mother refusing to return with G to Ireland, will expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation for the purposes of Art 13(b) and that, in the circumstances, I must make a return order. My reasons for so deciding are as follows.
30. I pressed Mr Jubb at a number of points to confirm that the mother now advances her case with respect to Art 13(b) on the basis that the separation of G from the mother by reason of her refusing to return to Ireland in the event the court made a return order constitutes a grave risk of physical or psychological harm to G or would otherwise place him in an intolerable situation. Mr Jubb confirmed on behalf of the mother that that is her case.
31. Within this context, as I made clear in *AT v SS*, the key question for the court becomes what would the situation be for G if he were to be returned forthwith to his country of habitual residence *without* his mother. The answer to that question depends, as do all questions regarding whether the exception under of Art 13(b) is made out, on the protective measures which can be put in place to ensure that G will not be called upon to face an intolerable situation when he gets home.
32. Within this context, the allegations made by the mother against the father and his family do not become irrelevant simply by virtue of the fact that the mother now places her case under Art 13(b) squarely on the contention that it is the separation of G from her and his return to the Republic of Ireland without her that will constitute a grave risk of physical or psychological harm to G or would otherwise place him in an intolerable situation. Such allegations remain relevant to the question posed in the foregoing paragraph. However, viewed in that context, a number of points fall to be made regarding the allegations relied on by the mother:
 - i) Whilst the mother contends that the father is not able to safely care for G and that G’s basic needs would be neglected, beyond that bald assertion, there is no evidence before the court that G has come to harm in either of his parents’ care. Indeed, through Mr Jubb the mother concedes that there is no evidence or suggestion of harm being caused to G by the parents or the paternal family. The mother makes no complaint regarding the care of G by his father or paternal grandmother in the weeks following G’s birth and, indeed, expresses gratitude

to them. The mother did not seek to gainsay the assertion by Ms Ridley that, prior to 7 December 2020, there had been no police involvement with the paternal family and the mother makes clear in her statement that there has never been any social services involvement with the family. G is in good health and does not have any disabilities;

- ii) Whilst the mother asserts without more that G would be “taught to be feared” were he separated from her care, there is no corroborating evidence whatsoever to support this assertion;
 - iii) With respect to the mother’s contention that were he to be returned to Ireland not in the care of the mother G would be exposed to emotional and physical abuse directly, and indirectly by witnessing it, it is the case that the mother levels serious allegations of physical abuse at the father and at members of his family. However, taking those allegations at their highest, they amount to one altercation between the mother and the paternal grandmother (during which both received injuries, both blame the other for initiating it and both gave accounts that were considered by the Gardai to have changed numerous times as between them) and one incident during which the father attempted to, and did headbutt the mother. As I have noted, the mother did not seek to gainsay the assertion by Ms Ridley that, prior to 7 December 2020, there had been no police involvement with the paternal family and the mother makes clear in her statement that there has never been any social services involvement with the family. Whilst the court would never seek to downplay the significance of domestic abuse, I am not satisfied that the foregoing matters, even taken at their highest, can make good the contention that were G to be returned to Ireland not in the care of the mother G would be exposed to emotional and physical abuse directly, and indirectly by witnessing it.
 - iv) I accept without reservation that separating G from the mother, his primary carer, by reason of her refusing to return with him to Ireland would have a short term, and adverse emotional impact on G. However, as Lord Donaldson MR noted in *C v C (Minor: Abduction: Rights of Custody)*, some psychological harm to the child is inherent, whether the child is or is not returned. Likewise, transferring the care of a child from one parent to another by reason of the refusal of a parent to return with the child following the making of a return order will result in a degree of short term disruption to the child. Absent evidence that the care of parent who assumes care of the child will harm the child or expose the child to a risk of harm, such short term disruption and upset will not constitute a grave risk of physical or psychological harm or would otherwise place the child in an intolerable situation. This is particularly so in circumstances where protective measures can be put in place to reduce the impact of the child of the change necessitated by the refusal of the taking parent to return with the child.
33. Within that latter context, and as noted above, the answer to the question of whether the separation of G from the mother’s care and his placement in his father’s care consequent upon an order returning him to the Republic of Ireland in order that the Irish court can determine the long term welfare of G will expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation for the purposes of Art 13(b) depends on the protective measures which can be put in place to ensure

that G will not be called upon to face an intolerable situation when he gets home to Ireland without his mother.

