THE HIGH COURT

FAMILY LAW

IN THE MATTER OF THE CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT, 1991

AND

IN THE MATTER OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

AND

IN THE MATTER OF U (A MINOR)

[2021] IEHC 607

[2021 No.14 HLC]

BETWEEN

A.W.

APPLICANT

AND

O.U.

RESPONDENT

Judgment of Ms. Justice Mary Rose Gearty delivered on the 24th of August, 2021

1. Introduction

1.1 The Applicant aunt is the legal guardian of a child, named U, and is based in Maryland, in the United States of America. The Applicant is also the aunt of the Respondent, who has no legal guardianship or custody rights in respect of the child but who is caring for the child while she is in Ireland. The child, U, is a 14-year-old girl who is originally from a third country [the country of birth]. She is a citizen of the United States of America and of her country of birth.

1.2 The application is made under the Hague Convention of the Civil Aspects of International Child Abduction [the Convention]. The Convention ensures international cooperation in respect of legal issues concerning child custody and welfare. The Convention requires that signatory states trust other signatories in terms of their social services and the operation of the rule of law in their respective nations. The Convention was created to combat the problem of the wrongful removal of children from the country in which they reside, usually by a parent, to the detriment of the child's relationship with the other parent. This international agreement recognises the normal incidence of relationship breakdown, which leads to the division of families between households and, given the ease of global resettlement, between countries. In this case, the movement of family members was prompted by the untimely death of the mother of this young girl rather than by a relationship breakdown.

1.3 It is recognised as an important policy objective for signatory states that parents and guardians respect the rights and best interests of the child and the custody rights of a co-parent or other legal guardian in deciding to move to another jurisdiction, taking the child from her habitual residence and, potentially, from social and familial ties in that jurisdiction.

2. Background

2.1 The child was born in 2007. This Applicant became her legal guardian in 2015. The Respondent, an Irish citizen and cousin of the child's, brought her to Ireland in 2019. The

Applicant initially consented to the child's travelling to Ireland, and also consented to her being enrolled in a school here, but has now withdrawn that consent. The teenaged child has stated her objections to returning to the United States but an issue about the independence of that view has been raised by the court-appointed assessor.

2.2 The initial legal requirements of Article 3 of the Hague Convention must be fulfilled, namely, the Applicant must satisfy the Court that she has custody rights in respect of the child and that she was exercising those rights at the time of retention. If she does this successfully, the Respondent must then establish a defence in order to resist an order for the return of the child. Even if a defence is established, the Court is not required to refuse a return as a result but retains a discretion in respect of return. This is due to the significance of the policy objectives of the Convention in terms of security for children in signatory states.

2.3 Three defences are argued. One is acquiescence in the sense that it is submitted to the Court that the Applicant effectively abandoned the child to family members in 2018 and has not exercised her rights of custody.

2.4 The second is grave risk, in which context the Respondent points to an acrimonious relationship between the child and the Applicant and she also relies on allegations of corporal punishment and more serious allegations of offending against U by third parties.

2.5 The application was made over 12 months since the alleged wrongful retention of the child, so, if wrongful retention is established, the Court has a discretion as to whether or not to return the child even if there is no proven defence of acquiescence or grave risk. The Court may consider the third argument in such circumstances, namely, whether this child has become well settled in Ireland such as to justify an order that U should not be returned.

2.6 The Respondent has informed the Court that she too lost her mother when she was very young. When this child travelled to stay with her family in her country of birth, the Respondent offered the child a home with her, here in Ireland. It is her strong view that she provides a loving and suitable home for the child. The function of this Court, however, is to examine the legal rights of the parties and determine the best outcome of the case when seen in the light of the Convention and consistent with the best interests of the child. This is not a welfare hearing in that the Court may not simply decide which is the better home. Rather, the Court must be guided by the objectives of the Convention while keeping the welfare of the child at the forefront of its considerations.

