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[16/08/1999; High Court (England); First Instance]
Re M. and J. (Abduction) (International Judicial Collaboration) [1999] 3 FCR 721

IN THE HIGH COURT OF JUSTICE

CA 86 of 1999

FAMILY DIVISION

PRINCIPAL REGISTRY

IN THE MATTER OF THE

CHILD ABDUCTION AND CUSTODY ACT 1885

AND

IN THE MATTER OF THE SUPREME COURT ACT 1981

Re M and J

(Abduction: International Judicial Collaboration)

THIS IS THE JUDGMENT OF MR JUSTICE SINGER IN THIS CASE IN THE FORM IN WHICH IT WAS HANDED DOWN IN OPEN COURT ON 16 AUGUST 1999. IT CONSISTS OF 17 PAGES (INCLUDING THIS PAGE) AND HAS BEEN SIGNED BY THE JUDGE.

THE JUDGMENT HAS BEEN HANDED DOWN IN OPEN COURT ON THE STRICT UNDERSTANDING THAT IN ANY REPORT NO PERSONS (OTHER THAN THOSE IDENTIFIED IN THE JUDGMENT ITSELF AND SOLICITORS AND COUNSEL APPEARING FOR THE PARTIES) SHALL BE IDENTIFIED BY NAME OR LOCATION AND IN PARTICULAR THAT THE ANONYMITY OF THE CHILDREN AND THEIR FAMILY MUST BE STRICTLY PRESERVED.

THE JUDGE HEREBY DIRECTS THAT NO TRANSCRIPT OF THE JUDGMENT SHALL BE TAKEN AND THAT THIS VERSION SHALL BE TREATED AS AUTHENTIC.

Signed: /S/ Peter Singer

Dated: 16 Aug 1999

The issue in this case has been whether I should order the return to the United States of America (and in practice to California) of two children whom I will call M and J. The course which the proceedings have taken has been unusual but constructive, and indeed I hope

instructive. It is for that reason that I am after the conclusion of these proceedings handing down this judgment in open court, upon the basis that any publication of it shall preserve the anonymity of the parties and of their respective addresses.

M will be eight in October, and J will be two in September, and both are boys. Their parents (whom I will call H and W) are both aged 28, and are the two defendants to the Originating Summons. The boys have lived with them in England since 2 January 1999 when W brought them here from the home of their maternal great grandmother (GGM) in California. GGM is 77, and she is the plaintiff in these proceedings. As the action for the children's return is primarily brought in reliance upon the Hague Convention on the Civil Aspects of International Child Abduction, as incorporated into English law by the Child Abduction and Custody Act 1985, the children are not themselves separately represented in these proceedings. I did however during the course of the proceedings invite the Official Solicitor to carry out investigations into the domestic situation of the family in England, and received a helpful report to which I shall refer in due course.

The children were brought here by W without any advance notice to GGM, who thus had not any opportunity whether to agree or to object. Prior to that removal they had each lived the whole of their life in America, the country of their birth and habitual residence.

GGM instituted these proceedings on 1 April 1999. Her solicitors and counsel were initially instructed on her behalf by the Child Abduction Unit of the Official Solicitor's Department acting as the Central Authority for the purpose of Hague Convention proceedings, pursuant to a request from their United States counterpart.

The return of both children was sought pursuant to article 12 of the Hague Convention. Alternatively, GGM invited the court to invoke its inherent jurisdiction to order the children's return.

The issues of law and fact which arose in the case, as it initially presented when it first came before me on 14 June 1999 can be summarised as follows:

1. Did GGM have "rights of custody" in the sense to be attributed to articles 3 and 5 of the Hague Convention which (in relation to either or both of the children) she was exercising at the time of removal or but for that removal would have exercised?

2. If "yes" in relation to either child, have the parents under article 13 established any basis upon which this court is not bound to order the return forthwith of that child as article 12 otherwise requires?

