



**THE COURT OF APPEAL
CIVIL**

UNAPPROVED
NO REDACTION NEEDED

Appeal Number: 2022/37

Neutral Citation Number [2022] IECA 295

**Birmingham P.
Whelan J.
Binchy J.**

**IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964 AND IN
THE MATTER OF THE FAMILY LAW DIVORCE ACT, 1996**

BETWEEN/

K J (OTHERWISE K A)

RESPONDENT

- AND -

A M Q (OTHERWISE A M Q)

APPELLANT

**JUDGMENT of Ms. Justice Máire Whelan delivered on the 20th day of December
2022**

Introduction

1. This is one of a number of appeals by Mr. Q (hereinafter “the husband”) from an *ex tempore* judgment and orders made by Mr. Justice Jordan in the High Court on Circuit on 17th December, 2021 remitting the above entitled proceedings which were instituted by K.J. (the wife) on 26th November, 2021 - and concern issues of guardianship, custody and access of the minor children of the parties - to the Circuit Court pursuant to Order 70A, r.15 of the Rules of the Superior Courts. The said order directed that the said remitted proceedings be

further prosecuted by a judge assigned to the relevant circuit where the wife and children reside, so that same be heard and determined “*as part of or alongside*” subsisting Family Law Divorce proceedings Circuit Court No. F284/2019 instituted by the wife in 2019.

The “*Liberty to apply*” order

2. The husband’s central contention in the High Court and in this appeal was that the Irish courts lacked jurisdiction to entertain the within proceedings. He asserted that this had been the import of an order made in the High Court (O’Hanlon J.) on 26th May, 2017 (the 2017 Order) in Child Abduction proceedings, record number 2015/61M, instituted by the husband in November 2015 which order had granted liberty to both parties to apply to the High Court regarding access to the minor children. He contended that the consequence of the 2017 order was that: “... *Ireland has jurisdiction only for access of children ...*” He further posited that the impact of the said 2017 High Court order required all courts in this jurisdiction to: “... *refuse[d] permission for application for custody, divorce or separation in any court in Ireland excerpt (sic) access application only in High Court for both parties (not for father only but for both parties). Courts in Ireland were not given jurisdiction to hear the custody. It was only done because it was interim order by the Pakistani Court until any permanent order was done by a Pakistani Court.*”

Background

3. The parties were married to one another in 2001 in Pakistan. They are citizens of Pakistan and naturalised Irish citizens. The wife was reared in a Middle Eastern country. They moved to reside in Ireland in 2001. There are three children of the marriage. The children were born in Ireland in 2002, 2005 and 2008 respectively. All three are financially dependent children of the marriage. One is of full age (aged 20½). The minors are aged 17½ and 14½ years respectively. At all material times the children resided within the jurisdiction of the courts of Ireland until in or about the summer of 2014. In mid-2014, by prior

agreement between the husband and wife, the family moved to Pakistan. The marriage between the parties broke down in Pakistan.

4. Both the husband and the wife invoked the jurisdiction of the courts in Pakistan and each obtained interim orders in 2015. Without the knowledge or consent of the husband, the wife removed the children from the jurisdiction of the courts of Pakistan in or about early November 2015 and travelled to Ireland with them, returning to reside in the Irish family home. The children have at all material thereafter resided within this jurisdiction. The children have thus lived their entire lives, apart from the aforementioned period of about 15 months, in Ireland. The children, though born in Ireland, have dual Irish and Pakistani citizenship. Their first language is English. They also speak Urdu.

