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[25/04/2001; Court of Appeal (England); Appellate Court]
Re B. (Children)(Abduction: New Evidence) [2001] 2 FCR 531

COURT OF APPEAL (CIVIL DIVISION)

Royal Court of Justice

25 April 2001

Dame Elizabeth Butler-Sloss P, Thorpe, Waller LJJ

In the Matter of B.

THE PRESIDENT:

1. I want to make two preliminary points: one that it is essential in this case that there should be no identification of the names of the children, and consequently the names of the parents, or any other form of identification of the three children who are concerned with the Hague Convention application (see the Convention on the Civil Aspects of International Child Abduction as set out in Sch 1 to the Child Abduction and Custody Act 1985). Second, counsel in their interesting and helpful submissions on an exceptionally difficult case have put forward arguments which deserve far greater consideration by this court than we are going to give them, for the simple reason that the mother came to this country in March of last year; the application by the father was made promptly in May of last year; the hearing was in September with judgment in October; the Court of Appeal heard it the first time round in December; the issue of implementation which has arisen before us today is at the tail end of April 2001. These children have now been in this country for over 12 months, and it is crucial that there should be an immediate decision as to what happens to them and that it should not be left for us to write judgments that would be respectful of counsel's arguments but not deal with the essential nature of these proceedings, which ought to be swift and efficient and which, for a variety of reasons, have dragged on. Therefore, we are going to give extempore judgments on this part of this case.

2. The mother has four children, three by her first husband ('the father'). They are 14 nearly 15, 13 and 10 nearly 11. The fourth child, who is six, is the child of the second husband. He is not strictly anything to do with the present application, but he is there and cannot entirely be ignored.

3. The father made his application under the Hague Convention in May 2000, the mother having come to this country in March without telling him. She was clearly in breach of the Hague Convention and the children would obviously have to be returned, subject only to her ability to persuade the court that art 13, in this case art 13(b), and to some extent the wishes of the eldest child should be considered as sufficient barriers to prevent art 12 taking effect.

4. Singer J in his judgment on 27 October 2000 took the view, having read a great many papers and having taken very careful consideration of this difficult case-having looked at a medical report from a consultant psychiatrist stating the health of the mother; having had a report from the court welfare officer in respect of the views of the children as to their return to the country of their birth-that the father had rights of custody in respect of all three children and that the Convention had been breached. He then came to the conclusion that art 13(b) was made out.

5. On 19 December last year the Court of Appeal, by a majority of 2-1, came to the conclusion that the judge was wrong and that the stringent test required under art 13(b) had not been met on the facts of the case (see [2001] 2 FCR 497). The order was that the three children should return to New Zealand.

6. Today another constitution of the Court of Appeal has been asked by Mr Norris QC, on behalf of the mother, to revisit the order of the Court of Appeal of 19 December with a view to saying either that it should be set aside because of new evidence or, alternatively, that its enforcement was impracticable in view of the change of circumstances which he presented on behalf of the mother.

7. The background to this case has been clearly set out in the three judgments of the Court of Appeal of 19 December. It is not therefore necessary for me to go into any detail about the facts save as to those facts which really impinge upon the current issue that we have to deal with today. But an important background matter is that the mother having separated from the father in 1990, when the youngest of the three children was only six weeks old, shortly thereafter set up home with and then married her second husband, the father of the fourth child. That marriage was disastrous. He was guilty of serious domestic violence towards her and towards the children. They were the unhappy witnesses of that domestic violence and the increasing unhappiness of the mother as a result of the behaviour of the second husband.

8. The mother came to this country for a variety of reasons which are set out in the three judgments of the previous Court of Appeal. There were undoubtedly financial implications to her leaving New Zealand and, she has said, her very real fear of the way in which her second husband behaved towards her. Those facts are comprehensively set out in the Court of Appeal judgments. The mother had produced to the trial judge, who accepted it, and to the Court of Appeal, the majority of whom did not accept it, the seriousness of her mental state as a result principally of her fear of return to New Zealand because of the behaviour of the second husband. There was no suggestion by her that she actually could not return, although she feared the effect upon her mental stability and, consequently, upon her ability to care for the children as a result of her requirement to return and care for them in New Zealand. Undoubtedly, from the first of the psychiatric reports, it is clear that she was suffering from a mild to moderate depression. The consultant psychiatrist said that that would undoubtedly be exacerbated and worsened by the actual return to New Zealand.

