

**THE HIGH COURT
FAMILY LAW**

[2019/24 CAF]

**IN THE MATTER OF THE GUARDIAN OF INFANTS ACT, 1964
(AS AMENDED)**

AND

**IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN)
ACT, 1976**

AND

IN THE MATTER OF R.D. (A MINOR)

BETWEEN:

L.D.

APPELLANT

AND

N.D.

RESPONDENT

JUDGMENT of Mr. Justice Jordan delivered on the 2nd day of April 2020

1. These proceedings concern an application by the applicant to be allowed to relocate to reside in the United Kingdom, her place of origin, along with her daughter R, the child of her marriage with the respondent. The application to relocate has proceeded on the basis that the relocation will be to the Manchester/Greater Manchester area (referred to generally as Manchester below) and in particular to the Sale area where the parents of the applicant reside. For ease of reference the parties shall be referred to throughout this judgment as the appellant, the respondent and R. – save where the context requires otherwise. The matter comes before the court by way of an appeal from the Circuit Court judgment and order of Her Honour Judge Ryan of the 28th of March 2019. The notice of appeal filed on the 2nd of April 2019 by the appellant is an appeal against the whole of the judgment and order of the Circuit Family Court. There are Judicial Separation proceedings pending in the Circuit Court which were instituted by the appellant in October 2017.
2. The appellant mother is thirty five years of age and comes from a family of three children. She has two sisters. The eldest of whom S., is thirty nine years of age. The second sister R., is thirty eight years of age. S lives in Greater Manchester with her spouse and is a regular visitor into the family home. R. is married, and lives with her husband, very close to the family home. Together the latter couple have one child, M., who is two years of age. R. is pregnant with their second child who is due to arrive later this year. Both M and the child R. are close and get on very well together.
3. The appellant’s parents are both now approaching seventy years of age and are retired from their careers in the IT and teaching sectors. They are both involved in the care of M., her sister R.’s daughter.
4. The family resided first in S until the appellant was around eleven years of age. They then moved to B, Sale, outside Manchester. This move was precipitated by her and her sister’s

attendance at the L School in Altrincham. The appellant lived there until she was eighteen years of age.

5. The appellant then continued her education at C University where she studied Spanish for four years. Part of this course of study included an obligatory year spent abroad in Spain. Following this, she lived with her parents again for approximately one year. Afterwards the appellant began travelling around the world with her then boyfriend. When they returned from travelling both the appellant and her then boyfriend moved into a flat together in the Greater Manchester area. Following the breakup of that relationship in October, 2010 the appellant went to reside with two friends in a house share, close to where she worked.
6. The respondent is thirty eight years of age. He is a native of Dublin. He now works as a Chartered Accountant in a large accountancy firm in which his father worked before him. It is clear from the evidence that he has a successful career and is ambitious for the future. It is also clear from the evidence that he works extremely hard and that his work frequently involves long hours in the office – although it does appear that he has the facility of remote working as the need arises.
7. The respondent's parents live in South Dublin. He is the youngest in a family of four children, three boys and one girl. His eldest brother is separated and lives away. Another brother RD lives in D and is married with three children, two boys and one girl. The girl is close in age to R. His sister G. is married with two children, a boy and a girl. The latter family lives in South Dublin.
8. The appellant was educated at XY, a well-regarded Dublin school, following his primary education. According to the expert reports and the evidence in court, the appellant's childhood was quite unremarkable and was a happy and contented one. After his Leaving Certificate exams, he attended Portobello College, qualifying in Business and thereafter following his father into the family accountancy firm. This firm subsequently merged with another relatively recently and became a much larger firm. The appellant qualified as a Chartered Accountant in 2008 and later as a Tax Consultant in 2013.
9. Prior to his relationship with the appellant the respondent was involved in three previous relationships. The first of which was when he was seventeen years of age and which lasted two years. The second of which was when he was in college and lasted for eighteen months. The last of the relationships before he met the appellant was for a duration of approximately three and a half years during which time he lived with his then girlfriend for the last two years of the relationship.
10. The appellant described in her evidence and to the experts a close family bond with her parents and siblings. Having enjoyed full careers, her parents retired and are enjoying their retirement and family life - while coping with the difficulties addressed in these proceedings. Her mother did suffer from a significant illness in recent years and this was ultimately diagnosed as an autoimmune condition. Her mother is fine now but does attend follow-up assessments at the hospital. Her father has had hyper-tension from a young

age and this is managed with medication. The appellant described him as really fit and healthy, involved in cycling and playing table-tennis. It is the position that he suffers from some eyesight difficulties which prevent him from driving. Overall, the maternal grandparents clearly enjoy full and active lives. They have no connection to Ireland apart from the appellant and R.

11. The respondent's parents are now aged seventy-four or thereabouts. Both have suffered from ill-health in recent years. The paternal grandfather has survived cancer and is suffering from Parkinson's disease. Despite these health issues he does attend the offices of the accountancy firm in what can probably best be described as a semi-retired fashion. The paternal grandmother suffers from a neurological condition which is a significant health condition.
12. The appellant came to Ireland to be with the respondent. They had met on a skiing holiday in Austria in February, 2011 and fell in love. The relationship moved quickly. After returning from Austria the appellant and the respondent maintained their relationship by travelling between Dublin and Manchester to see each other until the appellant moved over in October, 2011. Prior to her move the appellant was still living in the house share in Altrincham and she was working for a forestry company, UPM. This was all in the general vicinity of where her family lived in the Greater Manchester area.
13. The couple decided that the appellant would move to Dublin. The respondent had his career and house in Dublin, and he hoped to take over the partnership business in which his father was involved. So the appellant's move was sensible. On moving to Ireland she moved in with the respondent. She found work quite easily through an agency – although the work was somewhat uncertain and casual in nature.
14. After six weeks or so doing agency type work the appellant secured a temporary position with a company in Cherrywood. This role in a pharmaceutical company entailed PA/office administration type work as part of the team involved in the recalling of items. The appellant found this work, which was computer based, to be very monotonous. She did not enjoy the job but was glad to have employment. The appellant started to look for a new job in May of the following year and secured one closer to where she lived. Her new job involved a similar role to the previous employment and entailed a large degree of data entry.
15. After working in her new position for a short period of time, a new opportunity arose and the appellant moved to the new job as a Personal Assistant in a large company. The appellant commenced this employment in August, 2012 and remained there up until the birth of R. in 2016.
16. Whilst in this last employment, the appellant did a course in data protection. She sat the exams when she was approximately six months pregnant with R. and secured the qualification.