3. If in relation to either child article 13 circumstances are established, should I exercise the discretion thereupon arising for or against an order for return?

4. If I were to find (as in the special circumstances of this case I could) that M's removal did breach the Convention and was wrongful in terms of article 3, but J's was not, what if any order should I make under the inherent jurisdiction in relation to J? And how would his distinct status in those circumstances impact upon M's situation?

The chronology can be summarised as follows. None of W's family has any connection with England. She was brought up in California. There in her teens she met H. He was born in the town in England where they now reside, and lived in England until aged 13. Then with his mother and at least some of his siblings he moved to California. Until September 1998 there was his home.

M was born to the parents in October 1991. For some months after his birth he and W lived in GGM's home. At some point in the first six months of 1992 both parents and M set up their own separate home. Family life was disrupted for the first but unfortunately far from the last time when in December 1992 H was arrested for dealing in amphetamines. W thereupon left H and moved with M to live with her own mother (MGM).

From his subsequent conviction for that drug offense in May 1993 until his release in July 1994 H was in prison. He then went to live with W and M at the home of MGM.

The parents married in August 1994. In early 1995 the family moved to their own apartment but in April of that year H was for the second time convicted of a drug offense and imprisoned. The nine months or so between these two first imprisonments represents the longest period hitherto during which M has lived with both his parents.

In May 1995 W relinquished the day-to-day care of M to GGM, in whose home he lived continuously from then until his removal to England in January this year. In September 1995 GGM (jointly with MGM) instituted proceedings in the Los Angeles Superior Court, seeking appointment as co-guardians of M. In due course such an order was made without opposition from the parents. The effect (in terms of Children Act concepts) is to substitute the guardians for the parents as those with parental responsibility for M.

The extent to which W and (during his periods at liberty) H thereafter have had contact with M is a matter of some dispute, not relevant for present purposes, as are the details of W's manner of life and movements. H was released from prison on parole in October 1996, and resumed cohabitation with W in December 1996. But in March 1997 he was convicted of an offense of dishonesty which led to his return to prison for a further spell until mid-October 1997.

He was therefore not living with W during the greater part of her pregnancy with and at the time of the birth on 28 September 1997 of J. And in May 1998, when their younger child was only eight months old H was again arrested and imprisoned for a drug-related offense. W herself thereafter (on her evidence for the first time and uniquely) became involved in selling drugs. She was arrested for that on 1 June 1998, and as a direct result of that and her consequent remand in custody J, still just eight months old, went to live with GGM and his brother.

In September 1998 H was deported from the United States of America and his resident alien status revoked, Unless upon a discretionary compassionate basis to allow him to participate in proceedings relating to the children in Los Angeles he is unlikely for many years to be permitted to enter the United States of America. He came to live in England, initially at the home of his father.

Towards the end of November 1998 W was released from prison upon probation and subject to certain conditions. She moved into the home of GGM and lived there with her two sons. The extent to which she assumed responsibility for their day-to-day care is in dispute, but clearly on any view her acquaintance with the children resumed and strengthened.

Then on 2 January 1999 as a result of unilateral and undisclosed decisions taken by her with H she removed both boys from GGM's home and brought them to England. By then H had obtained separate accommodation, and since then the family has been re-housed in what would have been expected to be secure and suitable accommodation for the family. On his account, H has been in employment since shortly after his return to this country. The family's financial circumstances are adequate if modest. The parents maintain their firm

intention to put their criminality behind them and to turn over a new leaf There is no evidence to suggest that thus far they have failed in that intention.

When the case opened before me it bristled with apparent points of law, and some of fact. These latter primarily related to the strength and underlying thrust of what were said to be M's objections to return to the United States of America, and the question what account if any should be accorded to them under article 13, having regard to his age of less than eight and his degree of maturity which may well be greater than his chronological age would suggest. As to this I read the report and heard the oral evidence of Dr Dennehy, a very experienced consultant child psychiatrist. In accordance with established practice I heard no oral evidence from either parent, notwithstanding their availability, nor of course from GGM.