5. The husband instituted abduction proceedings, 2015/61M, on 11th November, 2015 seeking the summary return of the children to the jurisdiction of the courts of Pakistan. The husband's claim seeking the summary return of the children to Pakistan was brought pursuant to the inherent jurisdiction and the Protection of Children (Hague Convention) Act, 2000 and the 1996 Hague Convention. The 2000 Act came into force in this State on 1st January, 2011 by virtue of S.I. No. 650/2010, Article 2. The 2000 Act gave the force of law to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children signed at the Hague on 19th October, 1996 (the 1996 Hague Convention) and which had as its purpose, *inter alia*, to amend sections 14 and 30 of the Child Abduction and Enforcement of Custody Orders Act, 1991. The stance maintained by the wife throughout the 2015 proceedings was that she had been unaware of the existence of orders made by the Guardian Court in [city] at the time of the removal of the children from Pakistan in November 2015. The High Court refused to return the children to Pakistan. The husband then appealed to this Court.

6. As is clear from the judgments of this court delivered in the appeal [2018] IECA 97 on 12th March, 2018, the 1996 Hague Convention had no application to the husband's application. Pakistan had acceded to the 1980 Hague Convention on International Child Abduction in March 2017 but had not acceded to the 1996 Hague Convention. The provisions of the 1980 Hague Convention on Child Abduction did not apply. That was so because the orders sought to be recognised and enforced by the husband within the ambit of the abduction proceedings he had obtained in Pakistan in 2015 and hence pre-dated Pakistan's accession to the 1980 Hague Convention on Child Abduction. The Court of Appeal concluded that notwithstanding that the children were wrongfully brought to Ireland by the wife in breach of orders of the Pakistani courts in November 2015 and notwithstanding the various issues raised by the husband, same were insufficient to constitute a basis for setting aside the orders of the High Court refusing to order the summary return of the children to Pakistan. From the Court of Appeal, the husband sought leave to appeal to the Supreme Court, which application was refused by way of a Determination of the Supreme Court dated 15th May, 2018. The 2015 abduction proceedings thereby concluded.

Litigation events in Ireland post 15 May 2018

7. The wife instituted divorce proceedings F284/2019 in the local Circuit Court in late 2019. The husband separately contended that the relevant Circuit Court had no jurisdiction to hear or determine such proceedings. The wife, in light of the stance of the husband in disputing the jurisdiction of the Circuit Court to hear and determine the divorce proceedings and in deference to the 2017 "*liberty to apply*" Order made by O'Hanlon J. on the 24th May, 2017 referred to above, instituted proceedings on 26th November, 2021, 2021/127M, wherein she sought, *inter alia*, certain orders pertaining to the dependent children of the marriage, including an order for sole custody pursuant to the inherent jurisdiction of the High Court

and/or s.11 of the Guardianship of Infants Act, 1964, as amended, together with orders regulating access between the husband and the said dependent children. Further, an order was sought directing and/or remitting all issues of custody and access to the Circuit Court and/or the District Court pursuant to the provisions of the Guardianship of Infants Act, 1964 and/or s.11 of the Family Law Divorce Act, 1996.

High Court 17 December 2021

8. There were three distinct applications before Jordan J. pertaining to these parties;
- i. The husband's claim for the summary return of the minor children to Pakistan on foot of Orders he obtained in the said courts on 8th July, 2019.
 - ii. The husband's appeal against the order of Groarke J. refusing to strike out or refuse jurisdiction in relation to the wife's Divorce Family Law Civil Bill F284/2019.
 - iii. The wife's within Special Summons 2021/127M seeking Custody/Access orders in respect of the children and remittal of same to the Circuit Court.
9. In regard to (iii) above, to which this Appeal is directed, Jordan J. on 17th December, 2021 in an *ex tempore* judgment acceded to the wife's request for remittal to the Circuit Court of the within proceedings stating: "*... all I am doing in those proceedings is remitting the issue of custody and access for determination at the same time as the divorce proceedings. I do not see any basis upon which I should delay a decision on whatever issues are in dispute between the parties in that regard. It is not in the interest of the welfare of these children to delay matters so I am refusing a stay on the orders made in the third set of proceedings. I am refusing a stay on any of the orders I have made just now.*"

The Order

10. Relevant to this appeal, the High Court order provided that "*... all issues of custody and access ... and...these proceedings be remitted to the Circuit Court to be further*

prosecuted to the judge assigned ...for determination as part of or alongside the divorce proceedings bearing record number F284/2019 pending in the Circuit Court.”