9. Before the previous Court of Appeal, therefore, there was a mother who was asserting art 13(b) as reason why she should not return and reason why she should not be expected to take the children back, based, as I say, largely on the second husband. The court was not asked to consider what should happen to the children if she did not actually return. So they were faced with the always difficult argument of art 13(b) but not faced with the probability that the children would be expected to return without their mother. The other matter the court considered was the objections of the eldest child, who is now nearly 15, those objections being very much bound up with her desire to remain with her mother and her preference on the whole for England and the English education, as she has it at the moment, over the New Zealand education. The Court of Appeal held that her objections did not have

sufficient validity to overturn the requirement to return the children to New Zealand. There has been unanimity between the parents on one thing only, that is to say that the three children are extremely close and that it was extremely important that they should remain together as a unit and indeed as a unit, the mother would say, with the youngest child who is six. That view, that the three children should remain together, has been strongly reinforced by both court welfare officers who have seen the children, the first welfare officer, Mr R, before I think the hearing before Singer J, and the second welfare officer who saw them very shortly before the hearing today. We are indebted to Mr C for having produced a report at extremely short notice, which has been of great help to the court.

10. The presentation of this case by Mr Norris is that the mother's reluctance to return on 19 December as expressed to the Court of Appeal has now been transformed into a psychological inability to return: that she cannot bring herself to board a plane and return to New Zealand in her present state of health. There is a second report from the consultant psychiatrist, who says in a report of a few weeks ago that her emotional health is very poor; she demonstrates significant depression with weepiness, sleep disturbance, depressed mood, and so on.

'I believe there are implied thoughts of suicide . . . Her mental state is markedly worse than when I saw her in August 2000. The impact of return to New Zealand would be huge.'

11. The difficulty about these two reports is, of course, that neither has been cross-examined to. Both of them are based not only on how the mother presents to the consultant psychiatrist but, of course, on the account given by her. There is little doubt that she is in an unhappy and distressed state. That becomes very obvious from the unhappiness and distress which is markedly being shown by the children. Whether or not she could go back is a question mark. She said previously to the Court of Appeal that she could not be protected from the second husband because he was devious, manipulative and, as an ex-policeman, would be able to circumvent any orders that any court, however well-intentioned, might try to make. But she has not made any effort to obtain orders. We have been provided with a plethora of additional evidence, which we have accepted for the benefit of hearing this application today, or this implementation, I should say, of the previous order today. Among it is an opinion from leading counsel in New Zealand indicating the very effective methods provided in New Zealand for dealing with domestic violence, harassment and molestation. It is clear that the mother has not availed herself of any of those procedures.

12. There are some practical problems here, but the basic argument of the mother is the change of circumstances due to her considerable worsening state of mental health and her actual inability to go back to New Zealand. When the court asked Mr Norris for some assistance as to what alternatives there might be for the children if they were to return without their mother, Mr Norris told us that his client was unable to give any coherent instructions, and it seems clear that she has been unable to face up to that possibility.

13. I should have said that the House of Lords were petitioned by the mother after the 19 December decision of the Court of Appeal, and her petition was refused.

14. In looking at the state of mental health of the mother on the facts there are two psychiatric reports, the second disclosing an increasingly depressing picture and showing a poor state of emotional health. Against that the mother has not made any effective effort to receive medical attention in this country. The only visits to a doctor, apart from a short one at which she felt she was not perhaps getting through to the general practitioner what she wanted to say so she could not go back, have been for the purpose of these two reports. She has not sought or received any treatment, any medication, any psychological help, despite

the fact that she has now been in this country for a year. She has managed to move from one place to another and find in each place a home in which to live. She has managed to hold down two separate jobs in two parts of the country. She has managed to arrange the children's schooling and certainly their day-to-day care and does not seem to have collapsed in the process. It sounds perhaps cruel of me to say, but I have no doubt that her mental health is not improved by her enormous emotional upset at the prospect of having to return to New Zealand. But she is not, it seems to me, in that kind of state which would compel me, speaking entirely for myself, to say that she has manifestly shown some exceptional circumstance. I am concerned, I have to say, about the impact on her if she did go back and if things went badly wrong and her ability to cope in those circumstances. But there would be, I would expect, as there is in this country, the opportunity to have help of different sorts to deal with problems which might arise. We are told, as I say, that she will not go back.