17. At a previous point in the United Kingdom while in employment and after returning from her travels the appellant had joined the 'police specials' as a volunteer. This is the UK equivalent of the Garda Reserves.
18. In terms of employment the picture emerges of the appellant as a well educated, well qualified and competent and valued employee. It appears also that she has yet to find the job/career she wants. She has explored the option of teaching and the court is satisfied that there are opportunities for her in this area in Ireland and in the United Kingdom although some extra certification/ qualification is required. More recently, and in evidence, the appellant indicated a desire to work in the counselling and psychotherapy area which is something she had considered in the past. The court is satisfied that the appellant does have employment opportunities in the United Kingdom and that securing employment which provides family friendly hours of working is likely to happen if the appellant is resident in Manchester with R. and seeks employment. The Court is satisfied that work opportunities also exist in Ireland. However, the viability of such employment for the appellant in Ireland is significantly eroded because of the cost of accommodation and child care. In addition the appellant will not have free family child care available to her in Ireland to anything like the extent which it is available to her in Manchester.
19. The appellant and the respondent were married on the 19th of July 2013. Despite being very much in love it did not take long for difficulties to emerge in the marriage. It is clear from the evidence that within two years or so the appellant began to feel bereft of the close family dynamic and circle of friends which she enjoyed and had taken for granted in England. This was not replicated in any real way in Dublin and the appellant became increasingly lonely and homesick. Visits by her family and friends to Dublin and visits by her to England did little to stem the rising tide of despair which she felt.
20. Meanwhile the respondent was working very hard. At times the work on the 'merger' was hugely demanding in terms of his time and energy. As happens in relationships, the respondent's experience and expectation of family life was different to that of the appellant. It does appear from the evidence that the respondent felt somewhat crowded by visits from the appellant's family to the couple's home in Dublin, and particularly from the appellant's parents. The picture emerges of the respondent as a person who is tidy and organised about the house and quite self-contained in himself. He is someone who likes to be in control.
21. As a result of the different personalities of the appellant and the respondent there were tensions and difficulties in the house. These were added to when the couple experienced the trauma of the appellant suffering a miscarriage in her first pregnancy in 2015. When this happened the appellant's parents travelled to Ireland to support her and she was happy to have them with her at the time. The respondent however felt that their presence was intrusive and that they ought to have given he and the appellant some time and space together.
22. These traits, feelings and opinions of the appellant and of the respondent are normal, human and understandable. They are not a basis for levelling criticism at either party.

They are however an illustration of incompatibility which was becoming increasingly obvious as time progressed.

23. Amidst this tension in the household there was good news for the couple. After a successful pregnancy R. was born on the 26th of September 2016. The birth was difficult. The appellant was anxious around this pregnancy and birth, and understandably so because of the earlier miscarriage. A week after the birth the appellant suffered from severe mastitis which necessitated her readmission to hospital. She explained in evidence how she had to drive herself to hospital as the respondent returned home after being in the pub and having alcohol and she did not consider him fit to drive. Both the appellant and the respondent were first time parents and then dealing with the joy, the foreboding and the sense of responsibility this entails. The respondent was doing his best. The appellant was away from her family network and friends and was without the support and assistance which they would have provided to her on a daily basis in terms of looking after R and attending to the activities of daily living which also needed attention. The appellant felt unsupported by the respondent. The relationship floundered.
24. In early 2017 the appellant was back in Manchester at her parents' home and dealing with depression or post-natal depression which she sought and received treatment for and has recovered from. R. was travelling back and over the Irish sea and a custody battle had soon erupted. In June, 2017 the appellant sought and was granted a Prohibited Steps Order in the United Kingdom on an *ex-parte* basis. She was wrong to seek this order and now recognises that this is so and that it was a mistake on her part. She had done so after a fraught week-end in Dublin when it became clear to her that the respondent had no intention of commuting on a more permanent basis to Manchester although she had thought he was giving this option serious consideration. She felt frightened and threatened as a result. Unfortunately, the actions of the appellant, the Prohibited Steps Order and her behaviour in general obstructed the respondent's right of access to R. – and in a very significant way. Ultimately he had to bring proceedings under The Hague Convention in the United Kingdom. In August, 2017 a determination was issued by the High Court Family Division of London by Her Honour Ms. Justice Rowe QC pursuant to which R. was repatriated to Dublin, with the appellant travelling with her. The appellant has lived with R. in rented accommodation since then. There have been difficulties with access but the access arrangements, pursuant to a court order and with some agreed variations, are presently working reasonably successfully.
25. The appellant now wishes to relocate with R. to Manchester where she can be with her family and friends and benefit from the support which that environment will afford to her. She believes that she can live an independent life in Manchester but cannot do so in Dublin. She has given sworn evidence to the court that she does acknowledge the importance of the relationship between R. and the respondent and that she will facilitate and encourage generous access between the respondent and R.
26. The appellant has provided to the Court a large lever arch folder which provides specific detail in relation to what she considers particularly relevant aspects of the relocation

proposal. This is a carefully prepared and researched proposal and contains the following information: -

- (1) Maps and photographs.
 - (a) Map of locations of interest, including Manchester Airport.
 - (b) Map of locations of interest in Sale (Manchester).
 - (c) Map of Sale (Manchester) – its proximity to Manchester Airport and Manchester City Centre.
 - (d) A newspaper article from the Manchester Evening News articulating why Sale (Manchester) has been voted fourth best location in the UK to live in.
 - (e) Photographs of the home of the maternal grandparents.
 - (f) Photographs of the home of the sister R. and her husband.
 - (g) Photographs of the home of the maternal uncle and his wife in Sale (Manchester).
- (2) Documentation concerning accommodation available and cost in Sale (Manchester).
- (3) Documentation concerning education options, available schools and child care facilities and costs.
- (4) Documentation concerning employment opportunities, pay scales, flexible working options and work reference.
- (5) Documentation concerning further education options for the appellant including details concerning a counselling and psychotherapy qualification.
- (6) Documentation concerning air travel between Dublin and Manchester including flight schedules and flight costs.
- (7) Documentation concerning places to stay for the respondent in the Manchester/Altrincham area (hotels) including costings with details of travel time to and from the airport and amenities available.
- (8) Documentation in relation to the support network available in Manchester including letters of support from her parents, her sister R. (and husband), her maternal uncle Andrew (and his wife), another from a couple who are long-time friends of the appellant's family and including also a letter from the employers of the appellant's sister R confirming that the employer would be able to accommodate R moving to a 0.8 working pattern to accommodate providing childcare/support to the appellant and R. – which can be taken as a four-day working week or taken as working five shorter days.
- (9) Health care details including documentation indicating that the health care system in the United Kingdom is on a par with that in Ireland.
- (10) Details on the implications of Brexit and the common travel area.

27. In addition, the folder contains appendices detailing properties available for rent (February 2020), latest Ofsted (Office for Standards in Education, Children's Services and Skills) school reports for local primary schools and documentation detailing recent job vacancies matching the appellant's skills set as of February 2020.
28. The respondent is presently paying generous maintenance to the appellant which recognizes the high cost of rent in Dublin. He has not been found wanting in terms of financial support for the appellant and R. and he must be commended for this. In terms of future accommodation in Dublin the respondent furnished a proposal as follows by way of letter from his solicitors dated the 9th of March 2020:-

'In this regard our client is pleased to set out his proposals on the following basis:

He suggests an acquisition in the Castleknock / Coolmine/ Carpenterstown/ Clonsilla area of Dublin 15 in the price region of €350,000. This would permit the purchase of a comfortable three bedroom semi-detached home similar to our client's home. Our client suggest [sic] that this could be funded as follows:

- i. Payment by our client of the sum of €100,000 by way of upfront, non-refundable payment to your client – our client's father has agreed to provide these monies to him by way of an unsecured loan.*
- ii. The property in question (to be identified by your client) would be purchased in joint names of our respective clients given your client's present inability to obtain a mortgage. Assuming a price of €350,000, it would be necessary for a mortgage of €250,000 to be taken out. Based on a thirty year repayment period, KBC's three year fixed rate would involve monthly repayments of €962.*
- iii. Our client would undertake to discharge all mortgage repayments (including the mortgage protection policy) for a period of five years.*
- iv. At the end of the five year period, your client would assume responsibility for the monthly mortgage repayments. Our client estimates that the repayments on a loan of €220,000 (the principal sum having been reduced to approximately that amount) would be in the order of €840 per month.*
- v. At any time, your client will be entitled to take over sole ownership of the property and legal liability for the mortgage by obtaining our client's release therefrom. If she does so, our client will convey his legal interest in the property to your client.*
- vi. If your client exercises the option to take over the mortgage within 5 years of the date of purchase, our client would be prepared to pay a further sum of €25,000 against the capital outstanding so as to further lessen the monthly repayments to €760 per month which is less than your client's projected rent for Manchester.*

The overall capital value of the amounts being offered by our client are as follows:-

- a. Upfront payment €100,000.*
- b. Value of mortgage repayments over five year period including appropriate mortgage protection €60,000.*
- c. Possibility of further capital reduction as per (vi) above €25,000.*

Total capital value €185,000.

The Law

29. The start and end points for the Court's assessment of the application to relocate is what is in the best interests of R., given all the circumstances of what is a sad and unfortunate case which has emanated from the end of the parties' marriage. The Court must make provision for a new reality, one taking account of R.'s best interests and mindful of the separate lives of the appellant and respondent - who must yet remain in contact as the parents of R.
30. There is no presumption in favour of or against relocation in respect of the parent with primary custody of the child or the other parent. Thus, the assessment this Court is engaging in is one of welfare assessment viewed through the legal and practical prism of the child's best interests.
31. The applicable principles to be applied in applications such as this one have been considered by the courts in a number of decisions and this Court must be guided by the authorities. In *E.M. v. A.M.* (Unreported, High Court, 16th June, 1992), Flood J. identified the following criteria as being relevant:-
 - "(1) Which of the two [hypothetical outcomes] will provide the greater stability of lifestyle for [the child].*
 - (2) The contribution to such stability that will be provided by the environment in which [the child] will reside, with particular regard to the influence of his extended family.*
 - 3) The professional advice tendered*
 - (3)(4) The capacity for, and frequency of, access by the non-custodial parent.*
 - (4)(5) The past record of each parent, in their relationship with [the child] insofar as it impinges on the welfare of [the child].*
 - (5)(6) The respect, in terms of the future, of the parties, to orders and directions of this Court."*
32. MacMenamin J. further considered the principles to be applied in *U.V. v. V. U.* [2012] 3 IR 19. The criteria set out by Flood J. were referenced with approval. This was a marital case in which the High Court was assessing the relocation to Spain of two children, aged 12 and 6 years respectively. The applicant mother was a Spanish native. Refusing the

application to relocate, MacMenamin J. rejected the suggestion that there was a presumption in favour of the custodial parent and he pointed out that the fundamental constitutional and legal principle applicable in such cases is the children's right to have decisions taken as to their welfare with that welfare being the prime concern.

33. This Court must also have regard to the decision of the Court of Justice of the European Union of 5th October, 2010, in *J. McB. v. L.E., Case C-400/10 PPU*, where, referring to Article 7 of the Charter of Fundamental Rights (respect for private and family life, home and communications), that Court observed at paragraph 60 of the judgment, that the Article must be read in such a manner so as to respect the obligation to take into consideration the child's best interest, and the fundamental right of the child to "*maintain on a regular basis a personal relationship and direct contact with both of his or her parentsThe Charter likewise recognises, in Article 7, the right to respect for private or family life. This provision must be read in conjunction with the obligation to have regard to the child's best interests, which are recognised in Article 24(2) of the Charter, and taking account of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with both his or her parents*"
34. The latter principles should be respected and accord with the basic welfare considerations which apply under Irish Law.
35. In the Court of Appeal decision in *S.K. v A.L.* [2019] IECA 177, Whelan J. clearly and comprehensively sets out the law pertaining to relocation of children. The following extract from the judgment is worth quoting in full; -

'The law

38. *In an application by a parent seeking liberty to remove a minor who is habitually resident within the jurisdiction of the courts of this State for the purposes of relocation to another state where the other parent or holder of rights of custody does not consent to such relocation, the approach of the court is governed by the provisions of the Constitution, the Guardianship of Infants Act 1964 (as amended) and the jurisprudence governing the best interests of the minor in question.*
39. *In the instant case it is of relevance that the proposed relocation was to a non-EU State – a so-called "Third State". Significant distance can impact on the frequency and modalities of contact and generally can be a relevant factor in judicial consideration of the minor's best interests in the context of such an application.*
40. *In any trans-national child relocation case there are a variety of conflicting or competing interests potentially engaged, including the best interests of the child in question, the rights and interests of the parent who proposes to relocate and including their circumstances vis-à-vis any spouse, partner or family and the rights and interests of the left-behind parent and his or her spouse, partner or family. Such an application frequently, if not invariably, brings into stark relief the conflicting aims and objectives of the parent who proposes to relocate and who is*

usually the primary carer of the child with the rights of the left behind parent to maintain a relationship with the minor.

41. *Whilst in the English case of Payne v. Payne [2001] E.W.C.A. Civ. 166 Thorpe L.J. observed that the refusal to recognise the right to freedom of movement beyond the jurisdictional boundary of a parent's own country is "a stance of disproportionate parochialism" (pg. 487) such an approach does not reflect the law in this jurisdiction where the application falls to be determined in light of the Constitution having due regard to the best interests of the child concerned.*

No presumption for or against relocation

42. *In this jurisdiction, having regard to the constitutional mandate and the clear provisions of the relevant legislation, including the Children and Family Relationships Act, 2015, Part 4, and the Guardianship of Infants Act 1964 (as amended), in any application to relocate a child there can be no presumption in favour of or against either the applicant parent or the remaining parent. It is purely an exercise in welfare assessment.*

Article 42A of the Constitution

43. *As is clear from Art. 42A of the Constitution, the best interests of [I] was required to be the paramount consideration when the High Court determined the application for liberty to remove and relocate. Article 42A.1 provides: -*

"The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights."

44. *Article 42A.4.1 provides: -*

"Provision shall be made by law that in the resolution of all proceedings -

(i)

(ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration."

Article 42A.4.2 provides that: -

"Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child."

Relevance of prior child abduction claim to relocation application under Guardianship of Infants Act 1964 (as amended)

45. *At the level of principle it must be borne in mind that in circumstances where a wrongful removal or retention of a minor occurs which has resulted in the making of orders pursuant to the Hague Convention for the summary return of a minor to the State of her habitual residence, it remains open to the parent who is the subject matter of such an order of return, whether made on consent or otherwise, to bring an application before the courts of the state of habitual residence of the minor seeking leave to temporarily or permanently remove the child and liberty to relocate to a new jurisdiction.*
46. *The latter proceedings, such as in the instant case, are brought pursuant to domestic legislation governing child welfare. In determining an application pursuant to the Guardianship of Infants Act 1964 a judge is unfettered by any order, be it interim or otherwise, direction or step taken or as may have occurred in the context of the Hague Convention proceedings.*
47. *The functions of a judge dealing with any aspect of an application pursuant to the Hague Convention or the Child Abduction and Enforcement of Custody Orders Act 1991 are wholly distinct from the functions of a judge dealing with issues of custody, welfare and the best interests of a minor. In making determinations concerning a minor pursuant to the Guardianship of Infants Act 1964 (as amended), no breach of any principle of comity can arise since the functions of the judge under each regime are wholly distinct and different. The best interests of the minor is the paramount consideration in all determinations of welfare pursuant to the Guardianship of Infants Act 1964 (as amended). However, the best interests of a minor are not paramount pursuant to the Hague Convention since the purpose of that instrument is to achieve restoration of the status quo ante leaving all considerations of welfare and best interests to the courts of the habitual residence of the minor in question.*

Relevance of parent's conduct

48. *It is noteworthy that in making a determination on an application pursuant to the Guardianship of Infants Act, 1964 (as amended), the trial judge is expressly limited in considering the conduct of either parent. S.31(4) provides: -*

"For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only."