The Notice of Appeal

11. Two separate Notices of Appeal were lodged in respect of matters (i) and (iii) above. Both are identical. The grounds of appeal are wide-ranging, extending to about 33 separate grounds in all. They focus far beyond the particular judgment and order ostensibly appealed against in each Notice of Appeal and in particular, when considered with the submissions appear to seek to impermissibly reopen the concluded 2015 abduction proceedings or to achieve a revisitation and variation of the outcome of same. Certain of the grounds of appeal also actively challenge the validity of the High Court Order upholding the order of Groarke J. made in the Circuit Court on 15th June, 2021 notwithstanding that no separate appeal is brought nor indeed is any such appeal permissible, leave for same not having been obtained by the husband. In the circumstances, a short separate judgment addresses that latter aspect of the Notice of Appeal. The relevant grounds of appeal as pertain to this appeal are considered in further detail below.

Husband’s arguments in this appeal

12. The husband contends in the context of this appeal that an exchange which took place between counsel for the wife and the trial judge in the 2015 High Court abduction proceedings on 26th May, 2017 which resulted in, *inter alia*, an order being made granting liberty “*to both parties to apply to this Court regarding access to said minor children*” which amounts to a binding determination by the High Court which has the effect of precluding any future application by either parent for custody, guardianship, divorce or judicial separation in any court in this State save and except for applications pertaining to access which must in all cases be made to the High Court alone. He contends that the courts in Ireland lack jurisdiction to hear any applications pertaining to custody of the minor children.

13. Regarding the “*liberty to apply*” order made by O’Hanlon J. on 26th May, 2017 in the 2015 abduction proceedings, the husband asserts: “*it was only done because it was interim order by the Pakistani court until any permanent order was done by a Pakistani court. The application for recognition of Pakistani court order is only permissible according to the High Court ruling but that things are done the other way around.*”

14. The following excerpt from a “transcript” of the hearing was relied upon in Ground 1 and is cited and referred to in submissions and arguments by the husband:

“[26th May 2017]

[Counsel for wife]: ... *The Court will recall that the Court has made an interim access order which involves Skype, I think, with [Husband]. I suppose it is a matter for the Court as to whether - I imagine the Court envisages that continuing and I would suggest to the Court that any future access and custody applications should be made to the relevant District Court save that in the event that proceedings are issued in judicial separation or divorce, it would be handled in the context of those proceedings.*

Judge: *Well, since I have done such a comprehensive job on this, I would be inclined to give you liberty to apply to myself.*”

Order of the High Court made the 26th May, 2017 said to oust jurisdiction

15. The final orders of the High Court in the Hague Convention/Abduction proceedings were made on the 26th May, 2017 and perfected on the 15th June, 2017. The court having refused to make an order returning the children to the jurisdiction of the courts of Pakistan, on the issue of access, the orders made included, *inter alia*:

“2. *The applicant be at liberty to maintain his existing Skype access to said minors*”

And,

“5. *Liberty to both parties to apply to this court regarding access to said minor children.*”

16. Since the provisions of neither the 1980 Child Abduction Hague Convention nor the 1996 Hague Convention were found to be applicable, the orders with regard to access cannot be characterised as having been made pursuant to same but rather pursuant to the court’s inherent jurisdiction and in substance must be viewed as in the nature of the continuation of interim orders which had been made from time to time throughout the conduct of the proceedings before the High Court from November 2015 onwards providing for contact by the husband with the children. Generally, such interim orders operate on a temporary basis pending the conclusion of such proceedings being made of an interim as the court thinks fit for the purpose of securing the welfare of the child in question or preventing prejudice to a parent in light of relevant circumstances obtaining.

