THE HIGH COURT
FAMILY LAW

[2021] IEHC 516
[Record 2019 No. 45 M.]

IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT, 1989
AND
IN THE MATTER OF THE FAMILY LAW ACT, 1995

BETWEEN

D.K.

APPLICANT

AND

P.I.K.

RESPONDENT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 23rd day of July, 2021

Background to the Case

1. Significant evidence was heard from the parties and the salient points are as follows: The parties married one another in July, 2005 in England. The applicant in the notice of motion (respondent in the judicial separation proceedings) obtained a BSc in medical biochemistry in England where she had lived since the age of twelve years and, by way of postgraduate study, became a veterinarian following five years' study in a Scottish university.

2. Her husband graduated from UCD in 1999 and the parties met in 2001. Both parties travelled to Australia and New Zealand in 2001 for a three-month period. In England, the wife worked as a veterinarian in a permanent position and the husband worked for Defra (the British Department of Agriculture).

3. There is no dispute that the husband has a master's qualification in food regulation or that the wife put her veterinary inspector's position, which she had obtained from the Department of Agriculture in Ireland, on hold to go abroad with her husband. She resigned from that position in the fourth year of same in 2016 and she had had special leave all during that employment term by virtue of his employment abroad.

4. It is common case that E aged fourteen and a half years, L aged twelve years and I is aged ten years. They are dependent children and there are no court orders in being save for an agreed week on, week off arrangement which has been achieved with assistance from both facilitators, therapists and counselling in Rome.

5. Hague Convention proceedings became necessary when the children were removed from Rome to Denmark without the consent or knowledge of the father. This resulted in three court hearings in total in Denmark, The Hague Convention proceedings under the child abduction legislation, with the order for return being appealed and it was affirmed on appeal. There was still no willingness to voluntarily return the children and this meant that the father had to initiate extradition proceedings and, on foot of an order of the Danish courts, the children were ordered to be returned to Rome from Denmark on the 19th December, 2019. They had been in Rome for a five-month period since the summer of 2019.

6. It is common case that the marriage of the parties broke down in 2015.

7. While the parties had agreed that the marriage was over and they agreed to separate in 2016, a large apartment was afforded by virtue of his posting and they managed to run on parallel tracks, as it was described, for a period of time without formally setting up separate homes. To the husband's surprise, the Italian family law proceedings issued in 2017. After three hearings, a year and a half later, the Italian courts declined jurisdiction. This a matter of some contention in the case but this Court notes that it cannot look behind the orders of either the Danish or the Italian courts. The wife had issued those proceedings in Italy, hoping to have the judicial separation legislation, currently in force in Ireland, applied. The judgment was published on the 24th June, 2019 and is set out at exhibit B, tab 6.

8. The wife contends, in her application for relocation, that the education of the children would be equally if not better served by their relocation to Denmark. By virtue of the husband's employment in Rome, €56,000 by school fees in a private school named "M" are paid for by the Irish Government by virtue of his employment status.

9. Extensive evidence was given by her as to the benefits in terms of grants available and the comparative cost of schooling in Denmark and health benefits etc. She feels such a move would provide a more relaxed life for the children, that everything is near to hand and that a month before the children were abducted, her parents had purchased a house in Odense, Denmark and that the children then attended a school nearby and they could travel by bike, that everything was very convenient. Her contention was that they got extra help with their Danish and that, after six weeks, it did not pose a problem. This is a matter of some contention in the case. Both parties appear to be extremely conscientious parents, very concerned about the educational attainments of their children and the children have not disappointed them in the academic sphere.

10. Great emphasis has been placed by the applicant wife on the fact that the eldest child E was assessed as she had a dyslexia-type difficulty but that now she is attaining the level she should be at because she works extremely hard to attain that level. She described her as a challenging teenager, very artistic, interested in music and art, a hoarder, academic, work is very important to her and she is very attached to her peers. She made the point that, during the period in Denmark, her close friend R and E maintained that friendship even though they were abroad for five months. E's ambition includes discussion of perhaps studying psychology or the history of art. Part of the mother's contention is that, although she got classes in Italian provided for by the Embassy when they went to Rome, she only speaks tourist Italian and that her children are in the same position linguistically. The husband, by contrast, says that he never spoke Danish at home and that the children do not speak good or much Danish. Both are agreed, however, that English is the language of the school M in Rome and the language of the community in which they spend time, being one of an international and transient nature.

11. The applicant described the second child L, aged twelve years, as extremely kind and active and a worrier and that he accepts what is going on and that he will wait for things

to unfold. He voices and suffers from exam stress. He is popular. The school population is transient, that this adds to his resilience in losing and making friends. He loves to both cook and eat and he made one very good friend, namely N, when he was in Denmark. He also suffered two fractures on the same arm, one when he was in Denmark and the other in Rome.

12. The applicant sees her third child, I, aged ten years, as clear-headed and describes her as a force to be reckoned with. She says she will not do what she is told until she understands why. She was aged eight when she was in Denmark with her mother.

