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[12/07/2001; Family Court of Western Australia (Perth); First Instance]
Barry Eldon Matthews (Commissioner, Western Australia Police Service) v. Ziba Sabaghian
PT 1767 of 2001

FAMILY LAW ACT 1975

FAMILY COURT OF WESTERN AUSTRALIA, Perth

BEFORE: Holden CJ

HEARD: 27 June 2001

JUDGMENT: 12 July 2001

No. PT1767 of 2001

BETWEEN:

Barry Eldon Matthews

Commissioner, Western Australia Police Service

(Applicant)

- and -

Ziba Sabaghian (Hatam)

(Respondent)

REASONS FOR JUDGMENT

APPEARANCES:

Ms Bathurst of Counsel, instructed by Crown Solicitor, appeared on behalf of the Applicant.

Mr Childs of Counsel, instructed by Paterson & Dowding, appeared on behalf of the Respondent.

JUDGMENT:

1. Before the Court is an application brought in accordance with the Hague Convention on the civil aspects of international child abduction. The application is brought by the Commissioner of the Western Australia Police Service representing the Responsible Central Authority. The order sought is that a child, M, be returned to Germany. M is 13 years of age, having been born on 8 February 1988.

2. The child's father, K.S., is a resident of Germany. He was born in Iran on 9 March 1961 and is 40 years of age. The child's mother, Z.S. (H.) was also born in Iran on 27 October 1959 and she is 41 years of age. She is presently a resident of Mt Lawley in the State of Western Australia.

Short relevant history

3. The mother and father met in Pakistan as refugees. They were apparently married some time in 1987. On or about 18 September 1987 they travelled to Germany where they subsequently applied for and were granted residence. The child, M, was born on 8 February 1988 and sometime thereafter the parties separated. They were divorced according to Baha'i faith in 1991.

4. They lived separately until 16 May 1997 when they remarried. They separated again in June 2000. The following month, the mother travelled to Australia arriving in this country on 27 July 2000.

5. In December 2000, the father made application to the German and Australian Central Authorities, pursuant to regulation 13 of the Family Law (Child Abduction Convention) Regulations and on 7 March 2001 the present application was made to the Family Court of Western Australia pursuant to Regulation 14.

Relevant Regulations

6. Regulation 14 provides that in relation to a child who is removed from a Convention country to, or retained in, Australia, the Responsible Central Authority may apply to a court for an order for the return of a child to the country in which he or she habitually resided immediately resided before his or her removal or retention.

7. Regulation 3 defines the meaning of "removal" and "retention" as the removal of a child in breach of the rights of custody of a person, an institution or another body in relation to the child if, at the time of removal, those rights

(a) were actually exercised, either jointly or alone; or

(b) would have been so exercised but for the removal of the child.

8. By virtue of Regulation 4 a person has rights of custody in relation to a child if:

(a) the child was habitually resident in Australia or in a Convention country immediately before his or her removal or retention; and

(b) rights of custody in relation to the child are attributed to the person either jointly or alone, under a law in force in the Convention country in which the child habitually resided immediately before his or her removal or retention.

9. In his written submissions, counsel for the respondent concedes that the habitual residence of M prior to his arrival in Australia was Germany and that the father was exercising rights of custody prior to M departing Germany.

10. Regulation 16(1) provides inter alia that subject to sub-Regulations (2) and (3), on application under Regulation 14, a Court must make an order for the return of a child if the day on which the application was filed is less than one year after the day on which the child was removed to, or first retained in Australia. That Regulation is applicable in this case.

11. Sub-Regulation 16(2) sets out when the Court must refuse to make an order under sub-Regulation (1). It is not suggested that sub-Regulation has any application to this case.

12. Sub-Regulation (3) of Regulation 16 sets out the circumstances in which the Court may refuse to make an order under sub-Regulation (1). The mother raises the following defences to the application:

The father has subsequently acquiesced in the child being removed to, or retained in Australia

There is a grave risk that the return of the child to Germany would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; and

M objects to being returned and has an attained an age and degree of maturity at which it is appropriate to take account of his views.