15. The position of the three children (because of course whether she does or does not go back is not, would not and could not be definitive of whether the children go back) is somewhat unusual. K, the one who is nearly 15, has rarely seen her father, if at all, since 1991. She has made certain allegations against him. The accuracy of those is irrelevant because the factual position is that she has not seen him and he has not made very strong efforts to change her mind, which may be for good or bad reasons. He came to this country for a week over Christmas to see the second child, A. The elder sister refused to see him. She is now separately represented, for the first time, by Mr Scott-Manderson.

16. Summarising her position, she does not want to return, but she wishes above all to remain with her mother. Consequently, her objections to return are inextricably entwined with her objections to return without her mother. If her mother felt able to return in order to keep the family together, she would go back with her mother, although her preference would be to stay in this country. It seems to me that I cannot, myself, find that her objections to return to New Zealand are such as should be sufficient to inhibit the return of K. That is on the question of her wishes. The second matter is perhaps more difficult. She could not go to her father, whom she has not seen for 10 years. That would be, I can understand, extremely difficult. She clearly could not go to her step-father, who behaved unkindly towards her and of whom she is afraid. The alternatives are her grandparents, who are in their 70s and living in Hamilton. There is a letter that was disclosed to us today from the maternal grandfather indicating that he would be coming to England during June. He wrote it to K's father suggesting that they might bring litigation to an end and he would take the two elder children back to New Zealand at the end of their world trip, which they are about to undertake, that the boy could go to see the father and he would arrange for K to probably see the paternal grandmother. It is possible, undoubtedly, for K to stay as a temporary measure with her grandparents.

17. As a result of this letter, the grandparents were consulted at a very inconvenient hour for them over the short adjournment today, it being an entirely inappropriate time for them to be telephoned no doubt. But the maternal grandfather said that they were in their 70s; they were about to go on a world trip; they had previously looked after their deceased other daughter's young child and had discovered their limitations in child care; and they would not wish any open-ended arrangement to care for their three grandchildren. Having set out their objections, as a temporary measure the grandparents are a possibility.

18. The other possibility, which I have to say I would think would be very uncomfortable in a sense for K, would be that she would be accommodated in foster care in New Zealand. I would be surprised, in a loving family, if that was the situation that emerged. But if she does return without her mother, there are undoubtedly practical problems but not impossible to resolve.

19. A, who is 13, loves his father, loves his mother and loves his siblings. He is currently placed, and has been for some years, in an extraordinarily difficult position in that he is the only one out of the three who wishes to retain a relationship with both parents. He would like to go, and earlier wanted to go, back to New Zealand; wants throughout to live with his mother but seeing his father; assumed he was going back at the end of the December hearing and was quite taken aback by the change of plan whereby he is still in England some three months later. He undoubtedly could go back and stay either with his grandparents, with K, or he could stay temporarily with his father pending domestic proceeding in the country of the habitual residence of these children.

20. KI, who is nearly 11, is in the most extraordinary of all the positions of these children. He left his father's home when he was six weeks old. He has had very infrequent contact with his father. There was a question over paternity, the rights and wrongs of which we have not been told. But, as a result of that question being raised, whether by mother or by father it is difficult to tell, he has not had any recent contact with his father. Poor little boy: he does not actually really know who his father is. He seems to be under the impression, the erroneous impression, that the second husband, the stepfather, is his real father. It would be extremely difficult for him to go and live with his father, but, again, for a temporary measure, it would not be out of the question for him to go to the grandparents.

21. The second court welfare officer provided a worrying report about these children. The first one did too. The second one is, if anything, more worrying. It talks about K being tense and sullen, all three children were in tears.

'There was a high level of upset and my initial impression was one of a collective feeling of distress and worry.'

22. His conclusions in the long and very careful report were:

'8.3 All three children anticipate that whatever happens, they will remain with their mother. They are convinced that, in the event of the court ordering their return, she would comply with the court's direction. None of the children hope for this outcome as each of them has expressed real anxiety about the impact this would have upon her psychological well being.

8.4 In my experience, I have rarely encountered children who have displayed such a level of anxiety and upset as these children. The protracted nature of these proceedings has undoubtedly produced a serious level of uncertainty and worry for them. A final decision must be made soon for the sake of their emotional well being. I believe the two elder children could both benefit from some form of therapeutic intervention. The family should actively consider seeing The Children and Family's Consultation Service as a matter of priority to talk through and deal with some of these worrying and upsetting feelings which were so palpable in my interviews with them.'