Part V of Guardianship of Infants Act 1964

49. *In light of the constitutional provisions, the Children and Family Relationships Act 2015, section 63, inserted Part V into the Guardianship of Infants Act 1964.*
50. *Section 3 of the Guardianship of Infants Act 1964 (as amended) now provides:*

"(1) Where, in any proceedings before any court, the—

- (a) *guardianship, custody or upbringing of, or access to, a child, or*
- (b) *....*

is in question, the court, in deciding that question, shall regard the best interests of the child as the paramount consideration.

- (2) *In proceedings to which subsection (1) applies, the court shall determine the best interests of the child concerned in accordance with Part V."*

51. *Part V of the Act in particular includes s.31 which is of relevance in the instant case and which informed the determination of the trial judge as the applicable law governing the application of the mother seeking liberty to remove and relocate. It provides as follows: -*

- "(1) *In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.*

- (2) *The factors and circumstances referred to in subsection (1) include: -*

- (a) *the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships*
- (b) *the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);*
- (c) *the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;*
- (d) *the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;*
- (e) *the child's religious, spiritual, cultural and linguistic upbringing and needs;*
- (f) *the child's social, intellectual and educational upbringing and needs;*
- (g) *the child's age and any special characteristics;*
- (h) *any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;*
- (i) *where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;*

- (j) *the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;*
- (k) *the capacity of each person in respect of whom an application is made under this Act—*
 - (i) *to care for and meet the needs of the child,*
 - (ii) *to communicate and co-operate on issues relating to the child,*
and
 - (iii) *to exercise the relevant powers, responsibilities and entitlements to which the application relates."*

52. *The objectives underpinning the legislative approach is to direct the focus of the enquiry away from recriminations, blame or fault finding with regard to the past conduct of either parent unless it is "relevant to the child's welfare and best interests only" (s.31(4)). Thus, for instance, it was not open to the trial judge to engage with speculation and surmise advanced by the father as to whether conduct; of the mother in deciding to remain in the United States, in pursuance of enhanced economic security or arising from the advantageous opportunity available to her husband was premeditated or merely reflected short-term intentions which may have subsequently metamorphosed into more long-term prospects. There was no evidence adduced that any conduct on the part of the mother was adverse to [I]'s welfare and best interests and accordingly the trial judge correctly disregarded such allegations as he was obliged to do.*

Ascertainable views of minor

53. *In an application of this nature it is imperative that the views of the child are considered and taken into account as they clearly were. The s.32 report records two interviews with [I] and details of same are set forth. The author of the report was cross-examined at length by the father at the hearing.*

54. *The constitutional mandate to obtain the ascertainable views of the child was met in my view on the facts of this case. It is clear from s.31(6) of the Guardianship of Infants Act 1964 (as amended) that: -*

"In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—

- (a) *shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and*
- (b) *may make an order under section 32."*

In the instant case an order pursuant to s.32 was made. Therefore, the consultant clinical psychologist was a witness of the courts and not a witness for either party.

55. *In carrying out a Best Interests Assessment in the context of a proposed relocation particular factors may be of relevance including: -*
- (a) The minor's emotional and/psychological dependency upon the primary carer.*
 - (b) The relationship between the child and the remaining parent.*
 - (c) The relationship between the child and his or her extended family, including siblings, step-siblings, step-parents and grandparents and the extent to which the dynamics of those relationships that operate positively and beneficially for the minor may be affected by the relocation, and considerations as to how such changes might be ameliorated or addressed.*
 - (d) The reasonableness of the proposed relocation and, so far as relevant, the motivation of the parent who proposes to relocate which is required to be objectively assessed.*
 - (e) The practical consequences of a refusal of the application for all of the directly concerned parties and in particular the minor, the directly concerned parents or guardians.*

Balancing the rights of the parties

56. *Parents in relocation proceedings may invoke rights, including freedom of movement under the EU treaties and Protocol 4, Art. 2 of the European Convention on Human Rights which provides, "Everyone shall be free to leave any country, including his own." In the case of a remaining parent, Art. 8 ECHR rights to family relations may also be invoked However, the paramount consideration in an application seeking leave to relocate must always be the best interests of the child. The High Court correctly applied the relevant legal principles to the facts and made his decision based on the best interests of [I].*

Access

57. *In evaluating the right of a parent to access, it is to be borne in mind that not alone is access a right of the parent, particularly a non-custodial parent, it is also a right of the child and is, in the absence of evidence to the contrary, presumed to be in the best interests of the child that they maintain a constructive relationship with the non-relocating parent. Care must be taken, accordingly, to structure contact arrangements so as to preserve and vindicate the child's relationship with the non-relocating parent so as to minimise disruption to same and ensure so far as practicable that the relationship is maintained in such a manner as operates in the best interests of the minor.*

Washington Declaration

58. *Whilst no international convention or protocol at this time governs international family relocation, in March, 2010 following a conference considering issues arising in the context of international family relocation, the Washington Declaration on International Family Relocation was published with the support of the Hague Conference on Private International Law International Centre for Missing and Exploited Children.*

The said declaration provides, inter alia: -

"Factors Relevant to Decisions on International Relocation

.....

3. *In all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.*
4. *In order to identify more clearly cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors listed in no order of priority. The weight to be given to any one factor will vary from case to case: -*
 - i) *the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;*
 - ii) *the views of the child having regard to the child's age and maturity;*
 - iii) *the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;*
 - iv) *where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;*
 - v) *any history of family violence or abuse, whether physical or psychological;*
 - vi) *the history of the family and particularly the continuity and quality of past and current care and contact arrangements;*
 - vii) *pre-existing custody and access determinations;*
 - viii) *the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;*

- ix) *the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;*
- x) *whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;*
- xi) *the enforceability of contact provisions ordered as a condition of relocation in the State of destination;*
- xii) *issues of mobility for family members; and*
- xiii) *any other circumstances deemed to be relevant by the judge."*

59. *The Washington Declaration has no legal effect and can be characterised as "soft law". Neither was Ireland represented at the conference where the declaration was drafted. At most, it is merely representative of international juristic thinking in an area concerning children which is increasingly litigated. It does appear to resonate with the provisions of the Guardianship of Infants Act 1964 (as amended).*

UN Convention

60. *It will be recalled that pursuant to Art. 3 of the UN Convention on the Rights of the Child the best interests of a child shall be a primary consideration and further pursuant to Art. 12, the child's views must be considered and taken into account in all matters affecting him or her" .*

The Circumstances

36. The applicant and the respondent are both good parents to their child, R. They are very good people from good backgrounds. They are both third-level graduates although it does appear, on the evidence available, that the respondent's career trajectory and professional qualifications are likely to generate a much higher income into the future than the applicant can hope to attain. Of course, that may change in the future. I do accept the view expressed by Dr. Anne Byrne-Lynch in her report dated 31st of May 2018 which she expressed in the following words: -

"The parties present as having embarked on life together with a great deal of love and optimism, however, it appears that the birth of their daughter exposed fundamental incompatibilities in their expectations and needs in respect of relationships and family life."