The evidence

13. I am being asked to determine the application on very little evidence. I do not make that observation by way of criticisms of either the application or the respondent. I identify the papers upon which I am asked to rely as being as follows:

The application initiating proceedings

A six page affidavit of the mother sworn 5 April 2001

A one and a half page affidavit of the mother handed up in Court on 27 June 2001, without objection

What purports to be a three page affidavit of the father of 3 May 2001

A family report prepared by Keith Benn, a Family and Child Counsellor, dated 21 June 2001.

14. I am not assisted in determining the conflicting evidence of the mother and father by any independent evidence except a letter forwarded to the Attorney-General's Department by the local Spiritual Assembly of the Baha'i in Duisburgh, Germany upon which I cannot rely as it is not in the form that would make it admissible into evidence.

Acquiescence

15. The issue of "acquiescence" under the Convention was recently considered by the House of Lords In Re H (Minors) [1997] 2 WLR 563. The applicable principles were said to be as follows (at 575 – 576):

"… in my view the applicable principles are as follows: (1) For the purposes of article 13 of the Convention, the question whether the wronged parent has "acquiesced" in the removal or retention of the child depends upon his actual state of mind. As Neill L.J. said in In re S. (Minors) Abduction: Acquiescence) [1994] 1 F.L.R. 819, 838: "the court is primarily concerned, not with the question of the other parent's perception of the applicant's conduct, but with the question whether the applicant acquiesced in fact." (2) The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent. (3) The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law. (4) There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced."

16. In Commissioner, Western Australia Police v Dormann (1997) FLC 92-766, I have previously accepted the above statement as correctly identifying the principles.

17. I accept the submission of counsel for the applicant that the effect of these principles is that there are two ways in which the person opposing the return can seek to establish acquiescence within the meaning of Regulation 16(3)(a)(ii) and they are:

(a) by establishing that the other parent, as a matter of subjective intention, in fact acquiesced in the removal or retention; and

(b) by establishing that the other parent's words or actions, as a matter of objective consideration, clearly and unequivocally showed, and in fact led the other parent to believe, that he was neither asserting nor going to assert his right to seek the return of the child and that is words or actions were inconsistent with such return.

18. In other words, the person opposing return can seek to establish actual or constructive acquiescence. The onus is upon the mother to establish that the father acquiesced in the child remaining in Australia.

19. The entirety of the evidence upon which the mother relies to establish acquiescence is contained in paragraphs 29 and 30 of her affidavit sworn 5 April 2001 which read as follows:

"29. K. telephones approximately once each week. At one point he indicated that he was happy for M. and I to remain in Australia. At a later point he threatened that he would force me to return to Germany and that he would see to it that I go to prison.

30. I understand that K. recently communicated to the father of a friend of M., who resides in Perth, that he will allow M. and I to stay in Australia and that he will withdraw his application."

20. From an evidentiary point of view, paragraph 30 is of little assistance.

21. Paragraph 29 is, if accepted as being the truth, at best equivocal. In any event, the fact of the matter is that the father in his affidavit said:

"I never told anyone that I will allow M to stay in Australia and that I withdraw my application. That wouldn't make any sense, because I love my son and want to share my life with him."

22. In my view, a mere assertion unsupported by any other evidence in proceedings of this nature, keeping in mind the purpose of the Convention, are not sufficient to discharge the burden of proof that rests with the Mother to show that words or actions of the father clearly and unequivocally show that he has acquiesced. The fact that the husband has invoked the Convention and has persisted with the application would tend to indicate to the contrary. I am not satisfied that the mother has made out that the father has, either subjectively or constructively, acquiesced.

The Child Objects

23. Although this defence does not appear under a separate heading in the written submissions of counsel for the mother, it is clear that sub-Regulation 16(3)(c) is being relied upon from a reading of paragraphs 30 – 42 of those submissions.

24. The relevant time for consideration of a child's objection to being returned is the time of the hearing of the application brought by the Central Authority (see Agee and Agee (2000) FLC 93-055). The meaning of the word "objects" was considered by the High Court in De L v Director General, NSW Department of Community Services (1996) FLC 92-674. At 83,453 the majority (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ stated:

"… there is no particular reason why Reg. 16(3)(c) should be construed by any strict or narrow reading of a phrase expressed in broad English terms, such as 'the child objects to being returned'. The term is 'objects'. No form of words has been employed which would supply, as a relevant criterion, the expression of a wish or preference or vehement opposition. No 'additional gloss' is to be supplied."