23. Turning now to the powers of the court, they were well expressed, if I might respectfully say so, by Hale and Arden LJJ in their judgments of 19 December and I respectfully agree with them. It seems to me in line with what they say that the Court of Appeal has the right to revisit its own order for the purpose of enforcement or implementation. Generally that would be to deal with practicalities. The practicalities most often that are required to be looked at are those relating to whether the undertakings have been carried out and whether the arrangements are satisfactory. There remains a residual power, it seems to me, in the Court of Appeal to deal with some exceptional change of circumstance which might render the order impracticable to enforce, or, putting it in another way, the implementation impossible of fulfilment. The question therefore that is before this court today is whether the mother's present state of mental health is such that the order made quite properly by the

Court of Appeal on 19 December is now impossible to enforce. I do not myself think that it is. I do not consider that the mother's position in this case is such that it can be said that her undoubted emotional state has come to that stage that it can be treated as an exceptional change of circumstance.

24. Stripped to its essentials, this mother wrongfully removed her children from New Zealand, all four of them, and those children, whether they want to or not, have the right to have their decisions as to their welfare made by the New Zealand courts. The mother is in breach of orders of the New Zealand courts, and there is a duty upon the English High Court to uphold not only the rules of the Convention but the spirit of the Hague Convention. I agree with Mr Turner, for the father, that this is a last ditch effort by the mother to prevent her return. She is presently saying that she cannot return. She says it because of the change of her state of health. I am aware, of course, of the consequence for the children if she determines not to go back. I do not believe, in this case, as judges in the Court of Appeal have said consistently since the Convention came into force after the 1985 Act, that the abducting parent can dictate to the court that she will not go back and, consequently, her child or children cannot go back either. That, as I said in Re C (a minor) (abduction) [1989] FCR 197, [1989] 1 FLR 403, would be to drive a coach and horses through the Convention. That does not exclude the exceptional case, and we can all think of possible scenarios for a really exceptional case, where it was impossible for the mother to do so. I do not believe that this is one of those cases. I do think this mother, who is, apart from her behaviour in removing these children and her serious behaviour involving these children in the close and day-to-day understanding of what is going on in this case, a good and loving mother. But she has done these children a great wrong in removing them and a great wrong in being the primary cause of their present state of enormously high levels of upset; all due to her wrongful actions. Is she really saying to this court that, despite all of this and despite loving them as much as she says, she would not go back with them to help them settle back for a temporary or longer period in New Zealand while the New Zealand courts decide as to what is in their best interests? How could she not go back with them? I appreciate that she says that she will not. Earlier she has said, certainly in July of last year, that she would go back with them whatever might be the impact upon her mental health. She said that in para 96 of one of her statements:

'I will go wherever the children go, even though I have real concerns as to how this will impact directly upon me and my ability to care for them.'

25. A loving mother to whom the children are devoted, who is not, according to mental health legislation, unable to make her own decisions, unable to run her own life, must, it seems to me, be able to take that further step for the benefit of the children. If she does not go back, she presents her children with a formidable problem: first, because if she stays with the little one she splits the four children; and, second, she will precipitate a family crisis. But it seems to me, as a temporary measure, the grandparents would have to be there at the airport to meet the children and look after them. I cannot believe that K would not go with the younger two to give them moral support and arrangements could be made short-term to keep them there. The alternative is to say that the mother, having got herself into a high state of emotion, can say to the court: 'Because this has dragged on, and I have been responsible to some extent for this dragging on by asking for psychiatrists reports and so on, the case having gone to the Court of Appeal, and the children could have gone back in January. I can now tell the court I cannot now send the children back.' She makes her application to the House of Lords, she then makes her application with respect to implementation and she runs this case on and on until it is not heard until almost the end of April.

26. The children in my view should stay together. I toyed with the possibility that A should go back on his own. I do not however believe that that is what anybody wants, and I think it would be unjust to single him out. It seems to me that this family ought to go back together, and there is nothing in what the mother has said that leads me to say that the order made by the Court of Appeal on 19 December ought not to be implemented forthwith.

THORPE LJ:

27. I agree with all that Butler-Sloss P has said, particularly in relation to the jurisdiction of this court. I would emphasise that the decision of this court announced on 19 December involved a very profound consideration of finely balanced arguments analysing the judgment of Singer J in the court of trial. Unusually, the dissenting judgment was given by the family specialist in the court. In those circumstances, it seems to me that an application effectively to reverse that order brought within the shortest time of its announcement is an extraordinarily difficult application to mount successfully. Mr Norris QC has done his best. Nobody could have presented it more attractively or persuasively than he has done.