37. In relation to the practical and operational elements of the relocation proposal, Dr. Anne Byrne-Lynch deals with these in her recommendations. It is worthwhile setting out her recommendations in full:

"1. *I respectfully recommend to the court, in all the circumstances of this case, that it is in the child, R's, best interest that her mother would be allowed to relocate to Manchester where she has strong family support, and can develop a lifestyle*

compatible with her child-rearing responsibilities in relation to R. She is also more likely to develop her personal resilience in that environment, and a strong, resilient and contented mother is important for R. However, the input of the father is also important, and this recommendation is predicated on it being possible to develop a stable system of regular access for the father.

2. *It is recommended that for the next two years the court might consider an arrangement such as the following:*

The father to have weekend access with R on alternate weekends on a six-week cycle, whereby on week 2 and 4, R would be brought to Dublin for access from Friday at 4 p.m. to Sunday at 4 p.m., handover to be at Dublin Airport, and on week 6 the father to exercise access in Manchester from Friday at 4 p.m. to Sunday at 4 p.m., the handover point to be agreed. I recommend that access might be extended to Monday at 4 p.m. on weekends where the father's access falls on an Irish bank holiday weekend. I recommend that R might spend alternate Christmases with her father, travelling not later than 23rd December, and returning on 28th December.

3. *I recommend that the father would have facetime contact with R on every Wednesday at a time between 6.15 and 7 p.m., and on every Sunday when he does not have weekend access between 6.15 p.m. and 7 p.m.*
4. *I recommend that after two years an adjustment to access might be made to accommodate R becoming involved in regular pre-school, and that access might be adjusted every three weekends, with R coming to Dublin on weeks 3 and 6, and the father travelling to Manchester on week 9, but with the addition of 5 days extra holiday access at Easter, and 5 days in early January, and two 5 day periods during the Summer school holidays, extending to two 1 week Summer periods when she reaches 4 years. I recommend that alternating Christmas between her parents should continue. 5. I recommend that access might be reviewed after R has entered primary school, with a view to making appropriate longer-term recommendations, if the parties cannot come to agreement through mediation at that stage.*
6. *I recommend that the father would visit R's pre-school, or any other care setting she attends, at least once per term, and would receive copies of all reports and other communications. I recommend that the father would attend with the mother on R's first day of pre-school, and later her first day of primary school. I recommend that the father would meet with R's primary school teacher at least once per term.*
7. *I recommend that access arrangements would be adhered to in order to provide a predictable schedule for R and her parents, but that access might be cancelled if R is sufficiently ill to require medical attention. I recommend that the father would have notice of any medical or specialist appointments made for R, other than GP*

appointments made at short notice, or similar situations, so that he has the option to attend if he can."

38. Obviously, the above recommendations must be read in light of the fact that the date of the report of Dr. Byrne-Lynch is the 30th May, 2018 - and R is now almost two years older than she was then.
39. In his report dated the 5th March, 2019, Mr. Foley expresses the opinion, based on the reporting available to him, that he does not believe that the mother's relocation with R to Manchester would be in the best interests of R at present. Mr. Foley concludes his report as follows:

"While the mother presents as currently being emotionally stable and, by and large symptom free, in my opinion, she has not adequately acknowledged, and worked through, her traumatic experience surrounding R's birth, and her reaction thereafter. In my opinion, distancing from the father is not a psychologically appropriate or adequate response to enable her to face and work through the breakdown of the marriage.

Furthermore, a move to Manchester with R now does carry a risk that an aspect of the negative narrative of the father as destructive will be transferred to R over the coming years. A transfer of this nature risks undermining R's developing relationship with her father, which would already be challenged by distance, and the constraints of trying to parent in the circumstances of R's domicile in Manchester. The father presents as very settled in his home in Dublin, well integrated with neighbours and their children, whom R has regular contact with. In my opinion, the father will be at his most attentive and child-centred with R parenting in his current setting.

I recommend that R's best interests would be served if the mother were to remain in Ireland with R, from where both parents could face up to, and work through, the significant challenge of co-operative separated co-parenting. Staying in Ireland will require the mother taking a mature adult position, facing the reality of marital breakdown, and separated co-parenting, rather than relocating to Manchester and adopting a more childlike position.

I recommend that the mother should engage in regular psycho-therapeutic consultation to help her to examine all influences relating to her experience of the breakdown, and to help her to establish a new and different engagement with the father as separated co-parents. I recommend that the father continue to attend professional psychological support to assist him facing up to his part in the breakdown of the marriage and his contribution to the mother's experience of distress. He needs to work on developing an attitude and approaches that would more effectively support the mother of R. He needs to move beyond regarding the mother as someone who wilfully deceived him and the cause of shattered dreams and self-image.

I recommend joint custody of R by both parents, and they should gradually move towards a shared care arrangement of R, which would afford the mother an opportunity to engage in employment, or further training, as well as her developing an adult social life during periods when R is not in her care.

I recommend review when R is aged 4 years, and approaching entry to national school. The situation should then be clearer in terms of each parent's willingness and capability to engage in co-operative, separated co-parenting of R. Also, at that time, either parent may be involved in a long-term relationship, which would have a bearing on the situation and require assessment of R's best interest into the future."

40. The Court does understand Mr. Foley voicing of concern about a negative narrative concerning the father being transferred to R over the coming years, and being destructive insofar as her relationship with her father is concerned. However, there is no evidence before the Court that this has occurred to date, notwithstanding what is clearly a difficult position for the mother and her family, given the circumstances of the return to Dublin of mother and daughter. The evidence before the Court is that the relationship between R and her father has flourished, and the relationship between the appellant and the respondent is working insofar as arrangements concerning R are concerned, although there have been occasional bumps in the road. Although the concern about such negative narratives is always in the background, if not to the forefront, in cases such as this, the Court considers that the likelihood of such a negative narrative is as great, if not greater, if the mother is compelled to remain in Dublin with R. The evidence before the Court is persuasive that the mother and her family and friends appreciate that the relationship between R and her father is very important to her and for her.

The Court is persuaded that these people on the mother's side, and she herself, will hold true to their word and facilitate and nourish the continuation of the relationship between R and the respondent into the future.