25. For reasons that are not particularly relevant here, De L (supra) found its way back again to the Full Court. See De Lewinski v Department of Community Services(Full Court) (No. 2) (1997) FLC 92-737. The second Full Court had this to say:

"It is clear that the objection must be an objection to being returned to the country of the children's habitual residence, here the United States of America, not to living with a particular parent, here the husband. However, as was pointed out by Balcombe LJ. in Re R (Child Abduction: Acquiescence) (1995) 1 FLR 716, there may be cases "where the two factors are so inevitably and inextricably linked that they cannot be separated." We are of the view that this is such a case.

We would not suggest that children must articulate that they object to being returned to the country of their habitual residence for the purpose of enabling the courts of that country to resolve the merits of any dispute as to where and with whom they should live in order to come within the provisions of

reg.16(3)(c). That is not the language of children and the Court should not expect them to formulate and articulate their objection, if they had objected in the relevant sense, in that manner. The Court must have regard to the whole of the evidence and determine, no matter how the children articulate their views, whether the children object in the relevant sense. In our view, this was the approach adopted in cases such as Director-General, Department of Community Services v. Crowe (supra), Abraham and Abraham (supra) and Urness v. Minto (supra).” (at 83,939).

26. Furthermore, the second Full Court approved the following statement by Nicholson CJ in De L (Full Court) (No. 1) (1996) FLC 92-674:

“…a Court should not expect children to necessarily express their views within adult formulations. While courts may appreciate notions of forum, comity and jurisdiction, and that an objection to meet the terms of Regulation 16(3)(c) must as a matter of law be with respect to the place of habitual residence rather than the person with rights of custody, this is not the stuff of children’s concepts nor should it be expected that children should speak in such terms unless rehearsed.” (at 83,016).

27. When the Full Court reconsidered De Lewinski in De L (Full Court) (No. 2), it made reference to Director General, Department of Community Services v Crowe (1996) FLC 92-717 at 83,937. The Court had this to say:

“…In that case, the Full Court clearly purported to follow the decision of the High Court in De L v Director-General, New South Wales Department of Community Services & Anor (supra), as did the trial Judge in this case. In so doing, that Full Court concluded that the relevant objection was an objection to the return which would be otherwise ordered, that is an immediate return to the country of habitual residence so that the courts of that country could resolve the merits of any dispute as to where and with whom the child should live.

It was submitted, however, that Director-General, Department of Community Services v Crowe (supra), at least in relation to the reg 16(3)(c) defence, was wrongly decided because the Full Court there overlooked the following observation of their Honours in the High Court at FLC page 83,452; FamLR page 398:-

‘As we have indicated, the Convention itself contains a compromise, reflected in the terms of the Regulations, by which certain exceptions are allowed to the general principle that an abducted child be returned forthwith to the State of the child’s habitual residence.’

And further, because it misunderstood the principle enunciated by Balcombe LJ to which their Honours in the High Court referred. It was put that the statement of principle was ‘the return to which the child objects is that which would otherwise be ordered under Article 12, namely an immediate return to the country from which it was wrongfully removed’ and that the words appearing thereafter, namely, ‘so that the courts of that country may resolve the merits of any dispute as to where and with whom it should live’ form no part of the statement of principle but merely constitute a commentary on it.

In further support of the submission, we were referred to passages contained in Urness v Minto (1994) SLT 988 and Abraham and Abraham (unreported decision of Judge Inglis QC delivered on 9 September 1996 in the Family Court of New Zealand).” (at 83,937) (emphasis added)

28. Subsequently, in Agee and Agee (2000) FLC 93-055 the Court had this to say at 87,905:

In the result however, the learned Judges were not satisfied that the decision of the Full Court in Director-General Department of Community Services v Crowe (supra) was wrong, nor was there sufficient doubt as to the correctness of that decision to warrant a re-examination of the relevant issue by that Full Court.