3. Custody Rights and Habitual Residence

3.1 The child was born in 2007 and her mother died in 2018. In June of 2015, the Applicant was granted power of attorney by her late sister-in-law (the child's mother) and in June of 2015, a court in Maryland granted an Order that she be appointed as guardian of the child and this is the basis of her claim that she has rights of custody. The Respondent, while a relation of the child's and someone with whom U clearly has a close relationship,

has no legal right to take custody of the child without the consent of her legal guardian, the Applicant.

3.2 There has been some evidence about communications by the Respondent with social security and with the American Embassy but no decision has been made or action taken which affects the legal guardianship status of the Applicant in respect of this child or the fact that the Respondent relies on the consent of the Applicant in order that the child might remain here. While consent was clearly given to this Respondent to care for the child while she was in Ireland, there was no transfer of guardianship or custody rights to her. Unlike a typical Hague case, therefore, the Respondent does not enjoy custody, or any, rights in respect of U, independent of the consent of the Applicant to act as U's guardian in Ireland.

4. Habitual Residence

4.1 It is not seriously disputed that the child was habitually resident in the United States at the time when she came to Ireland. U had lived in Maryland from 2015 to 2018 until the death of her mother. Thereafter, she remained in America with her aunt and guardian, the Applicant, for over 6 months at which time she travelled to the country of her birth to stay with extended family there. It was intended that she would attend school there for a time. In early 2019, the Applicant returned to America. The child went to Ireland in January of 2019 with the Respondent instead of remaining in school in that third country, as planned. The Respondent enrolled her in school in Ireland. The Applicant wrote a letter in March of 2019 confirming that the child was living with the Respondent while she attended school in Ireland.

4.2 The law as regards changing habitual residence is set out in *Mercredi v Chaffe* C-497-10 PPU (22nd December, 2010), which decision has been followed in Ireland in numerous cases involving the Council Regulation (EC) No 2201/2003 and in Convention cases. The term appears in both the Regulation and the Convention and should be consistently applied across different international instruments thus the passages quoted are applicable to this case.

4.3 In *Mercredi,* the First Chamber Court gave the following guidance at para. 51:

> *"….in order to distinguish habitual residence from mere temporary presence, the former must as a general rule have a certain duration which reflects an adequate degree of permanence ... Before habitual residence can be transferred to the host State, it is of paramount importance that the person concerned has it in mind to establish there the permanent or habitual centre of his interests, with the intention that it should be of a lasting character. Accordingly, the duration of a stay can serve only as an indicator in the assessment of the permanence of the residence, and that assessment must be carried out in the light of all the circumstances of fact specific to the individual case."*

4.2 There is at present no legal right for the child to remain in Ireland indefinitely, although the Respondent indicates that she is attempting to regularise the child's status here.

Nonetheless, the fact remains that she has no legal right to live here and remains a citizen of the United States. The plan for her to attend school elsewhere was never expressed to be anything other than a temporary arrangement. At most, it can only have been intended to subsist throughout her secondary school years. There was no indication of a permanent move from America to Ireland. When the Respondent did not arrange for the child to return to the USA in the summer of 2019, the Applicant revoked her consent to U being in Ireland. There was, therefore, no appreciable time or settled intention, on the part of the only legal guardian entitled to make such a decision, that the child remain permanently anywhere but in America.

4.3 The case of *AS v EH* [1999] 4 IR 504 involved an issue of habitual residence where the relatives of a deceased mother, with no legal rights of custody, took a child to Ireland. There, Geoghegan J. relied on the following passage from the judgement in *Re S (Abduction: Hague and European Conventions)* [1997] 1 FLR 958, per Butler-Sloss L.J., in which the father had applied for guardianship of the child in England:

> *"The death of the mother, the sole carer, would not immediately strip the child of his habitual residence acquired from her, at least, while he remained in the same jurisdiction. Once the child has been removed to another jurisdiction, the issue whether the child has obtained a new habitual residence whilst in the care of those who have not obtained an order or the agreement of others will depend upon the facts. But a clandestine removal of the child on the present facts would not immediately cloth the child with the habitual residence of those removing him to that jurisdiction, although the longer the actual residence of the child in the new jurisdiction without challenge, the more likely the child would acquire the habitual residence of those who have continued to care for the child without opposition. Since, in the present case, the English Court was seised of the case within two days of the removal of the child, it is premature to say that the child lost his habitual residence on leaving England or had acquired a new habitual residence from his de facto carers on arrival in Ireland'."*

4.4 A question that does arise, on the facts of this case, is whether or not U has become settled here within the meaning of that phrase in Convention cases. This issue will be considered below, but in terms of habitual residence, as seen above this phrase is used in Convention cases to describe the place in which the child permanently resides and usually is determined by the place of residence with her parent or guardian. On these facts, on the balance of probabilities, which is the relevant test in such a case, the place of habitual residence of U remained Maryland, America.

4.5 The facts of *AS v EH* involved a very young child and one who had only been in Ireland for two days before the father acquired rights of custody. Here, the Applicant had rights of custody throughout but did not act until July 2019 to revoke her consent in respect of the child living in Ireland. That period of under 7 months, while the child was registered in a school, does not appear to this Court to be sufficient time, combined with the surrounding circumstances of legal guardianship, school arrangements and an expectation of return to

Maryland during the holidays, to strip the child of her habitual residence in America. Rather, any arrangement whereby the child was to stay here was never expressed as a permanent one.

4.6 It must be emphasised that the Respondent, who argues (in effect) that the child is now habitually resident in Ireland, did not in 2019, and still does not, have legal guardianship or any custody rights in respect of the child. In other words, she does not have the legal right to determine where the child resides. Only the Applicant had that right in 2019. The remaining period of over a year, during which time the child has continued to live here, falls to be considered under the defence of being well settled, below, rather than under the heading of habitual residence.

4.7 The Respondent has exhibited a letter dated January 2019 which the Applicant avers is a forgery. This exhibit appears to extend the consent of the Applicant to U living in Ireland. Again, the reference is to her being schooled here and to returning to America "on vacation" if she wishes but it is headed as an "authority" for U to live and be schooled in Ireland. Other documents refer to an arrangement "while she goes to school" or, in even more limited terms, consent to travel. While it is impossible to say definitively if the document exhibited at G is a forgery, even if it is not, it does not carry the necessary implication of permanency, particularly when viewed with the other documents, to constitute proof on the balance of probabilities that the Applicant decided that the child would move to Ireland for good. The most probable interpretation of all the documents, when carefully considered, is that the child moved to Ireland and, when school began, consent was extended to her remaining there, but for the purposes of school and with the hope that she would find it easier to get over her mother's death with friends of her own age around her. Even if a move to Ireland was contemplated as early as January 2019, there is insufficient evidence to show an intention that the child's home would no longer be in America.

5. Exercise of Custody Rights

5.1 As to whether or not the Applicant was exercising her custody rights, one must look at the various interactions between the Applicant and her niece, U. The Court must bear in mind that the law sets a relatively low bar for parents in the Applicant's shoes. Ms. Justice Ní Raifeartaigh in *N.J. v E. O'D.* [2018] IEHC 662 reviewed the authorities and summarised the situation saying that the courts must take a liberal view on the question of the exercise of custody rights and that the focus of the inquiry should be on whether the parent or guardian sought to have a relationship with the child, not merely on issues of financial assistance.

5.2 In a recent decision of this Court, *W.B v S. McC & Anor* [2021] IEHC 380, overnight access alone, some months before the application was brought for the return of the child, provided sufficient proof that the applicant in that case had exercised his custody rights.

5.3 From 2019 the Respondent took an active interest in what was happening in U's life. In November 2019 she travelled to Ireland, having revoked her consent to U remaining here on 30th of July, 2019. The revocation was notarised. Texts had already made it clear

that for 2 months before this, matters had deteriorated. These messages make it clear that the Applicant guardian's consent had already been withdrawn before the formal, written revocation.