41. It must also be said that the reality of marital/relationship breakdown and separated co-parenting frequently does involve the separated parents of a child, or children, living long distances apart from one another with all the logistical problems that this entails. It is proper that the estranged spouse/parent be entitled to a free and independent life without being, or feeling, beholden to the other, notwithstanding whatever circumstances of financial inequality may exist between them both. All of this may create hurdles to be surmounted, and inconveniences to be tolerated. However, such fall-out from marital/relationship breakdown should not be looked at with a view to maintaining the relationship status quo as much as possible after it has ended - as if the justice of the situation is met by advising one side that this is what they had signed up for, or put more bluntly, by telling them that they had made their bed and must now lie in it. That thinking does not belong in the recipe of ingredients for a child welfare assessment.
42. The mother feels trapped in Dublin with R. It is difficult to find plain language to better describe the predicament she finds herself in. Her situation and her feeling about it, and

about the future, is bad for her and is bad for R. It can be easily remedied by allowing her to relocate to Manchester with R, although this will regrettably cause sorrow and considerable inconvenience for the respondent. But the distance involved is not great. It is a three to four hour journey – door to door. The father is a high earner on his own account and is in a position to work remotely. Should he wish to do so, he would have little difficulty in acquiring a permanent base in Manchester, which would ease and facilitate his access to and relationship with R.

43. There has been considerable analysis by Dr. Anne Byrne-Lynch and by Mr. Robert Foley (both Clinical Psychologists) of the personalities of the appellant and the respondent. There is no doubt but that they are two very different personalities and it seems to the court that the personalities of each presented challenges for the other in the relationship. There is nothing to be gained by attributing fault or blame or dwelling on the causes of the breakdown in the relationship in circumstances where it has broken down irretrievably for some years now and the focus of the court must be on the child welfare assessment concerning R.
44. On the evidence there can be little doubt but that the appellant's best interests will be served by her moving back to Manchester where she wants to be and where she will have her family support around her. It does not necessarily follow from this that such a relocation will best serve the welfare of R.
45. On the other side of the equation, it is a fact that the respondent's life, his career and his base are in Dublin and his best interests will be served if the appellant and R remain in Dublin where access and a regime approaching the co-parenting model in respect of R can be accomplished with greater ease from his point of view. Again, it does not follow that what is in the respondent's best interests is in the best interests of R.
46. Having regard to the legal principles which apply the Court finds as follows: -
 - a. It is beneficial to R. to have a meaningful, consistent and structured relationship with each of her parents.
 - b. It is beneficial to R to have a meaningful, consistent and structured relationship with her other relatives (including her grandparents, uncles, aunts and cousins) on both sides of the family. Any regime going forward should provide for the opportunity of meaningful contact with the extended family to nurture and maintain these relationships. In this regard the Court is persuaded that the family dynamic on both sides is such that R does have a closer and more child centred relationship with the relatives on her mother's side than she has with those on her father's side. This is not a criticism of the father or the relatives on his side but is rather a statement of fact. Nor is this situation unusual in families – in that children in families will frequently tend to gravitate towards one side or the other depending on the circumstances. The fact is nonetheless an important consideration as the court is satisfied that R. will not require the same length of time in child care

facilities if living in Manchester as she would if living in Dublin simply because she has more people to look after her in Manchester if her mother is at work.

- c. R is too young to express her own views and preferences on the issue of relocation. However, it is clear from the evidence and reports of both experts that she has a strong bond and relationship with both of her parents and there cannot be any doubt but that she wants this to continue. She is a well-adjusted and bright young girl and she has adapted quite well to the circumstances which have arisen as a result of the breakdown of her parents' relationship. It seems also from the evidence that she has been quite resilient and unperturbed by the travel arrangements to and from Manchester although it is clear that travel between Dublin and Manchester will increase in the event of her relocation to Manchester. In an ideal world one would prefer to avoid a three to four hour door-to-door journey from one parent's residence to another but a balance must be struck in light of the overarching principle of doing what is best for the child's welfare.
- d. There is some difference of opinion between the parents in relation to the child's religious upbringing. Although married in a Roman Catholic Church the father would prefer that no baptism take place until R. is in a position to decide herself whether or not she wishes to be baptised. He told the court that it is not a decision he is happy to make on behalf of R. The mother would prefer the more traditional approach of the Catholic Church and would have preferred that R. would have been baptised before now. The compromise struck was that R. received a blessing at her cousin's christening. Although this is a not unusual difference of opinion between both parents it does indicate that R, if she and her mother relocate to Manchester, is to be brought up in the Catholic faith and attend Catholic school and suchlike. This is not likely to impact adversely in terms of the child's best interests. Even if relocated R. will have the influence of her father's view on faith and religion – and is likely to benefit from the knowledge that there are different views on such matters – and that there must be respect for all creeds and none. On this point, and in light of the Order being made by this Court, if the school of choice requires that pupils be baptised into the Roman Catholic faith before being enrolled then this should be permitted by the father. Otherwise he could have a veto on the school of choice and that would not be in the best interests of R.
- e. The social, intellectual and educational upbringing and needs of R. can be well catered for in Dublin and in Manchester. They are being well catered for at present. However, as already mentioned, the court is satisfied that the family support in the extended family and the relationships within the extended family are stronger and more available in Manchester than in Dublin. It is the case that R's identity will be more English than Irish if she is brought up in Manchester as opposed to being brought up in Dublin. But her mother is English and her father is Irish. Even if she relocates with her mother to Manchester she will have strong connections with her father and with Ireland and she will identify with both. It is necessary to touch upon this issue in circumstances where it has been a concern expressed by the father,

somewhat indirectly, during the hearing of his appeal. This is a concern expressed against the backdrop that the Irish father married the English mother after they met in Austria. That international dimension to the relationship did not end on marriage and remains after the breakdown of the marriage. It is something which must be addressed as part of the breakup. A view prevalent in the arguments of the father is the view that the mother made a commitment to Ireland when she came here and got married here. During the hearing it was put to the appellant that she ought to take responsibility for the decision she made when she came to Ireland and married an Irishman. This was a forthright expression of the viewpoint of the respondent - but from an objective standpoint is a line more at home in a play by John Millington Synge than here. The proposition is not correct. That it is an incorrect view is of some relevance in the context of the welfare of R. in all the circumstances of the case. Each case is unique. The appellant was born and brought up in England and clearly believes that she belongs there following the failure of her brief marriage to an Irishman in Ireland. The Court is satisfied that the mother is not content in Ireland and it is also satisfied that she would be much more content in Manchester – not least because that is where her family, her roots and her main network of friends are. The appellant never really settled in Ireland. The Court has no doubt that compelling her to remain in Ireland will not be in the best interests of the welfare of R. because she is not happy or content living in Ireland. There is a very credible and understandable basis for her malcontent at being compelled at present to reside in Ireland and the evidence does not indicate that time will change her feelings on this.

- f. R. does have the advantage of regular and meaningful access with her father at present, including regular structured overnight access. It is important that regular, structured and meaningful access continue. As already mentioned, the court is concerned at the circumstances at which the mother applied for and obtained a prohibited steps order in England – and effectively excluded the father from his role as father in the life of R. - on an *ex parte* application. That this happened was wrong. At this stage the mother and indeed her family in England have gone to considerable lengths to explain their desire and willingness to facilitate and nurture the relationship between R. and her father if she can relocate with her mother to Manchester. The Court is concerned, given the application for the Prohibited Steps Order, that the mother and her family may simply be paying lip-service to this “desire” – and that there may be a radical change in their position and attitude if the application to relocate is granted. As touched upon earlier, the Court is persuaded however, on the balance of probabilities, that the mother and her family in Manchester mean what they say in terms of facilitating access and nurturing the relationship between R. and her father if the relocation application is granted. The Court is proceeding on the basis that the mother (and indeed the father) are willing and able to facilitate and encourage a close and continuing relationship between R. and the other parent – and to maintain and foster relationships between R. and her relatives on both sides.