Whilst this issue was not argued before us, we are nonetheless constrained to say that the arguments apparently advanced in De L (Full Court) (No. 2) concerning the correctness of the decision in Crowe appear, on the face of them to have merit. It is strongly arguable that the words “… so that the courts of that country may resolve the merits of any dispute as to where and with whom the child should

live" form no part of the statement of principle, but merely constitute a commentary on it. Given what the High Court had to say in De L (High Court) No. 1, the wording of reg 16(3)(c) should be accorded its natural and ordinary literal meaning. That is, that the child "… objects to being returned" (in this case to New Zealand) qualified however, with a consideration as to whether the child has "… attained an age and degree of maturity at which it is appropriate to take account" of that child's views."

29. In arriving at a resolution of this matter. I must give weight to the objects of the Convention. In the recent decision of DP v Commonwealth Central Authority [2001] HCA 39, Kirby J summarised those objects as including:

(i) To discourage international child abduction and retention with its negative impact on children;

(ii) To make it clear to those who might be tempted to engage in this conduct, so as to secure a chosen forum for the resolution of custody disputes, that their attempt will ordinarily fail;

(iii) To institute effective means that will ensure the prompt return of children removed or retained in this way by the observance on the part of the authorities of the country to which the child has been removed (or in which it is retained) of the measure of restraint in what would otherwise be the right or duty of such authorities to investigate painstakingly the facts of each individual case in order to assess the best interests of the child and to determine custody.

30. His Honour observed (at paragraphs 127 and 128):

"Consistent with this general approach and consonant with the language of the Regulations (and of the Convention), it is proper to regard their objective as including that of normally restoring the child, and the other parties concerned, to the status quo that existed before the international removal or retention in question. Specifically, it is ordinarily to require that the authorities (courts or tribunals as the case may be) in the country of the child's habitual residence should resolve the merits of disputes over custody and, in that context, decide the best interests of the child.

It is in this sense that provisions such as those in the Regulations are properly to be classified not, as such, as laws searching the for the best interests of the child but rather as laws for selecting the forum where that search is to be undertaken and concluded. It is easy enough to slip back into a factual enquiry into the child's best interests, but having for centuries been the duty of common law courts of disposing of analogous cases. But such a tendency must be resisted for otherwise the attainment of the main point of the Regulations and the Convention will be frustrated."

31. I now turn to consider whether the child objects based on the contents of the report of the Family and Child Counsellor dated 21 June 2001. The report states as follows:

"M. objects to being returned to Germany. He would prefer to remain living in Australia with his mother. He states he feels settled in Australia and settled in his school life.

M.'s main reason for not returning to Germany is based on his attachment to his mother. He prefers to remain living with his mother and does not wish to live with his father.

M. stated that should he have to return to Germany he would choose not to live with his father but would stay with the parents of his best friend, whose family name is M.R. M. was asked how he would feel if he was to return to Germany in the company of his mother. He believes that his mother would not return as he fears that she will be imprisoned for removing him from Germany. In the event that his mother was to return to Germany, M. stated that he would remain in Australia with family members.

Other objections that M. offered were comparisons between the weather in Perth Western Australia and Duisberg Germany, that he had family members here; he had better friends here; he preferred the schools and he enjoyed Perth."

32. However, further into the report the family and child counsellor reported:

"M. said it was not a choice between Australia and Germany, it was a choice between living with his father or living with his mother. He prefers to live with his mother."

33. The Counsellor further reports:

"He told me on a number of occasions that it is not the country he objects returning to, rather he prefers remaining with his mother. He says the worst decision would be that he be returned. He states he would be determined to return to Australia to live with his mother. He stated to me that he did not wish to live permanently with his father."

34. It is reasonably clear to me that M.'s main objection is not to being returned to the country of his habitual residence, namely Germany, but rather to being separated from his mother and/or living with his father. To hold this to be a valid objection within the meaning of the relevant Regulation would be to ignore what the Full Court had to say in De Lewinski v. Department of Community Services (Full Court) (No. 2) (supra). The exception would be if the objection to being returned to Germany was inextricably linked to the objection not to live with the father. In my view, that link does not exist in this case. Subject to satisfactory arrangements being made, a matter to which I shall refer later, it is open to the mother to return to Germany with the child. She gives as her reason for not returning:

"I am fearful of the father and do not know the consequences I must face if I were to return. The father has threatened to have me imprisoned if I return."