34. Within this context, I am satisfied that the protective measures that are proposed by the father, and given specifically in the context of the mother's indication that she will not return with G, will further reduce the adverse impact on G of that situation. Those protective measures can immediately be supplemented by the mother issuing proceedings before the Irish court with respect to the welfare of G or issuing such proceedings should the father fail to honour his undertakings with respect to facilitating contact between the mother and G. Having regard to the principle of comity, this court can be satisfied that the courts of the Republic of Ireland will ensure that the mother is able, subject to the welfare assessment of that court, to have contact with G in the event of a dispute between the parents arising in that regard. Likewise, whilst I am satisfied that there is no cogent evidence before the court to suggest that G would come to harm in the care of his father, this court can have confidence that the welfare authorities in the Republic of Ireland will take steps to safeguard G should it be necessary to do so.
35. In all the circumstances, and for the reasons I have set out, I am not satisfied that the separation of G from the care of the mother and his placement in his father's care consequent upon an order returning him to the Republic of Ireland in order that the Irish court can determine the long term welfare of G, due to the mother refusing to return to Ireland with G, will expose him to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation for the purposes of Art 13(b). In those circumstances, the court has no option but to make a return order unless there is some alternative basis on which the Art 13(b) exception can be made out.
36. Within this context, I agree with the submission of Ms Ridley that the evidence before the court suggests that the mother may well, ultimately, decide to return with G. It would be my hope that the mother will reconsider her decision not to travel with G when he returns to the Republic of Ireland. For the avoidance of doubt, had the mother rested her case with respect to Art 13(b) on the contention that the conduct of the father and his family would present a grave risk of physical or psychological harm to G or would otherwise place him in an intolerable situation were G *and* his mother to return to Ireland, I am in any event been satisfied that the protective measures offered by the father as set out above would remain sufficient to address the concerns relied on by the mother.
37. Having considered the evidence in this case and assuming a level of risk based on the evidence advanced by the mother regarding the conduct of the father and his family in Ireland, I am satisfied that the protective measures offered by the father as undertakings (although he expressing himself willing also to submit to orders) at a time when it was not clear that the mother was refusing to return are sufficient to meet that risk. The undertakings offered by the father, in respect of which he is willing to submit to orders, are extensive and comprehensive in addressing the risks contended for by the mother. The Republic of Ireland is a signatory to the 1996 Hague Convention. Within that context, save in so far as they relate to issues of financial support and child maintenance, it would be open to the mother to seek to enforce undertakings or orders in the court in Ireland under Art 23 of the 1996 Convention as measures taken by the authorities of another contracting State. In addition, it would be open to the mother to obtain orders from the Irish court mirroring the protective measures obtained before this court. In circumstances where, as I have noted, the mother places her case regarding Art 13(b)

squarely on the contention that the separation the mother from G by reason of her refusing to return to Ireland in the event the court made a return order constituted a grave risk of physical or psychological harm to G or would otherwise place him in an intolerable situation, which case I have rejected, I say no more about these matters.

CONCLUSION

38. In conclusion, I am not satisfied that the mother has made out the exception under Art 13(b). Within this context, I am required to order the return of G to the jurisdiction of the Republic of Ireland in order that the courts of the country of G's habitual residence can make decisions regarding his future welfare. In the circumstances, I make a return order and will hear submissions as to the timing of that return.
39. That is my judgment.