5.4 The Applicant also relies on documentary evidence that that the Applicant paid U's dental insurance, suggesting both an exercise of custody rights and an expectation that the child would return to the United States, suggesting her time in Ireland was a temporary arrangement, insofar as she was concerned. The Respondent argues that this was a financial step necessary for her to show that U was in her care and that she had excellent care here in Ireland. Her dental care, however, is not the issue. No argument is made that the child would not have had excellent care here and the Respondent's care is not questioned. What is in issue is her legal right to retain the child in her care in the teeth of the legal guardian's objections.

5.5 The Applicant avers that she forwarded money to the Respondent for the upkeep of the child. The messages exhibited by the parties show the Applicant taking active steps in respect of U and trying to keep in touch with her via phone. Her daughter, A, maintained regular contact with U via messages on social media. These are uniformly friendly in tone.

5.6 The Respondent argues that the Applicant only took on the care of the child so that she, the Applicant, could benefit financially from the arrangement. This is a very serious allegation to make and potentially very damaging to the child if it were to be repeated to or believed by her. In circumstances where the parties have clearly moved from a position of helping one another to a serious dispute about the custody of the child, this Court will not rule on the likelihood of such an averment. It is not necessary to make a finding in respect of her motivation in circumstances where this child's mother has chosen the Applicant as an appropriate guardian, the Applicant has accepted the role and has made efforts over the past two years to fulfil that role. While reprehensible if true, and it is robustly denied, even if a guardian has some financial interest in a child, that does not mean that they can be stripped of their rights and duties in law by the unilateral action of another party, no matter how well-intentioned their actions.

5.7 In terms of the *prima facie* evidence necessary to prove that there was an exercise of her rights of custody, the Applicant's trip in 2019, her payments of dental insurance and her attempts to contact and to maintain contact with the child, including through her daughter, are sufficient proofs. As set out above, the legal test is a low threshold.

5.8 This Court finds as a fact that the child was habitually resident in America throughout the relevant period and that the Applicant was exercising her rights of custody, therefore the Court must now decide if any of the defences are made out by the Respondent under Article 13 of the Convention.

6. Consent and Acquiescence

6.1 The burden of proving consent is on the Respondent as she seeks to raise the defence.

6.2 The law in relation to consent and acquiescence is set out in the Supreme Court Judgment of Denham J. in *R.K. v J.K. (Child abduction : acquiescence)* [2000] 2 IR 416. In this case the Supreme Court approved the following statement of Waite J. in *W v W* (*abduction: acquiescence*) [1993] 2 F.L.R. 211 :

> *"Acquiescence means acceptance. It may be active arising from expressed words or conduct, or passive, arising from inference arising from silence or inactivity. It must be real in the sense that the parent must be informed of his or her general right of objection, but precise knowledge of legal rights and remedies, and specifically, the remedy under the Hague Convention is not necessary. It must be ascertained on a survey of all relevant circumstances, viewed objectively in the round. It is in every case, a question of degree, to be answered by considering whether the parent has conducted himself in a way that would be inconsistent with him later seeking a Summary Order for the child's return."*

6.3 The Court has already considered the consent of the Applicant to the child's living in Ireland above, under the heading of habitual residence, and found that any consent was to a temporary arrangement. The Court has commented in this context on the Applicant ostensibly agreeing that the child could live with the Respondent and be schooled in Ireland.

6.4 The concept of acquiescence is different in that where, as here, consent is revoked or never present, it may be that the behaviour of an applicant led a respondent to believe that the child was now resident in the new, requested country. In other words, the question is: did this Applicant conduct herself in such a way that it would be inconsistent of her to now seek the return of U to America? The answer must be, no. She formally revoked consent in July of 2019. The Applicant delayed a long time before commencing proceedings but that period is more appropriately considered under the heading of whether the child is settled here such that it would be unfair to remove her. Given the robust terms in which the consent was withdrawn and the 2 months of acrimonious texts between the parties which led to that withdrawal, even over a year of inactivity in the courts is not sufficient to amount to acquiescence when seen against that factual background.