35. In her first affidavit filed 6 April 2001, she complained of her husband's violence towards her. Nowhere in that affidavit does she allege that she was subjected to violence during the current or previous separation. Any suggestion that such violence would occur now that the parties are separated inconsistent with her invitation to her husband to travel to Australia with her. 37. Counsel for the respondent asserts that to accede to the Father's application and that of the Central Authority will be to ignore the clearly expressed, well thought out and reasoned views of a 13½ year old child. I accept that may be the case. Unenviable though it may be, my view is that the Regulations and the authorities interpreting those Regulations leave no room for me to decline to order the return of M. because he has a preference for one parent over another.

38. In any event, in my view, I must be on guard against the possibility of those views being manipulated by the respondent. Unfortunately, the Family and Child counsellor was not asked to investigate this aspect of the matter and I have no evidence to assist me in this regard one way or the other.

Grave risk or intolerable situation

39. There are two aspects to be considered. The first is that the respondent's case, as I understand it, is that she will not return to Germany, that M. will not live with his father and that will create an intolerable situation. It is not necessary for me to repeat my comments as to the wife's reasons for not returning.

40. I am attracted by the words of Butler-Sloss LJ in C v C [1989] 1 WLR 654 where she said at 661:

"The grave risk of harm arises not from the return of the child, but the refusal of the mother to accompany him. The Convention does not require the court in this country to consider the welfare of the child as paramount, but only to be satisfied as to the grave risk of harm. I am not satisfied that the child would be placed in an intolerable situation, if the mother refused to go back. In weighing up the various factors, I must place in the balance and as of the greatest importance the effect of the court refusing the application under the Convention because of the rfgusla of the mother to return for her own reasons, not for the sake of the child. Is a parent to crate a psychological situation, and then rely upon it? If the grave risk of psychological harm to a child is to be inflicted by the conduct of the parent who abducted him, then it would be relied upon by every mother of a young child who removed him out of the jurisdiction and refused to return. It would drive a coach and four through the Convention, at least in respect of applications relating to young children. I, for my part, cannot believe that this is in the interests of international relations. Nor should the mother, by her own

actions, succeed in preventing the return of a child who should be living in his own country and deny him contact with his other parent. As Balcombe L.J. said in In re E. (A Minor) (Abduction) [1989] 1 F.L.R. 135, 142:

'the whole purpose of this Convention is . . . to ensure that parties do not gain adventitious advantage by either removing a child wrongfully from the country of its usual residence, or, having taken the child, with the agreement of any other party who has custodial rights, to another jurisdiction, then wrongfully to retain that child.'"

41. The onus of establishing the existence of a "grave risk" within the meaning of Reg. 16(3)(b) is upon the person opposing return: Director General, Department of Community Services v Crowe (supra). In DP v Central Authority (supra) the majority (Gaudron,Gummow and Hayne JJ) stated as follows:

""Narrow construction"?

In the judgment of the Full Court of the Family Court which gives rise to the first of the matters now under consideration (DP v Commonwealth Central Authority) it was said that there is a "strong line of authority both within and out of Australia, that the reg 16(3)(b) and (d) exceptions are to be narrowly construed". Exactly what is meant by saying that reg 16(3)(b) is to be narrowly construed is not self-evident. On its face reg 16(3)(b) presents no difficult question of construction and it is not ambiguous. The burden of proof is plainly imposed on the person who opposes return. What must be established is clearly identified: that there is a grave risk that the return of the child would expose the child to certain types of harm or otherwise place the child in "an intolerable situation". That requires some prediction, based on the evidence, of what may happen if the child is returned. In a case where the person opposing return raises the exception, a court cannot avoid making that prediction by repeating that it is not for the courts of the country to which or in which a child has been removed or retained to inquire into the best interests of the child. The exception requires courts to make the kind of inquiry and prediction that will inevitably involve some consideration of the interests of the child.

Necessarily there will seldom be any certainty about the prediction. It is essential, however, to observe that certainty is not required: what is required is persuasion that there is a risk which warrants the qualitative description "grave". Leaving aside the reference to "intolerable situation", and confining attention to harm, the risk that is relevant is not limited to harm that will actually occur, it extends to a risk that the return would expose the child to harm.