- g. The Court is satisfied that both parents are able to care for and meet the needs of R. They are also able to communicate and cooperate on issues relating to the child. The Court has no concern in relation to their ability to act as and behave as responsible parents in respect of R. Although R. has a strong bond with both parents the Court is satisfied that she is emotionally and psychologically dependent upon her mother who is and has been her primary carer for almost all her young life. The family dynamics insofar as contact with relatives on the father's side of the family are concerned can be addressed in a positive and beneficial way by a structured access regime which will see R. travelling to Ireland to be with her father for weekends regularly throughout the year – and with holidays in Ireland built in to the regime.
- h. The mother's proposed relocation is reasonable in all the circumstances. If she is allowed relocate to Manchester, the Court is satisfied that she will have employment opportunities and career prospects more readily available to her and in circumstances where R. will have family carers available to her if her mother must be at work.
- i. In addition, the Court is satisfied on the evidence that the mother will have an opportunity to carve out an independent life and a more realistic opportunity to have her own home independently in Manchester than would be the position if she had to remain in Dublin.
- j. The practical consequences of a refusal of the application to relocate to Manchester include:-
- (1) Effectively compelling the mother to remain resident in Dublin.
 - (2) Removing from the mother and from R. the benefit and positive consequences of the network of family support and relationships which are available to them both in Manchester and which are simply not readily available to them both in Dublin.
 - (3) Creating a situation where the mother's life, career prospects and happiness are adversely impacted, at a relatively young age, for the foreseeable future – and most probably until R attains the age of majority. Indeed, a refusal of the application is likely to mean that the die is cast for longer than that as R. will have been brought up in Dublin and the mother will have been forced to create a life and her home in Dublin.
 - (4) At another practical level a refusal of the application means that the mother is compelled to live in a city where rents and the cost of housing are exceptionally high by international standards and far in excess of those prevailing in Manchester going by the evidence produced to the Court.

- (5) On the other side of the equation, the practical consequences of allowing the relocation of mother and daughter to Manchester, insofar as the father is concerned, include;
- (a) making access to his daughter considerably more difficult on a logistical level because of the travel time involved between Dublin and Manchester;
 - (b) creating an understandable level of insecurity and uncertainty in his mind as to the future in circumstances where his daughter (and her mother) will be resident across the Irish Sea and in another legal jurisdiction;
 - (c) allowing his daughter to be brought up in England although she was born in Ireland and he is Irish – and in circumstances where he would obviously prefer that she be brought up in Ireland as an Irish citizen although her mother is English;
 - (d) making access to his daughter between he and his family and friends much more cumbersome than at present and depriving R. of the routine enjoyment of children’s events such as birthday parties and outings that can now be arranged with much greater ease and at short notice – albeit this requires a level of cooperation between both parents.

Conclusion

47. There is no easy or quick fix solution in terms of the problems that a relocation creates and which fall to be considered when such an application comes before the court. All the court can do is balance the respective rights and interests in light of the evidence and proceed based on what it concludes is best for the child in question.
48. In all of the circumstances, the Court has come to the conclusion that it is in the best interests of the welfare of R. to allow her mother relocate with her to Manchester but on the basis that a generous and structured access regime be put in place in order to allow the continuation and nurturing of the essential and important relationship which R has with her father.
49. In arriving at this decision, the Court is conscious of the fact that it is allowing the appeal against the decision of the Circuit Court Judge. In that regard, the Court has had the benefit of the evidence of Dr. Anne Byrne-Lynch which was not available to the Circuit Court Judge and it has also had the benefit of the passage of the twelve month period since the Circuit Court decision.
50. The Court will, therefore, allow this appeal.
51. The access regime is detailed in the Court Order appended, which has been finalised and perfected following the written submissions in that regard from both sides.

APPENDIX 1: ORDER

**THE HIGH COURT
FAMILY LAW**

**2019 24 CAF
2019 66 CAF**

**THURSDAY THE 16TH DAY OF APRIL 2020
BEFORE MR JUSTICE JORDAN**

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT,
19889 AND IN THE MATTER OF THE FAMILY LAW ACT, 1995 AS AMENDED BY THE
FAMILY LAW (DIVORCE) ACT, 1996 AND IN THE MATTER OF THE GUARDIANSHIP OF
INFANTS ACT, 1964 (AS AMENDED) AND IN THE MATTER OF THE FAMILY LAW
(MAINTENANCE OF SPOUSES. AND CHILDREN) ACT, 1976 AND IN THE MATTER OF R.D.
(A MINOR)**

BETWEEN

L.D.

APPLICANT

AND

N.D.

RESPONDENT

Upon Motion of Counsel for the Respondent pursuant to Notice of Appeal herein filed on the 2nd day of April 2019 appealing the Order of the Circuit Court herein dated the 28th day of March 2019 and Upon Motion of Counsel for the Applicant pursuant to Notice of Appeal herein filed on the 2nd day of August 2019 bearing High Court Record Number 2019 66 CAF appealing the Order of the Circuit Court herein dated the 1st day of August 2019

And the hearing of the within Appeal having come for hearing before the Court on the 25th 26th and 27th days of February 2020 and the 12th and 13th days of March 2020 in the presence of said Counsel for the Respondent and Counsel for the Applicant And the Court deeming the Appeal to be in respect of the said Order of the Circuit Court herein dated the 28th day of March 2019 and the Circuit Court Order herein dated the 1st day of August 2019

Whereupon and on reading the said Notice of Appeal the said Orders of the Circuit Court the pleadings and documents herein the Affidavits herein filed together with the documents and exhibits referred to therein

And on hearing the evidence adduced herein by the witnesses as set out in the Schedule hereto and On hearing what was offered by said Counsel for the Respective Parties

The Court was pleased to Reserve Judgement herein

And Judgement having been delivered electronically on the 2nd Day of April 2020

And on further consideration of electronic submissions by the respective parties in respect of final Orders

IT IS ORDERED Pursuant to section 11 of the Guardianship of Infants Act, 1964, as amended, that:

1. The Appeal herein be allowed
2. The Appellant is permitted to relocate with R and to reside anywhere in the Manchester and Greater Manchester (referred to below as Manchester) areas of the United Kingdom. The Respondent is to be furnished with the address where the infant resides and is to be informed of any change of address.
3. There is a stay on this Order until the 2nd of May 2020 so that the necessary arrangements may be made by the parties.
4. Pursuant to Section 11 of the Guardianship of Infants Act, 1964, as amended, the Court orders the following access and other arrangements concerning R.:-

The Respondent (the father) is to have access to R. as follows:

- (a) On the second weekend of each month in Dublin, R is to be brought to Dublin for handover at Dublin Airport at 5.00p.m. on the Friday, with handover for return to Manchester to take place at Dublin Airport at 4.00p.m. on the Sunday of that weekend.
- (b) The father is to have access to R. in Manchester on the fourth weekend of each month, with handover to take place at a point to be agreed at 4.00p.m. on the Friday evening – with the father having the option to return R. to the care of her mother at an agreed handover point at 6.00p.m. on Sunday or alternatively to drop R. to her crèche or pre-school or primary school on Monday morning after the weekend at the usual drop-off time – but provided he notifies the mother of his intention to exercise this option of stay-over on Sunday night before 5.00p.m. on the Tuesday preceding, in writing. In the absence of such notification then the default position is that the handover is to take place on the Sunday as above. Late notification of the intention to exercise the option of the additional Sunday overnight is not permitted as the regime must be clear and certain to both sides and recorded in writing on the Tuesday preceding the weekend access in question.
- (c) Insofar as access is concerned the father does have the option of exercising his “Dublin access” in Manchester, should he prefer, provided he gives at least two weeks’ advance notice in writing to the mother. Should he exercise this option then the handover arrangement will be as normally applied for “Manchester access”. Should he exercise his access for the second weekend of the month in Manchester, then he also has the option of the extra Sunday night which he can exercise as in the fourth weekend of the month. If such second weekend access taking place in Manchester falls on a weekend which is a Bank Holiday in the Republic of Ireland and in the U.K. then the father has the option of having R. until 6.00p.m. on the Monday provided he sets out what he intends when giving notice.