It is unnecessary for me for present purposes to trace the submissions and arguments deployed on either side to meet the obvious factor that although GGM and MGM (who at that stage played no part in the proceedings) were legally-constituted guardians of M, GGM's claim for J's return was based only upon the fact of his residence with her from June 1998 onwards. From the outset, however, it was made plain to me on behalf of W that if M's return was ordered she would accompany him to Los Angeles and would take J with her, of necessity leaving H behind. Once there she would hope to be in a position to make application to the Superior Court for whatever orders would in that court's jurisdiction be necessary to enable and permit her and both children to return to England and to resume life here and with H.

On W's behalf it was strongly urged that the circumstances which the children would face upon such a return gave rise to grave risk that they would be exposed to physical or psychological harm or otherwise placed in an intolerable situation, in terms of article 13(b) of the Convention, and that I should exercise the discretion thus evoked and rule against return.

In the light of a host of English authorities it would be a difficult task to establish this defence in relation to M, whose status as a child susceptible to return under the principles of the Convention could scarcely be in doubt. For present purposes I need perhaps only refer to two cases in the Court of Appeal, both decided this year and both called Re C. In the first of these, reported at [1999} 1 FLR 1145 as Re C (Abduction: Grave Risk of Psychological Harm), Ward LJ at 1154A referred to:

an established line of authority that the court should require clear and compelling evidence of the grave risk of harm or other intolerability which must be measured as substantial, not trivial, and of a severity which is much more than is inherent in the inevitable disruption, uncertainty and anxiety which follows an unwelcome return to the jurisdiction of the court of habitual residence.

In that case, as here, the effect of an order for return would be to split the family, as the mother's husband was unable to accompany her and the child in question. Upon this Ward LJ observed (at 1156) that:

They left the USA knowing full well that the stepfather was likely to be refused re entry. They should not have embarked on a "Xmas visit" from which the family could not return intact. By their own actions they created the adverse conditions upon which they now seek to rely.

Return was ordered in that case, notwithstanding that potential fragmentation of the family.

In the second Re C, as yet not fully reported, Butler-Sloss LJ referred to the situation created by the mother in that case as a "self-induced dilemma". The fact that the nature of the dilemma in the circumstances of that case was distinct from that which this mother faces is less significant than that both are self-created. In his concurring judgment Thorpe LJ (at page 18 of the transcript) illuminatingly observed as follows:

In many cases a balanced analysis of the assertion that an order for return would expose the child to the risk of grave psychological harm leads to the conclusion that the respondent is in reality relying upon her own wrongdoing in order to build up the statutory defence. In testing the validity of an article 13(b) defence trial judges should usefully ask themselves what were the intolerable features of the child's family life immediately prior to the wrongful abduction? If the answer be scant or non-existent then the circumstances in which an article 13(b) defence would be upheld are difficult to hypothesise. In my opinion article 13 (b) is given its proper construction if ordinarily confined to meet the case where the mother's motivation for flight is to remove the child from a family situation that is damaging the child's development. Of course the judges of the Family Division have a highly trained instinct to protect children from the risk of harm. They meet the need and the opportunity for child protection daily, not only in public law proceedings but equally in private law proceedings. But that prime responsibility in the conduct of Children Act proceedings does not extend to the very special field of child abduction. In that field the prime responsibility is to ensure the early return of the abducted child.

A factor in W's case against return was that as a result of the infractions of probation committed not least by her absconscion she would be arrested upon reaching California. The prospect of arrest of the abducting parent upon return should not of itself signify an article 13(b) defence: see Re L (Abduction: Pending Criminal Proceedings) [1999] 1 FLR 433. In this case, however, that prospect seemed particularly poignant given what I was told might be the significant length of W's imprisonment, and her inability meanwhile effectively to initiate proceedings designed to test whether the children's welfare was better met by living with GGM in California, or with their parents in England.