17. Whereas “*liberty to both parties to apply...regarding access*” was granted by the High Court, it is noteworthy that neither parent ever applied to court on foot of same thereafter. Relevantly, the wife has continued to reside within this jurisdiction with the three children at all material times following the conclusion and determination of the abduction proceedings on 15th May, 2018 when the application for leave to appeal to the Supreme Court pursuant to Art. 34.5.3 of the Constitution was refused.

Judgment appealed against

18. In the parts of his judgment of the 17th December, 2021 relevant to this appeal, Jordan J. noted that the husband had contended that the Circuit Court lacked jurisdiction to deal with the divorce proceedings instituted by the wife, proceedings record F284/2019, in the circuit where she resides.

19. The wife, in an affidavit sworn on the 11th May, 2021, in the context of the related appeal in 2021/31CAF had deposed, *inter alia*, that she is ordinarily resident within the

jurisdiction of the said Circuit Court and had been so resident with the children since 2015. The husband did not dispute those facts.

20. Jordan J. in his judgment makes a clear finding that the Circuit Court has jurisdiction to deal the application for a decree of divorce pursuant to s. 5 of the Family Law (Divorce) Act, 1996 and ancillary orders having due regard to s. 39 of the said 1996 Act “...*the divorce proceedings are properly before the Circuit Court Family Court in ... it does have jurisdiction and in those circumstances I am dismissing the appeal against the order of Judge Groarke and affirming Judge Groarke’s finding...*” (para.2)

21. The judgment at paras. 14, 15, 22 and 23 engages specifically with the husband’s contentions that the courts in Ireland lacked jurisdiction to determine welfare proceedings:

“14. Insofar as the remaining aspects at issue are concerned, Judge O’Hanlon on 26th May, 2017 after an exchange with counsel concerning future applications concerning access or custody, made an order granting liberty to both parties to apply to this Court regarding access to the children. It is entirely clear from the transcript and the exchange that took place and that led to that portion of the order that Judge O’Hanlon was retaining seisin of the matter because she was familiar with the parties and with the children and with the background and she felt that if another application was to be made in respect of the children she was best placed to deal with it because of her knowledge of the case. Judge O’Hanlon is now retired. No application was made to her regarding access to children. On reading these papers at an earlier stage it seemed to me that the appropriate way to deal with fact that there were substantive proceedings now pending in the Circuit Court – with this liberty to apply granted by Judge O’Hanlon back in May of 2017 in proceedings entitled in the matter of the Protection of Children The Hague Convention Act 2000 and in the matter of the Guardianship of Infants Act 1964 as amended and in the

matter of the three children as it was at that time - it seemed to me on reading the papers back then that the appropriate way to deal with the matter was to remit any issue concerning access to the children or any issue concerning directions sought or to be sought under the Guardianship of Infants Act 1964 as amended to the Circuit Court to be heard as part of or alongside the divorce proceedings. In fact the mother did issue a special summons which is before the court today bearing record number 2021/127M and seeking a number of orders concerning the custody of the children and seeking a declaration that the dependent children are habitually resident in this State and seeking an order directing or remitting that all issues of custody and access be remitted to the Circuit and/or District Court pursuant to the provisions of the Guardianship of Infants Act 1964 and/or s.11 of the Family Law Divorce Act 1996. Insofar as that is concerned I do not propose to make any order concerning the custody of the children today. I have already said, and it is part of the judgment that I have just given, that is my view, and I am finding on the evidence and did so in the context of the proceedings which I have referred to, that the children are habitually resident in Ireland and ordinarily resident in Ireland - that is the fact of the matter.

15. I will make an order which I had intended to make in any event but I will make the order in the proceedings bearing record number 2021/127M because those proceedings are before me today. I will make an order remitting all issues of custody and access to the Circuit Court for determination as part of or alongside the divorce proceedings pending in the Circuit Court and in that regard insofar as the order of Judge O'Hanlon of 26th May, 2017 granting liberty to both parties to apply to this Court regarding access to the said minor children one of whom is now of age is concerned, I am remitting as I say that aspect to the Circuit Court for determination as part of or alongside the divorce proceedings."