7. Defence of Grave Risk

7.1 In *CA v CA* [2010] 2 IR 162, [2009] IEHC 460, Finlay-Geoghegan J. described the Article 13(b) defence as a "rare exception" to the requirement to return which "should be strictly applied in the narrow context in which it arises." The kind of situation which may constitute a grave risk to a child was considered in *RK v JK (Child Abduction: Acquiescence)* [2000] 2 IR 416, where Barron J. cited with approval the formulation from the United States Sixth Circuit Court of Appeals in *Friedrich v Friedrich* 983 F.2d 1396 (6th Cir. 1993) (at p.451):

> *"… a grave risk of harm for the purposes of the Convention can exist in only two situations. First, there is a grave risk of harm when return of the child puts the child in imminent danger prior to the resolution of the custody dispute, e.g. returning the*

child to a zone of war, famine or disease. Second, there is a grave risk of harm in cases of serious abuse or neglect, or extraordinary emotional dependence, when the Court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection."

7.2 Collins J. in *CT v PS* [2021] IECA 132 outlined various cases relevant to an understanding of the objectives of the Hague Convention and concluded at para. 61, "*there cannot be any serious doubt that factual disputes about the care and welfare of children are best resolved where the children reside. That is of course a fundamental animating principle of the Hague Convention."*

7.3 The Respondent raises a number of issues which amount, she submits, to the child being at grave risk if returned to the United States. She alleges that the child was subjected to corporal punishment by the Applicant and was the subject of two serious assaults at the hands of third parties while in the US. The first of these was when she was much younger, an event she no longer remembers.

7.4 The Respondent, perhaps understandably, views this as evidence of the Applicant's inability to protect this child. The evidence of chastisement or punishments, if true, is evidence of inappropriately harsh corrective measures. The Court, for the purposes of a grave risk defence, must consider whether the allegations, if true, justify a decision not to return the child. Again, it must be noted that the allegations are denied. It must be emphasised that this Court has not had the opportunity to hear the parties and to assess their evidence after it had been tested by cross-examination, so this exercise is not one in which the issues of fact can be decided definitively. Nonetheless, the Court can assess if such allegations would, if true, amount to sufficient evidence of a risk so grave as to justify an order not to return U.

7.5 Dealing with each allegation in turn: The Respondent refers to specific complaints such as U being beaten with a belt and says that while she has not exhibited messages, there are voice messages to support this averment. The only material on which the Court can act is evidence. In a case such as this, and even where a Respondent appears in person, it is important to note that no such message has been produced and, in such case, it must be clear that a voice message could be a powerful support for her argument. There is no other support.

7.6 The allegations by the Respondent of the Applicant's alleged misconduct towards the child are not referred to by the child. She does not mention this aspect of the case in her interview with the independent assessor, nor is it set out in text messages to her cousin, the Applicant's daughter with whom she appears to have a good relationship. On the contrary, in messages to her cousin, the child refers to the Respondent as being greedy and telling lies. The Court will not determine whether or not the basis for these messages was true, and it is clear that there are arguments about money between the parties, but the spontaneous messages between the child U and the adult daughter of the Applicant are friendly in tone and unlikely to have been written, in this Court's view, for a third party or any audience. The messages also provide evidence of a familial relationship with

that cousin and strong social and emotional ties with the country of habitual residence, America, as opposed to the requested country, Ireland.

7.7 Even if the allegations of punishment were true, it seems from the established case law that such allegations should be managed by the courts in the country of habitual residence rather than by the unilateral action of a relative, no matter how well-intentioned. To remove the child from the legal guardian or to retain her without consent and in opposition to the guardian's wishes, is a serious step and one which must have legal repercussions. While this Respondent may deplore aspects of the Applicant's care of the child and may consider herself to be the better friend to, and guardian of, the child in terms of her immediate care, the fact remains that she has no legal right to take the child if her guardian wishes to keep her.