The judicial instinct to protect children from risk of harm goes hand in hand with the desire to secure for them, if practicable, the selection of the potentially more beneficial upbringing. As an underlying objective of the Hague Convention is to ensure that welfare issues concerning children are decided by the courts of the country of their habitual residence rather than by the foreign court of a country to which they have been wrongfully removed, then it could be argued to be a rather perverse pursuit of principle to enforce return in circumstances where the admittedly wrongdoing parent could not in practice put the welfare issue to the test because of her own long-term incarceration. This is however precisely the sort of bullet upon which first instance judges must steel themselves to bite if we are to comply with the requirements of this highly-regarded and effective international Convention which, in a case such as this, can be said to transcend the otherwise pervasive principle that the child's welfare is the court's paramount consideration. Such is precisely the point emphasised by Thorpe LJ in the passage just cited.

By the time when submissions before me were drawing to a close it was established that a bench warrant had been issued for W's arrest upon her return to California, and that this would lead to her appearance before a judge who would decide whether to revoke her probation. It appeared that her probation officer was minded to recommend that that indeed should be the consequence of her breach, and that she should serve the balance of her original prison sentence.

The parties had been in some discussion concerning the children's circumstances in the event of theft return. It appeared to be agreed that the parties would be prepared to accept terms that amongst other matters (but from the point of the children most significantly) would allow for the children to remain with W upon arrival in California until such time as a court in that jurisdiction was in a position to regulate their lives in proceedings in which all the adults would have an opportunity of making representations. The parties seemed at that stage prepared to give undertakings to the English court to that effect, and to record them as stipulations or conditions with the intention and effect that an American court might take appropriate note of any breach committed after the children's arrival in that jurisdiction.

So far as the giving of undertakings to the English court is concerned, it is now well - established by case - law that such undertakings should not be accepted by the court save to the extent that they regulate affairs relating to the children up to but not beyond the door of the court of the children's habitual residence. For to attempt to do otherwise or more would fall foul of the important principle that the English court in such circumstances should not make welfare decisions interfering with the discretion of the court to the jurisdiction of which the Hague Convention requires return. Similarly, it is now reasonably well - understood, at least with the Department of State in Washington (which is the Hague Convention Central Authority so far as abductions from the United Sates are concerned), that the acceptance of such undertakings by the English court should not be regarded as an interference with their courts' own appropriate jurisdiction.

But the agreement and the then - proposed undertakings that would leave the children (sensibly, as it seemed to me, from their point of view) with their mother during the three or so weeks that it was envisaged might lapse before an inter - partes hearing could be convened in California were subject to significant risk of the frustration, over which the adults had no pre-emptive control, that criminal process for breach of probation would remove W's ability to look after the children during that period. This left unmet what appeared to me to be the potentially profound and disturbing (even if perhaps temporary) anxiety and uncertainty to which W and H and M (and, albeit to a limited extent because of his limited comprehension, J) would be prey in what was in any case likely to be the disturbed and emotional process of preparing for return, making the journey, and disembarkation. It did not seem to me to be at all attractive nor in any way in the children's interest that uncertainty should reign until that point as to whether at the airport the mother might be arrested and the children then placed (as would in those circumstances appear appropriate) in the care of GGM.

In the Court of Appeal decision in Re RB (Abduction: Children's Objections) [1998] 1 FLR 422, an exceptional case which demonstrates how a combination of a Hague Convention order appropriately made and parental intransigence and intolerance can wreak havoc for and overwhelm children, Thorpe LJ suggested (at 427H) that:

it is important ... that the court systems in each jurisdiction should equally act in concert. Once the primary jurisdiction is established then mirror orders in the other and the effective use of the Convention gives the opportunity for collaborative judicial function. The Danish judge and the English judge should in any future proceedings if possible be in direct communication.

Butler - Sloss LJ echoed this, endorsing that suggestion.