Because what is to be established is a grave risk of exposure to future harm, it may well be true to say that a court will not be persuaded that without some clear and compelling evidence. The bare assertion, by the person opposing return, of fears for the child may well not be sufficient to persuade the court that there is a real risk of exposure to harm.

These considerations, however, do not warrant a conclusion that reg 16(3)(b) is to be given a "narrow" rather than a "broad" construction. There is, in these circumstances, no evident choice to be made between a "narrow" and "broad" construction of the regulation. If that is what is meant by saying that it is to be given a "narrow construction" it must be rejected. The exception is to be given the meaning its words require.

That is not to say, however, that reg 16(3)(b) will find frequent application. It is well nigh inevitable that a child, taken from one country to another without the agreement of one parent, will suffer disruption, uncertainty and anxiety. That disruption, uncertainty and anxiety will recur, and may well be magnified, by having to return to the country of habitual residence. Regulation 16(3)(b) and Art 13(b) of the Convention intend to refer to more than this kind of result when they speak of a grave risk to the child of exposure to physical or psychological harm on return."

42. The evidence that the respondent relies upon is confined to her affidavit sworn 6 April 2001 and the counselling report. That evidence is:

"Although the violence against M. was less frequent, M. often witnessed K.'s conduct towards me. On one occasion in 1999, K. physically assaulted M. so much so that M. sustained bruising and refused to

go to school as a result of this. Generally, however, whenever Kamran would attempt to hit M. I would try to prevent him from doing so and would send M. to his room.

I did not report the violence to Police as when I had done so on one occasion I sensed that the Police were not interested, and I suspect that this may have been because I am not German."

43. The wife only alleges one specific assault by the husband on M.

44. In the report M. stated that when things went wrong his father was often harsh and his punishment was often physical. He said the one thing that he would change about his father would be that he did not punish him physically. M. believes that there is some risk that he would be physically chastised by his father if he were to return to him. He recalled "being smacked both with his father's hand and with a stick when he was in trouble previously". He apparently did not recall being sufficiently bruised that he refused to go to school. Furthermore, one must observe that notwithstanding the "harsh" treatment alleged it is within M.'s contemplation that if he were to remain living in Western Australia he would return to see his father for visits. It is also in my view, important to note that M. did not give as a reason for not wanting to return to Germany, or alternatively to remain in Australia, harsh treatment at the hands of his father.

45. The allegations concerning harsh treatment are untested and are being made by a person trying to fit within one of the defences available under Regulation 16(3). In his affidavit the husband states:

"I never assaulted M.! I never threatened M. physically, verbally or emotionally. The dispute was only between Z. and me. Please ask M. about the real circumstances in a situation when Z. cannot influence him."

46. Once again, in my opinion, I have to guard against the possibility that M. has been influenced to say these things by his mother. I am not saying that is the case but it is a real possibility. M. is, after all, anxious about returning to Germany. Furthermore, he is of the opinion that if I order his return that his mother with whom he has a strong emotional attachment will not return with him. The evidence such as it is does not satisfy me that there is a grave risk that M.'s return would expose him to physical or psychological harm or otherwise place the child in an intolerable situation.

47. The evidence before me is silent as to what contact M. was having with his father prior to his wrongful removal from Germany. I deem it safe to assume that M. was spending some time with his father in view of the concession by counsel for the respondent that the father was exercising rights of custody prior to M. departing from Germany. The documents annexed to the application initiating proceedings indicate as much. This would not be consistent with M. being at grave risk.

48. As I am not satisfied that the respondent has been able to bring this matter within any of the subsections which would allow me to exercise a discretion. I am left in the position that I must make an order for the return of the child pursuant to Regulation 16(1).

49. There is one aspect of this matter that does concern me. Attached to the application initiating proceedings is the request for return. The box containing the heading "Proposed Arrangements for Return of the Child" has been left blank.

50. Prior to making an order for the return of the child I intend to stand this matter down for a short period of time to:

(a) allow the mother to reconsider whether she will return to Germany with the child;

(b) to hear submissions as to what undertakings or conditions ought to be imposed to ensure the physical and financial welfare of the mother and/or M. upon return.

I certify that the preceding 50 paragraphs are a true copy of the reasons for judgment delivered by this Honourable Court

Associate

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