7.8 This can best be understood by contrasting this case with one in which the Respondent sees a neighbour's child being mistreated. As she will readily understand, there is no country in the world in which the law permits a person to simply take the child home in order to provide her with better care. While one might wish to do so, the security of all children demands a swift and consistent remedy from the courts, usually an order that they be returned home if they are removed from the care of their parent or guardian. This applies even when the guardian in question has not provided consistent care. While in individual cases the parent or guardian may be far from perfect, strong social support for the legal guardian in such a situation creates and maintains a powerful disincentive against removing children from their homes. This is the important social value being upheld by the relevant domestic laws and international treaties. In order to better serve children, the support sought for those whose care is inadequate is the social welfare system in their country of habitual residence. In such a state-supported system, the child and the family receive the support they need from trained professionals. This extends even to situations in which violence is used in the home. The level and effect of alleged violence on the child herself must be severe and such as cannot be mitigated by the actions of the social welfare system in America before it would justify a decision not to return the child. That is not the case here.

7.9 The evidence of an historic assault, alleged to have taken place when the child was 8 years old, is not sufficient evidence of neglect on the part of the Applicant such as would constitute a grave risk to the child. The evidence is that the child was brought to hospital by the Applicant but not to the police. While again, the Respondent's concern may be understandable, the fact remains that an historic act of abuse (even if proven and this child herself does not recall such an act) is rarely the fault of the parent or guardian unless, for instance, they are present and do nothing to prevent it. There is no such evidence here. Further, it was appropriate to bring the child to hospital, and that was done.

7.10 More recent allegations of third-party assault are somewhat more disturbing, comprising as they do a series of allegedly inappropriate assaults on the part of a lodger, who stayed with the Applicant. Again, taking the allegation at its height, that lodger is no longer in

the home and there is no cause to fear any risk to the child from that quarter. However, the Court must comment on the level of evidence in that regard: Mr. Van Aswegen, the independent assessor whose reports are invariably couched in neutral language, concludes at page 9 of his report that it is unlikely that these objections (referring to the child's rehearsal of why she refused to return to America) were objectively formed and that it is likely that adult influence is present. Finally, despite her description of events as being a serious assault, this Respondent has done no more than the Applicant to report the allegation. Indeed, given that the Applicant has now challenged the lodger in question and, despite denials, ejected him from the home, it seems she has done as much as could be expected of her without a specific complaint from U herself.

7.11 The Court finds as a fact that the Respondent has not proven that to return the child to America would be to put her at grave risk.

8. The Views of the Child

8.1 If the child objects to being returned and is of sufficient maturity that the Court should consider her views, the Court retains a discretion as to whether or not to return the child. The Court considers the messages between A, the Applicant's daughter, and U, who have known each other since they shared a home in Maryland, to be one of the best sources of information as to the views of this child. In what the Court views as an important exchange, U suggests that she dislikes a number of aspects of living in Ireland. She find it "*boring*" as there is "*no mall or nice shops*". She states at times she feels intimidated by the Respondent, giving the example "*when mom calls and I say something she doesn't like when she call ends she shouts at me and she says sometimes moms mad in the head*." In particular, this occurred, she tells A, when she told the Respondent that she missed America. She adds:

> *"Then she never gives me right to speak she always say U doesn't want America*
>
> *She never really set down and asked me"*
>
> And eventually: "*I can see now. So greedy holding me like a prisoner for 2 years. No am coming home now."*

8.2 She goes on to comment in relation to pocket money and how it is very small and sends a picture of a bucket in a bathtub which she complains they have to use because the shower doesn't work, she says she can't wait to leave this place. What appears from this exchange between the girls, by the use of emojis and tone, is that they are close and speaking frankly to each other. U clearly indicates that she wants to return to Maryland.