- (d) R. spends each alternative Christmas with her father, travelling not later than the 22nd of December and returning not later than the 28th of December. Starting off this year R. is to spend Christmas 2020 with her father.
- (e) On the Christmas that R. is not with her father for Christmas then she is to spend the New Year with him, travelling to Dublin not later than the 28th of December and returning to Manchester not later than the 3rd of January.
- (f) The handovers in respect of the extended holiday periods are to take place in Dublin Airport as normal.
- (g) R. is to spend six days each Easter with her father in Dublin during the period between Palm Sunday and the Saturday following Easter Monday. This should be arranged so that Easter Sunday alternates between the parents from year to year.
- (h) R. is to spend the second and third week of her summer school holidays (14 days) with her father.
- (i) During mid-term breaks which fall on a period of weekend access the father is to have an extra day at the beginning of the week-end provided he elects to take this day at least four weeks in advance, in writing.
- (j) The parents must cooperate in order that Irish and United Kingdom passports will issue to R. which will allow her to travel with either one of them – and likewise in relation to renewal of same. In the event that either parent wishes to bring R. on holidays elsewhere then full details and contact information in relation to destination and accommodation must be provided to the other parent at least four weeks in advance of the commencement of the holiday – the social media contact is to be facilitated at suitable times twice weekly whilst on holidays. If the holiday access arrangements at Christmas or Easter or Summer overlap in whole or in part with the weekend access provided for then the holiday access arrangement will prevail – and will not be additional to that weekend access which would otherwise have taken place.
- (k) During the weeks which the father does not have access to R. he is entitled to overnight access during school terms in Manchester commencing by him picking R. up from crèche/playschool/primary school when school finishes on the Thursday of each week and dropping her back to same for commencement of the day the following morning. If exercising this option, the father must notify the mother in writing no later than 5.00p.m. on the preceding Monday and this facility is not to be abused. Its continuance is dependent upon no repeated late attempts at notification or cancellations

over the course of each year.

- (l) In the event that weekend access in Dublin falls on a Bank Holiday weekend in the Republic of Ireland then the return handover is to take place no later than 5.00p.m. on the Monday of the Bank Holiday weekend and access is then extended to that extent with the following caveat: this provision is to continue provided it does not unduly interfere with school and for that reason the father must notify and liaise with the school at least two weeks in advance if R. is going to miss a day by reason of this access being exercised – and he should be guided by the school view in that regard.
- (m) The father and mother must liaise in relation to travel arrangements in a timely manner so that flights and travel arrangements can be made well in advance to keep costs to a minimum. The mother is responsible for booking and paying for the flights bringing R. to Dublin and may book same on giving 10 days advance notice to the father so that he can have a say concerning any reasonable alteration which he feels necessary. If flights have to be changed after being booked, in order to accommodate the father within his entitlements under the access regime, then he is responsible for the cost of any such changes.
- (n) The father is to have social media contact set up and facilitated with R on every Wednesday if she is not with him that week between 6.15p.m. and 7.00p.m. and on every Sunday when she is not with him between 6.15 p.m. and 7.00p.m. (social media to mean Facetime, Google Duo, Zoom or any other social media platform agreed in writing between the father and the mother).
- (o) The mother is allowed to choose the pre-school and any other care setting, and the primary school which R. attends. R. may be baptised into the Roman Catholic faith. Following commencement in creche, pre-school and primary school (and through her education) the father is to be allowed to participate in her schooling – including being named as her father and joint guardian, and including being copied with school reports and school communications. (For example, by having his email address listed for such purpose along with the mother's – as well as his landline, and/or mobile phone number, along with the mother's). In addition, the father is entitled to attend at R's first day of any future creche, pre-school and primary school, if he is available to do so, and provided he advises the mother at least two weeks in advance that he does intend to do so – in writing. In addition, the father is entitled to meet with or communicate with R.'s carers/primary school teacher periodically as parents normally do, subject to school protocol in that regard.

- (p) For the avoidance of doubt, any communication in writing will suffice if sent by email, provided a receipt of delivery or acknowledgment is received. Both mother and father are to facilitate email communication between one another and should acknowledge receipt of same when received. Communication between both are to be respectful of the other.
- (q) In order to avoid uncertainty, the access schedule is to be adhered to, and neither party has a right to alter it unilaterally. The spirit of the regime is to provide structure, routine and certainty for R. and is intended to minimize conflict and avoid either party seeking to dominate the other in so far as R. is concerned. Any alteration in the access arrangements which occurs by agreement between the parties should be recorded in one document written in clear language and signed by both the father and the mother – and with their signatures witnessed and dated.
- (r) The father's access arrangements are suspended in the event that R. is sufficiently ill to require urgent medical attention and/or hospitalisation. In that event, the father is to be afforded access to R. of reasonable duration in order to visit her at home or in hospital, or elsewhere as agreed between the parties, in order to see how she is and to comfort her in the normal way of a parent. Likewise, the above directions concerning visiting R. are to apply in favour of the mother if R. becomes sufficiently ill to require urgent medical attention and/or hospitalisation whilst in the father's care. Insofar as her health otherwise is concerned, the father is to be given written notice as soon as possible of any medical or specialist appointments made for R. (other than GP appointments or similar appointments made at short notice) in order that he has the option to attend if he can do so. If it is his intention to attend, then the father should notify the mother of that in writing in a timely manner following receipt of notification. The father is to be kept reasonably informed in relation to the health of R. - and likewise the mother while R. is in his care (they do not have to inform each of every upset stomach or runny nose etc. – the requirement is to be construed reasonably).
- (s) Insofar as secondary school is concerned, no order is being made in that regard, although it is hoped that both parents will agree on a secondary school when the time comes, and will then have regard for the wishes of R. who will undoubtedly have her own views and aspirations which, although not decisive of the issue, may be influential.
- (t) The father and mother are to agree a facilitator or a trusted intermediary to assist in reaching agreement on issues surrounding R. and access in particular. Issues are likely to occur and there will be circumstances where either parent may seek to be facilitated in relation to family events or social occasions as they arise. The court is alert to the fact that the swapping of

some dates and times of access may be reasonably requested at times in the future and which events the court cannot legislate for in this court order. The inclusion of this provision is not to allow a re-writing of the access regime but is to provide for exceptional circumstances a few times a year.