28. What he says in this case is that here there is a change of circumstance so profound as to require the court to revisit the assessment of the art 13(b) defence. He says that there is now evidence of emotional and psychological depression and deterioration sufficient to constitute a fundamental change of circumstance. He particularly emphasises and relies upon the evidence of his client in a recent statement in which she said:

'I wish I had the strength to be with the children when they return to New Zealand, but I do not. I am empty. I am exhausted. I have been through too much. All of my energy over the past few weeks has been spent on making it through the day. Everything I do, from the moment I get out of bed in the morning to the moment I return at night, is a struggle and an effort. I focus on just making it through the day. I have no more strength to give.'

29. That self-assessment, says Mr Norris, is fully corroborated by the recent report of the forensic consultant adult psychiatrist, Dr Y.

30. What is a court on an application as unusual as this to make of such assertions: particularly where there is a head-on challenge from the respondent, on whose behalf Mr Turner QC submits that the assertions are essentially, consciously or subconsciously, a manipulative, last ditch evasion of the requirement of the court? It seems to me that the court in these circumstances has to test these assertions for consistency with previous statements made by the mother and then against the whole matrix established either by proven fact or admitted fact within the arena of the case.

31. In the carrying out of the first test, the contrast between what is now said by the mother and what she said in the paragraph in her affidavit of 10 July cited by Butler-Sloss P is only too apparent. Mr Norris says, and fairly says, that the dynamics of the case do not necessarily render the two statements inconsistent. They may both be reliable statements reflecting circumstances that existed at their respective dates. That may be so, but what is there within the expert evidence that could possibly justify a conclusion of a fundamental and recent change in the mother's emotional and psychological state undermining her capacity to carry out the responsibility that is laid upon her by the order of 19 December?

32. In Mr Y's first report dated 3 August 2000 looking to the future, he said of the mother:

'Were she and the four children to be returned to New Zealand, I believe that the depressive illness would become more profound.'

33. Accordingly, it is not surprising that in his report of 15 April 2001 he notes a deterioration in the mother's mental state consistent with the imminence of either her departure or her separation from the children. But when asked the question by the mother's instructing solicitor as to the sincerity of her expressed psychiatric difficulties, he said this:

'It is necessary to say that the issue of the children's return is certainly the chief causative factor in the genesis of her current mental state. However, I believe that the depression and distress are bona fide and represent the typical reaction to both the imminent separation from her three children or the alternative spectre for all five of them, including [the mother] returning to New Zealand.'

34. That seems to me to be an important assessment. The typical reaction is fully understandable against the chronology of the life of the family over the course of the last 11 months. It is only necessary to posit the mile stones: the flight from New Zealand in March 2000 knowing of the possibility that there would be pursuit; the issue of the proceedings in May 2000; extensive interlocutory proceedings culminating in the September trial; a reserved judgment which seemed to defeat the father's challenge; then the appellate proceedings reversing the trial judge. Inevitably, any adult living through such a turbulent experience is likely to undergo a level of emotional and psychological stress of a critical level, and those sort of stresses inevitably bear on the children in the day-to-day care of the mother.

35. In the end it seems to me that the doubting self-assessment in para 9 of the mother's recent statement is challenged by the incontrovertible evidence of her profound love for these children and her commitment to their welfare. It seems to me that the children are probably pretty well on target when they say to the court welfare officer, as they did earlier this month, that they 'anticipate that whatever happens they will remain with their mother. They are convinced that in the event of the court ordering their return she would comply with the court's direction.'

36. In conclusion, I would only emphasise the importance of maintaining, or at least striving for, the six week target for Convention proceedings in the court of trial. Extenuation of those proceedings not only risks injustice to the claimant, but also to the respondent who has to cope with life in a country which will almost always be unknown to the children, if not to the respondent, in very difficult practical circumstances. I also think that periods for implementation should invariably be kept to a minimum wherever possible. The longer the period between the order for return and the return itself, the greater will be the stress on the respondent and thus the risk of deterioration in emotional and psychological health. Of course, in many cases there will necessarily be some delay between the order and the return. That delay may be brought about by the necessary exploration of practicalities, or it may be brought about by the exercise of the right to apply for permission to appeal. Those factors were obviously present in this case. But as a general rule, I do believe that judges, particularly in the court of trial, should pay close heed to the obligation to achieve return forthwith. For departure from that target is likely to jeopardise the process of return and also to impact adversely on the children.