8.3 The Respondent says that U was made to kneel for punishment and was beaten daily and this claim is repeated by U, in almost identical words, in the report to the independent assessor in the case. He has commented that there has been influence by an adult on this child in terms of her stated views as to where she might live. He too ties this impression to the exchange between A and U, including her references in that exchange to the Respondent shouting at her if she says she misses America. Having interviewed

and assessed her, the assessor was not persuaded that her view as to where she should live was independently formed. The messages between U and her cousin positively refute the stated view that she objected to returning to America. She refers to America as "home" throughout.

8.4 For these reasons, and despite the ostensible objections of the child who is sufficiently mature to have her objections considered, the Court is satisfied that this is not an appropriate case to exercise the discretion to refuse to return a child to her legal guardian in her habitual residence. This is not only because of the conflict between the stated views and those set out in contemporaneous texts, which reduces the weight of the stated objections considerably, but also because of the overarching objectives of the Convention and the unusual facts of the case in that this Respondent has no lawful rights of custody in respect of this child.

9. Is the Child Settled in her new Environment?

9.1 The final question for the Court is whether or not the child has become so settled in Ireland that it would not be right to move her to another country. This concept was considered in *Re N (Minors)(Abduction)* [1991] 1 FLR 413 where Bracewell J. commented, at p. 417/418:

> *"… what is the degree of settlement which has to be demonstrated? … more than mere adjustment to surroundings. I find that word should be given its ordinary natural meaning, and that the word 'settled' in this context has two constituents. First, it involves a physical element of relating to, being established in, a community and an environment. Secondly, I find that it has an emotional constituent denoting security and stability."*

9.2 The Court went on to confirm that a finding of settlement gave a court a discretion as to return and endorsed a description of the term as one importing stability when looking at the future, and encompassing place, home, school, people, friends, activities and opportunities.

9.3 This child's stay in Ireland appeared always to be temporary. Counsel asked, by way of rhetorical question, how stable can her presence be when she is not a citizen and has no right to reside here? While there is evidence of her enjoying school here and having friends in Ireland, none are named. Other activities are also mentioned but equally there were school friends and activities available to her in the US. The child did not mention any particular relationship in Ireland which would suggest a strong tie here such as compares with that she appears to enjoy with A, the Applicant's daughter, for instance.

9.4 While the argument is made that the Respondent enrolled the child in school by subterfuge, it is unnecessary to consider this argument. The findings of fact of this Court are that the child was wrongfully retained and that her stated views are not sufficiently reliable to justify an exercise of the discretion to refuse to return her, given the contradictory views seen in her messages with A. The defences of consent, acquiescence and grave risk are insufficiently supported by the evidence offered by the Respondent.

Looking at all of the evidence in the case, there is insufficient evidence to find as a matter of probability that U is so well settled in Ireland that she should not be returned to her guardian in Maryland.

9.5 Finally, it is important to note that there has been some wrangling amongst the parties as to what financial support was available for U. This has played a minor part in the Court's considerations. It has also been the subject of comment by the assessor that the child's interests have not been best served by a decision to move her to the country of her birth rather than to help her to deal with the grief caused by the death of her mother. The school system in Maryland will be well equipped to help a child in her situation and the Court must, as a matter of law, return her to the country of her habitual residence where her guardian will note the matters set out in the assessor's report.

10. Conclusion

10.1 This is not a family law case in which the Court can hear evidence and make decisions based on welfare grounds alone. While the best interests of the children are always of paramount importance, in the context of what might be termed the usual child abduction cases, the Court must be vigilant to ensure that both parents have a meaningful relationship with their children. Here, the parents are no longer the legal guardians, though of course it may still be important to vindicate the rights of those who have been caring for a child, for the child's own benefit. The importance of securing legal rights and giving effect to international agreements in matters pertaining to the custody of children remains vitally important for the security of all children, worldwide, in this modern age of global communication and travel. It is this policy which is the more important on the facts of this case. While the case has been decided on affidavit only, there is also strong support for the conclusions which this Court has reached that the child will not be at risk in the United States and that she should be returned to her family there who want her back and will care for her appropriately, with the help of the relevant social welfare and school services there.