In the light of the, as it then stood, best but very imprecise information available as to what would befall W upon return to America I suggested to the parties' representatives towards the conclusion of submissions that during the two day interval that other obligations

imposed before I could in any event give judgment it would do no harm and might prove helpful to facilitate enquiries and if necessary direct judicial communication to clarify this uncertainty. The parties' representatives agreed and I invoked the assistance of the Child Abduction Unit within the Official Solicitor's Department. It seemed to me that such an initiative was within the scope and intention of article 7, whereby Central Authorities are enjoined to "co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention." The Article continues, to the extent for present purposes relevant, to specify that Central Authorities "shall take all appropriate measures ... (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures" and "(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues."

In consequence, after some initial enquiries made direct by the Child Abduction Unit proved unpromising, I was put in touch by telephone one evening with Judge Gary Ferrari, a Supervising Judge exercising criminal jurisdiction in the Superior Court of California for the County of Los Angeles. In anticipation of our conversation he had familiarised himself with W's file and had arranged for the District Attorney to be in attendance and to hear our discussion. He it was who had issued the warrant, not backed for bail, for W's arrest. To him I outlined the family history, the nature of the Hague Convention proceedings, the likelihood that the result would be the return of W with both children to California, the uncertainties that there awaited her in the light of her breaches of his court's orders, and my hope that ultimately the issues of where and with whom the children should live might be effectively dealt with by one of his colleagues.

Judge Ferrari extremely sensitively indicated that he would not in any way wish to see frustrated, impeded or delayed the investigation in the appropriate Californian court of the welfare issues which would arise if the parents sought to vary or discharge the guardianship order in favour of GGM and MGM in relation to M, with a view (if successful) to the children's return to England to re-establish family life with their father. With the assent of the District Attorney be was able there and then to assure me that he would recall and quash the warrant; reinstate W's probation; minute our discussion upon his court's record; and take no further action (in the event of W's return to California) until the issues relating to the children had been resolved. The following day he made an order reflecting precisely that, and faxed me a copy. It follows that he could not have been more helpful.

In addition he put me into direct contact with Judge Paul Gutman, the Supervising Judge of the Family Law Department of the Los Angeles Superior Court. Before I spoke to Judge Gutman the following evening I circulated the parties with an account of the discussion I had held with Judge Ferrari and its outcome and (when available) with a copy of his order. I then initiated a three-way telephone conversation between myself and counsel, Mr Marcus Scott-Manderson for the mother and Mr Richard Harrison for GGM. With me they agreed that I should discuss with Judge Gutman whether arrangements could be for a swift inter-partes hearing after the return of W and children to California, and what if any orders he might be prepared to make in advance of that return to regulate the position of the children pending such hearing and to secure that they would be separated neither from each other nor from their mother, if he considered that appropriate.

Judge Gutman and I on the first occasion spoke at some length about the case. I gave him what I hope was a dispassionate account of the circumstances which had led to the hearing before me, and of the potential practical outcomes as they appeared to me to be. I explained my desire to enable his court, the court of their habitual residence, to deal with the children's future welfare, and how that might have been frustrated if their mother were

incarcerated. I emphasised how concerned I was not to appear to be interfering in matters within his jurisdiction.

The essential outcome of our discussions was that Judge Gutman would do what he could to ensure that any child custody proceedings instituted in California would be given such degree of priority as was consistent with a proper investigation of the issues raised. He and I were in entire agreement that all parties and the children needed to know the eventual outcome with the least delay; and in particular that if that outcome were to be that mother and children should return to England then the sooner that could be achieved the least damaging would have been the combined effect of their original removal from GGM's home and the Hague proceedings. Conversely, of course, if the children's future proved to be that they should remain with GGM, then that too should be resolved as soon as possible after any return to California. Judge Gutman also indicated that he was happy with and supportive of undertakings expressed also as stipulations that would regulate the immediate interim position upon the children's return, namely that (as the parties at that stage seemed to agree) both children should remain in W's care notwithstanding the guardianship order relating to M.