...

“22. Insofar as the third set of proceedings are concerned, all I am doing in those proceedings is remitting the issue of custody and access for determination at the same time as the divorce proceedings. I do not see any basis upon which I should delay a decision on whatever issues are in dispute between the parties in that regard. It is not in the interests of the welfare of these children to delay matters so I am refusing a stay on the orders made in the third set of proceedings. I am refusing a stay on any of the orders I have made just now.

23. These children have been the subject of proceedings in the High Court, in the Court of Appeal and a determination made also in the Supreme Court. Having regard to the fact that the original High Court order was 2017, the Court of Appeal judgment 2018, the Supreme Court judgment two months later in May of 2018, I do not see any circumstances in which it would be appropriate to grant a stay on any of the orders I have made because we are dealing with the welfare of children and because this has gone on for too long [husband]. The matters in dispute between yourself and your wife are matters which you are entitled to litigate but in my view, [husband named], and I know you disagree with this, in my view they are matters which should be litigated in the Circuit Court where the divorce proceedings are pending. So I am not granting any stay on any of the orders which I have made.”

Analysis

22. Since it is not in dispute and the husband does not appear to meaningfully contest the fact that the wife was ordinarily resident within the circuit in question at the date of the institution of the proceedings F284/2019 and that she was ordinarily resident there throughout the period of one year ending at the said date within the meaning of s. 39(1) of

the Family Law (Divorce) Act, 1996, as amended, in light of the findings and order of Groarke J. of 15th June 2021, as upheld by Jordan J. in Appeal 2021/31CAF of 17th December, 2021, there is a binding and conclusive determination that the Circuit Court did have jurisdiction to deal with the Family Law Civil Bill, including the application for a decree of divorce and the ancillary reliefs therein sought.

23. With regard to the separate issue of the High Court's procedural power to remit the within proceedings 2021/127M to the Circuit Court, it appears that the husband is under a fundamental misapprehension as to the meaning and import of an exchange that took place between counsel for the wife and the judge referred to above and also the implications of the orders concerning access made on 26th May, 2017 in the High Court in proceedings 2015/61M. Such orders, are generally of a temporary nature directed towards the welfare of the relevant children and the respective interests of the parties and same are generally operative pending conclusion of the proceedings. The High Court judge in question has now retired. The order has been superseded by events. The High Court is no longer seised of any aspect of the proceedings bearing Record No. 2015/61M.

Order 70A Rule 15 - Remittal

24. Where remittal of family law proceedings to a lower court is sought, the procedural position is governed by Order 70A, r.15 which was enacted by S.I. 343/1997:

“15. (1) Where any action or proceeding is pending in the High Court which might have been commenced in the Circuit Court or the District Court any party to such action or proceeding may apply to the High Court that the action be remitted or transferred to the Circuit Court or the District Court (as the case may be) and if the High Court should, in exercise of its discretion, consider such an order to be in the interests of justice it shall remit or transfer such action or proceeding to the Circuit Court or the District Court (as the case may be) to be prosecuted before the Judge

assigned to such Circuit or (as the case may require) the Judge assigned to such District as may appear to the Court suitable and convenient, upon such terms and subject to such conditions as to costs or otherwise as may appear just.

(2) An application under this rule to remit or transfer an action or proceeding may be made at any time after an appearance has been entered.”