WALLER LJ:

37. I agree with both judgments, but will just add a very short word of my own.

38. The mother wrongfully removed three children from the jurisdiction of the New Zealand court and brought them to England. The father brought proceedings under the Convention on the Civil Aspects of International Child Abduction (set out in Sch 1 to the Child Abduction and Custody Act 1985) (the Hague Convention) for an order for their return, so

that the New Zealand court could deal with any application relating to the children's future and, in particular, so that the New Zealand court could decide whether the mother should be entitled to take any of those children out of the jurisdiction.

39. It is important, as I see it, to stress that this court has not been dealing with the application to remove the children from New Zealand, nor an application which will determine the appropriate access that father should have to any of the children hereafter. Those are matters for the New Zealand court. What this court has been dealing with, is whether the mother should be compelled to start from the position from which in law she should have started and, with this country's Convention obligation, which is to ensure (subject to a limited exception) that she should be so compelled.

40. Not without difficulty, this court overruled Singer J's decision and ordered the return of the children to New Zealand. The contemplation was, unsurprisingly, that the mother would return with the children if the children were compelled to return. Since that order the mother now says that she will not in fact return. My Lord, Thorpe LJ, quoted a paragraph in her third affidavit where she talks about being empty and exhausted. The question for this court is whether that attitude has produced such a change of circumstances since the previous decision of the Court of Appeal that it is not now practical to carry out the order that that court made.

41. I have found the decision in this case an extremely anxious one. So did those who had to take the decision on the previous occasion, and so will those who ultimately have to take the long term decisions on this family. But in my view one must not allow one's anxieties about whether one would have decided a case in the same way, or whether one thinks that the New Zealand court might or might not make certain decisions in relation to one or other of the children because of their different circumstances, to cause one to deviate from what at this stage is this court's function. The fact is that a previous Court of Appeal has decided that the children should be returned. That decision, it should be said, included taking a specific decision in relation to K and exercising a separate discretion in relation to K, the eldest child.

42. The question is whether the circumstances have become such, since that previous decision, that it has become impracticable for the order to be enforced or implemented. While this litigation has been going on, and my Lord Thorpe LJ has spelt out the history, the effect on the children and the mother must have been terrible. We have all in our judgments recognised that. That can only have got worse as things have gone on, including a petition to the House of Lords and having that petition rejected. But this court must clearly be extremely cautious before reaching a conclusion that the person, who has in effect lost an issue in litigation, should be able to argue that the effect of it all has been such, that the enforcing of an order would now be impractical because of a condition which has been brought about by this very litigation.

43. I have not been persuaded that anything has occurred since the order of the Court of Appeal to make enforcement impractical. I am not persuaded that the mother has in any way been prevented from going back to New Zealand by any circumstances since the order of the Court of Appeal. If she has at present decided that she will not go back, that is a conclusion formed, as I see it, through her own free will. That is an attitude which can change. My own view is that it will change in the interests of the children if those children were to be sent back. The evidence for that is contained in the original para 96, again quoted by Butler-Sloss P, and the paragraph from the court welfare officer's report quoted by both Butler-Sloss P and Thorpe LJ. I also think it will change for this reason. Only if this court, in effect, took the whole matter out of the New Zealand court's hand by refusing to send back

any of the children would the mother not have to be involved in proceedings in New Zealand. If any of the children were sent back, and particularly if all three were sent back, the mother would have to take proceeding in New Zealand in order to regularise her own custody arrangements in her own best interests. In my view she would have to return to New Zealand so to do in order to give her the best chance. But if by any chance all that be wrong (and as I have indicated that chance is very remote), if she did not go back herself, there is in fact no evidence before the court to demonstrate that she will not be able to make appropriate arrangements for the children to be looked after in New Zealand while the court in New Zealand decides what the children's future should be. There are, for example, the maternal grandparents. As I see it there is no basis for concluding that a short-term arrangement under which the children could stay with them or be looked after by them would not be appropriate.

44. In those circumstances I agree that the application should be dismissed.

COUNSEL: James Turner QC and Alastair Kirk for the father; Alastair Norris QC, Michael Nicholls and Debbie Taylor for the mother; Marcus Scott-Manderson for K.

SOLICITORS: Charles Russell; Kingsley Napley; Bindman & Partners.

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