As on the previous day I circulated a summary of that discussion to the parties (and indeed to both judges in America and to the Child Abduction Unit).

I had made it plain to both counsel in the course of our discussions that I had it in mind at the resumed hearing on 18 June 1999 to adjourn rather than by judgment to dispose of the proceedings. That in the event I did, notwithstanding submissions on behalf of GGM that I should conclude the Convention case there and then. I recognise of course that the Convention and indeed domestic rules require expedition: I had article 11 of the Convention and rule 6.10 of the Family Proceedings Rules 1991 well in mind. But I also had in mind that, as in Children Act cases purposive delay can be constructive, so too in some Hague Convention cases may it also prove so to be. My reasoning was that a period of delay at this point would enable the adults more time to consider their and the children's position in the light of the very considerable simplification and clarification resulting from my discussions with colleagues of the situation which would upon their return await mother and children. I had also been given some reason to believe that a degree of communication might be restored between W and GGM. I hoped that W would appreciate (as I was told she did) the removal of the threat of immediate imprisonment even though that very relief removed a substantial plank from her article 13 defence. I hoped that GGM might be able to look beyond the battle over whether or not the children would return to America, to the true issue which would then need to be decided, namely whether or not they should thereupon return to England. It seemed to me to be not impossible that, given some time, the parties might reach if not overall then at least partial agreement. I also bore in mind the relatively recent introduction by the Court of Appeal of mediation as an option in suitable Hague Convention cases, and my knowledge that research into the scope for this in the arena of abduction cases will shortly be underway.

I therefore balanced the objective of expedition against other considerations reflected in the Convention and in the 1985 Act: article 7(c) imposing (as one of their obligations upon (admittedly) Central Authorities) a requirement to "take all appropriate measures ... (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issue"; and the power given to the court by section 5 of the Act so that it may "at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned ...".

So far as the welfare of the children was concerned, it seemed to me that there was much to be said for enabling M to conclude or at least approach the conclusion of his current school term. Judge Gutman had told me that he would in due course appreciate further reports and information concerning the family's activities since their arrival in England and clarifying their current situation. Finally, he explained to me that in his view it would be practicable for W to obtain pro bono representation in California in advance of her return so that proceedings might be commenced and perhaps timetabled in the meantime.

I therefore adjourned the case to the date when I would next be available on 12 July 1999 in London. I invited the Official Solicitor to investigate the home and social circumstances of the parents and children to the extent practicable for a report to be produced at that hearing, and authorised him (although he did not take advantage of this) to conduct any part of his enquiry via an intermediary such as the relevant Local Authority. A representative of the Official Solicitor's Department had in advance agreed that it would be appropriate for me to ask for such a report having regard to the requirement of article 7(d) that Central Authorities "either directly or through any intermediary . . . shall take all appropriate measures . . . (d) to exchange, where desirable, information relating to the social background of the child."

I communicated the outcome of that hearing by e-mail to Judge Gutman and to Judge Ferrari, and in due course faxed a copy of the order to each of them. I should add that Judge Ferrari's continuing involvement was extremely beneficial, in that as a result of a review of the criminal file he was able to dispel as "completely without merit" the suspicion emerging from one of the American court documents that W might have been involved in injuring a child.

When the case resumed before me on 12 July we had indeed moved one important step forwards, but unfortunately also one back. The parents had unreservedly agreed to withdraw their opposition to an order for both children's return. A draft consent order to that effect had been prepared, which however also incorporated undertakings concerning which agreement had not yet been established. The significant area of disagreement related to a shift in GGM's position. She and MGM, having in the interim had an opportunity to reflect, were no longer prepared to allow either child to remain in W's care upon disembarkation but wished them both to be returned to her physical custody immediately they reached California. But by now W had secured legal representation in California. Flights had provisionally been arranged for the following weekend, and thus the intervening days were available to attempt to resolve this impasse.