27. A useful review and analysis of the jurisprudence of the Supreme Court regarding O.70A, r.15 was carried out in *R. v. R.* [2021] IEHC 221 whereby Barrett J. at para. 45 observed:

“... W v. W (Supreme Court, Unreported, 25th November 1999)

45. The authoritative case on remittal continues to be the decision of the Supreme Court in W v. W, a set of judicial separation proceedings in which the applicant wife had commenced her proceedings before the High Court and the respondent husband sought, pursuant to O.70A, r.15 RSC, a remittal of same to the Circuit Court. The remittal was refused and that refusal was upheld on appeal to the Supreme Court. In her judgment for the Supreme Court, Denham J., as she then was, observed, inter alia, as follows, at pp.5 et seq. of her judgment:

‘The onus is on the person seeking to have the case remitted. Thus, the onus rests on the respondent in this case.

The court has a discretion. The judge has to balance the relevant matters raised. The test to be applied is that an order to remit should be in the interests of justice.

The High Court and Circuit Court have a concurrent jurisdiction. No issue on this aspect of the case arose.

Delay is not a bar to seeking to remit an actionHowever, if an application is not made at an early date and the proceedings are joined and advanced a delay in seeking to remit in all the circumstances of the particular case be a factor for consideration by the High Court judge in the exercise of his discretion in considering the interests of justice. In this case the delay in seeking the order to remit was not such as to weigh against the respondent. However, the issue of delay in general in the case was an important factor in considering the interests of justice...

...

“... The court has a discretion. The discretion should be exercised to remit if that be in the interests of justice. In the circumstances of the case the refusal to exercise the discretion to remit was just. Further delay should be avoided. The case should be decided as soon as is reasonably possible. Such procedure would be for the benefit of all the family...”

25. Barrett J. then considered the factors to be taken into account in evaluating whether it is in the “*the interests of justice*” for the High Court in any given case to remit family law proceedings to the Circuit Court, firstly noting at para. 46:

“...In this regard, the court would respectfully note that the test applicable under O.70A, r.15 is not exclusively or even predominantly one that is backward-looking. What the court must do is ask where ‘the interests of justice’ now lie.”

26. He then turned to *Shatter’s Family Law* (4th ed., Butterworths, 1997), the authoritative family law text, for a non-exhaustive check list of factors the High Court might consider when evaluating where the interests of justice lie in a remittal application under Order 70A, r.15, observing at para. 48:-

“ ...Shatter, at p.105, identifies a number of factors to which a litigant may have regard when deciding in which court to commence her/his proceedings, which factors it seems to the court also offer a readily transferable, non-exhaustive list of factors to which the High Court can usefully have regard when seeking to determine an O.70A application. The factors to which Shatter refers are the following:

...

- (a) the nature of the issues in dispute and the type of court orders sought;*
 - (b) the jurisdictional competence of the court to grant the order or orders sought;*
 - (c) the legal complexity of the matter;*
 - (d) the accessibility of the court;*
 - (e) the estimated amount of time that will elapse between the date of the issuing of proceedings and the court hearing;*
 - (f) the income and asset position of the parties insofar as it is relevant to the matters in issue;*
 - (g) the value of the property, if any, in dispute*
 - (h) the overall family circumstances, where relevant;*
 - (i) the suitability of the particular court to deal effectively and expeditiously with the issues that require determination in the proceedings;*
 - (j) the estimated legal costs’.*
- Barrett J. added “[To these this Court would respectfully add:]
- (k) the explanation offered by the party who commenced the proceedings as to how/why the proceedings have been commenced before the High Court;*
 - (l) the extent to which proceedings have already proceeded in the High Court;*
 - (m) the fact that the Oireachtas in giving concurrent jurisdiction was seeking to minimise the burden of costs of legal proceedings;*

(n) the implications of a non-remittal on the right of a party later to bring a de novo appeal before the High Court;

(o) given that this motion is brought within the context of proceedings where, to borrow from s.3(1) of the Guardianship of Infants Act 1964, the 'guardianship, custody, or upbringing of, or access to, a child...is in question' and hence are proceedings governed, inter alia, by s.3(1), and that the question arising (which court should hear the relocation proceedings) is a predicate question and/or a question that falls within the wider issue of the question of the 'guardianship, custody, or upbringing of, or access to, a child' (however, one describes it, it is simply not a standalone question from the 'guardianship, custody, upbringing or access question'), the court considers that it must in this motion have regard to the 'best interests of the child[ren] as the paramount consideration';

(p) any and all other factors which seem of relevance in the context of any one case to reaching a determination as to where 'the interests of justice' lie for the purposes of O.70A."