During that time I spoke again on more than one occasion to Judge Gutman. He was prepared to entertain representations on an inter-partes basis at short notice on any day and was, in the absence of any agreement, prepared to regulate immediate arrangements for the children on an interim basis, prior ever to their physical arrival in his jurisdiction. In the event it proved impracticable to arrange for this to happen before 28 July 1999. But, again, delay was in my view entirely beneficial. For it averted potential fracas for W and the children and upset for them and for GGM the unsatisfactory outcome of which after hot debate at the airport might have been that GGM took M under her guardianship order home with her, while W made her way with J alone to stay, as proposed, with her mother-in-law. For, in the presence of GGM and both parties' attorneys, Judge Gutman negotiated agreed undertakings and stipulations to be offered and agreed to not only by W and GGM but also by MGM. Accordingly on 30 July 1999 I made a consent order for both children's return, the order incorporating those undertakings.

I believe that the advantages for the whole family, but particularly for the children, of embarking upon this process (which admittedly took about six weeks to reach its conclusion) significantly outweigh the likely consequences of my having imposed a peremptory order in mid-June, given the uncertainties and disagreements and potential for conflict then rife. It is of course essential if such a process of judicial co-operation is to be successful, that the court should as far as possible carry the parties consensually into the discussions. It is, I suggest, important that so far as practicable full information relating to the communications between the judges be made available promptly to all participants. But it is I hope clear that in an appropriate case real advantages can be reaped when judges in different jurisdictions can communicate and collaborate.

I would wish to record my considerable appreciation for the co-operation with which Judge Gutman and Judge Ferrari entered into this collaboration. It was clear from every discussion with each of them that their prime concern was to secure the best outcome for the children at each stage. Neither of them for a moment suggested that they resented what might have been regarded as my interference in their domestic procedures. Each was clearly pleased to have the opportunity to contribute to what in the event became a negotiated result.

I must also express my gratitude for the very considerable support afforded to the court by the Official Solicitor's Department. His report prepared within the space of three weeks catalogues the visit to the home, to the parents and to the children made by his representative and the other enquiries pursued. As well as containing much factual information that may assist Judge Gutman in due course, the report highlights some areas of anxiety which it may be necessary for him to investigate and evaluate. The Official Solicitor's report concludes with an extremely helpful suggestion, in the event that the court in California is minded to permit the mother to return to England. I record it in full, as potentially of value in other cases, but also as an indication of imaginative and constructive originality. It is as follows:

If the mother returns with the children to California, and if the court there decides that the children should remain in California, that will be the end of the matter as far as this jurisdiction is concerned. It may, however, be of some help to the court in California if I say that if it was looking for some form of safeguard in the event of the mother being given permission to remove the children from California permanently to live in the United Kingdom, it would be possible to provide this under the wardship jurisdiction of the High Court in England and Wales. If an indication was given to me that on the children's return to England they should be made Wards of Court I would be happy to issue an originating summons on their behalf. I would then act as their next friend (legal representative), to monitor their placement and secure their welfare.

I would be pleased to provide a report for the High Court (which could be copied to the Superior Court in California) on the children's progress after, say, twelve months. In the event that for some reason the placement broke down, the High Court could decide whether the children's best interest would be served by their returning to California or by staying in England. The local social services department would be given the opportunity to intervene in the proceedings to protect the children. If the placement succeeded then after a suitable interval consideration could be given to the wardship proceedings being discharged.

In short, the procedures adopted in this case have enabled W to accept her and the children's involuntary return to America with far less resentment than might otherwise have affected the children; have dispelled uncertainty and anxiety as to the children's immediate circumstances upon arrival; have put in place in advance of their arrival a framework for

judicial resolution of the welfare dispute; and have provided the prospect of appropriate support for the children in the event that that decision results in their return to this jurisdiction.

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