27. There is nothing contained in the order made by O'Hanlon J. in the High Court on 26th May, 2017 to support a contention that access to the courts in this jurisdiction in respect of applications for custody, guardianship, divorce or separation were being in anywise restricted or delimited. Such issues were not before the High Court in 2017. Nothing in the exchange between counsel and the judge supports such a contention. The exchange took place entirely in the context of an abduction application where the return of the children to Pakistan was being sought by the husband and opposed by the wife. Those proceedings concluded, at the latest, in May 2018.

28. Following conclusion of the said abduction proceedings, the courts in this State retained full jurisdiction to hear and determine applications including in respect of divorce, ancillary orders, decrees of judicial separation and so forth, subject only to the applicant meeting the relevant statutory and legal requirements for the exercise of jurisdiction by an

Irish court in relation to the application in question. In the case of divorce, the issue of jurisdiction is governed by s. 39(1) of the Family Law Divorce Act, 1996:

“39.—(1) The court may grant a decree of divorce if, but only if, one of the following requirements is satisfied—

(a) either of the spouses concerned was domiciled in the State on the date of the institution of the proceedings concerned,

(b) either of the spouses was ordinarily resident in the State throughout the period of one year ending on that date.”

29. Insofar as the order for remittal of these proceedings is concerned, it was entirely logical and a correct exercise by the trial judge of his undoubted discretion that proceedings 2021/127M were remitted to be determined “...*as part of or alongside...*” the pending divorce proceedings F284/2019. Any other outcome would have been procedurally unsatisfactory. This will minimise costs and reduce delays and duplication and is demonstrably “... *in the interests of justice...*” within the meaning of O.70A, r.15(1). It is imperative in the interests of justice, that there be certainty around future custody and access to the children, the expeditions disposal of all issues between the parties, the avoidance of delay and the minimising of costs and expenses that all issues pertaining to the breakdown of the marriage of the parties be disposed of in the Circuit Court as the trial judge correctly concluded in making the remittal order.

Observations on Grounds of Appeal otherwise

30. There are two identical Notices of Appeal in two separate appeals. The following observations fall to be made:

1. Ground 1 asserts that “*Ireland has jurisdiction only for access*” - this is demonstrably incorrect for all the reasons stated above.
2. Ground 2 makes generalised scandalous allegations of “ *irregularities*”, “*corrupt lawyers*” “*solicitor lied, misled and threatened*” and suchlike. Insofar as it pertains

to events which are alleged to have occurred in the course of the 2015 proceedings same are not relevant to this appeal which pertains to a purely procedural order.

3. Ground 3 criticised the judge for taking into account the views of the children but has no identifiable relevance to this specific appeal remitting proceedings 2021/127M to the Circuit Court.
4. Ground 4 states that “*the Circuit Court...only has jurisdiction for Access*”. This ground is clearly incorrect and no legal basis beyond bare assertion is made out for same.
5. Ground 5 appears to pertain to a separate appeal 2021/19HLC and in any event, the husband does not appear to have adduced evidence that the children put their views before the courts in Pakistan or that same were taken into account.
6. Ground 6 is in substance an attempt by the appellant to further appeal, impermissibly and without leave, against the final and conclusive decision of the High Court in Appeal 2021/31CAF and is a collateral attack on the finality of the order of 17th December, 2021 dismissing the appeal against the order of Groarke J. 2021/31CAF. In light of same and grounds 26-29 (both inclusive) below, a separate short judgment is delivered in respect of these grounds.
7. Grounds 7-19 are an impermissible attempt to re-open the 2015 Child Abduction proceedings and/or to effect that same be revisited. Said proceedings concluded by Determination of the Supreme Court in May 2018. This ground of appeal is a collateral attack on the orders made in the said proceedings.
8. Grounds 20-22 raise issues regarding the eldest child of the parties who is now a person of full age.
9. Grounds 22-25 raise issues as to the merits of custody and access of the children and the orders obtained in Pakistan in July 2019. The order appealed against is purely

procedural. The trial judge made no determinations regarding custody, access or welfare. All such issues and the Pakistan Order can be fully agitated by the appellant before the Circuit Court as the judgment, including at para. 10, makes clear.

10. Grounds 26 – 29 (along with Ground 6 *ante*) in substance an impermissible attempt by the husband to appeal against the orders made by the High Court Judge in respect of Circuit Appeal 2021/31CAF. In light of the persistence of this ground in both Notices of Appeal and submissions, a separate judgment addressing the issue is delivered alongside this judgment.

11. Grounds 30-33 - These grounds make many grave allegations against professional people involved in the 2015 litigation. Ground 30 pertains to welfare which has been remitted to the Circuit Court for determination. Intemperate language is used throughout these grounds such as “*my video link connection was switched off*”, “*corrupt people*”, “*predetermined view*”, “*forgery*” etc.

None of the said grounds are made out. Mostly they are irrelevant or directed towards re-opening the 2015 proceedings. No ground identifies any stateable basis for varying the procedural order made by the judge that the proceedings 2021/127M be remitted to the Circuit Court for determination alongside proceedings F284/2019.

Conclusions

31. The arguments and contentions being advanced by the appellant contesting the jurisdiction of the Circuit Court to hear and determine applications including the proceedings 2021/127M are not soundly made. They are based on a fundamental misapprehension as to the import and effect of the order of O’Hanlon J. made on the 26th May, 2017 which had granted liberty to the parties to make an application to the High Court regarding access to the children. Such liberty could not in any sense be considered capable of trenching on the entitlement of either party to invoke the provisions of other legislation including the Family

Law Divorce Act, 1996 and also to seek any ancillary orders pursuant to same, subject only to satisfying the relevant Circuit Court that it was entitled to exercise jurisdiction in relation to the divorce application and that the requirements of s. 39 of the said 1996 Act were satisfied. The wife clearly satisfies the requirements of s. 39(1).

32. Further, the arguments and contentions advanced in opposition to the jurisdiction of the Circuit Court based on an exchange of views between the High Court judge and junior counsel for the wife said to have taken place on the 26th May, 2017 are not sound. Those words do not have the import contended for. Such an exchange could not and did not have the legal effect of ousting jurisdiction otherwise vested in the courts pursuant to s. 39 of the Family Law Divorce Act, 1996 and/or the Guardianship of Infants Act, 1964, as amended/and/or the inherent jurisdiction of the High Court to make welfare-related orders pertaining to the minor children of the parties as appropriate. The order appealed against was purely procedural, eminently sensible and entirely practical.

33. Accordingly, this appeal falls to be dismissed. The trial judge was correct in remitting the proceedings 2021/127M to the Circuit Court in the terms provided.

Costs

34. The appellant having failed on all grounds of appeal advanced, my provisional view is that the respondent is entitled to her costs of the appeal, to be ascertained in default of agreement. If the appellant contends for a different outcome with regard to the costs, a written submission, no longer than 2,000 to be provided by him to the respondent and the Court of Appeal office within 21 days of the date of delivery of this judgment setting out all arguments for a different costs order. The respondent to be entitled to furnish a replying submission - no longer than 2,000 words - in response within a further 21 days. The court will consider same thereafter and make such directions or orders as appropriate.

35. Birmingham P. and Binchy J. have authorised me to record their assent to the within judgment.