13. Her contention is that, in February/March, 2017, she was not aware that her husband was seeking a fifth year of employment in Rome until March, 2018 when she learned same through a third party. She said she needed a years' income rent in an account to get a lease on her own apartment at that stage and she had no passports or legal status in Rome at that time. There were disputed monies taken out of an account and sent to the husband's sister and the wife herself agreed that she took €12,000 out to pay taxes out of a joint account. She said that account then was frozen by the bank because it had a large overdraft. She said her husband took the passports in 2007 and she and the children had planned a half term break in Copenhagen in October only to discover that the birth certificates had been removed and she, at that time, was seeking to relocate. There was a second bank account with savings of €57,000 of joint monies which she put into an account at that time in her own name.

14. Another reason why the applicant seeks the relocation is because she is English qualified as a veterinarian and she describes the situation of degree recognition as being almost impossible in Italy, the country has a surplus of veterinarians and that they leave to find work. She says that the medical terminology requires a very high standard of Italian and that outside of the cities, very few Italians speak English and that she would need medical level fluency in Italian. In terms of working in Ireland, she said that the hours were not family friendly, whereas in Italy there was an ethical issue for her because the code of welfare regarding an animal in Italy would be against euthanasia, whereas euthanasia would be used in Ireland, Denmark and England, but is not an option if an animal is dying in Italy. She said €2,500 to €3,000 was the cost of getting certification in Italy as a veterinarian and that that would take five years. Her husband disputes her claim that she cannot get work as a veterinarian in Italy. The respondent to this motion disputes specifically the wife's claim that she could not get work in Italy as a veterinarian and he referred to the specific form which he had looked into which was necessary to apply for same and said that it could be done.

15. The wife accepted freely that both of them, through their marriage had been very family orientated and she said that the third pregnancy, while not expected, was very welcome. She said that in February, 2020, both of them had taken on recommendations of the counsellors working with them, that there would be one week on, one week off access in terms of caring for the children and that they had before worked well together pre-marriage and had made huge changes relocating with a two-month old baby and with

three children then later under four years to Italy and that she had loved her job as a veterinarian at that time.

16. This witness said that, in terms of relocation to Denmark, access could be organised. She said that, every two to three weekends during The Hague proceedings, the children had access and that now that they are older and they fly unaccompanied and that certain airline operators take children from ten years and that they are experienced travellers, that it is a two and a half to three-hour flight with low cost fares being available from Friday to Sunday for access visits. What she would love to happen would be that if the children could go to the father in Rome once a month and that he could travel to see them once a month, and she said that, in the Danish school calendar, they have three to four days off every six to seven weeks. She suggests that every holiday can be split and that in mid-August, there could be one week to Italy and one to Ireland. She described in detail the plan for the academic year should they move, that school in Denmark starts on the 11th August, 2021 for that academic year that that school time goes on until the 16th October, 2021 when there is a break until the 24th October, 2021. The Christmas break is from the 22nd December until the 2nd January, 2022. Term continues then until the 9th April, 2022 and then there is a nine-day break until the 18th April, 2022. Term then continues to the 13th May, 2022 which is a Friday and there is a break from the 2nd June, 2022 until the 6th June, 2022 which is a long weekend, Saturday, Sunday, Monday. School holidays give one month off in July and one week in August and she said there could be some leeway on summer holidays. The official holidays are from the 25th June, 2022 and leeway could be given so they could begin their holidays earlier.

17. She then worked out her proposal for 2022/2023 school holidays and said that they end in the first week in August, and in May/June, there are three four-day weekends and she gave an example from the 27th June until the 29th June, and, from the 23rd June, it is the effective school holiday. She said they would work very hard to have regular contact with the father during weekends and holidays. She suggested sharing the holidays and alternating Christmas day, alternating New Year and alternating Easter, and she said there are quite a number of bank holidays when they or he could travel to see the children, that there are nine weekends between mid-August to the 16th October, and if he were to travel once a month and the children were to travel to him once a month, that every third weekend they were in a five-week cycle, one or another would be going. She said she had always had a close relationship with his family and would bring the children to Dublin to facilitate contacts and changeovers, and that she was prepared to be very flexible and that she accepted that it was very important to continue the relationship with his family.

18. She said that from September until December, 2019, they struggled to get contact established and that he would come on a Friday evening or Saturday and he had to go back late Sunday or Monday morning and that there was more than one flight daily between Rome and Copenhagen to the second airport. She gave extensive information as to what happens after eighteen years in terms of funding of third level education not being means tested in Denmark and with the living wage, one is free to study so that

there is no need for parental help for a 72-month period in total. She said for a six-year period, they have a student loan scheme, low finance loan on a pro rata basis, including for veterinary students and it applies if they undertake medicine or veterinary.

19. She gave extensive evidence about free orthodontic care for adults and children and health education with substantial subsidies. She said there was also single monthly parental benefits of €1,500 a month that cover rent, utilities and food and that €2,100 is the figure for the same in Rome and that she is not entitled to any benefits in Italy.

20. She said her parents bought a house in Denmark three years ago as a permanent home which is one hour from her and that she has a cousin one hour from her as well. She said, in any event, her parents travel to Rome six to seven times a year to see her but that they are now getting older.

21. She referred to the occasion when L had the bad fracture while they were in Denmark and, at the same time, she had to go to the airport with his friend and that her own aunt and uncle stayed with him following treatment but that in Rome she claimed to have no such support and she said her family in Denmark meet once a year for a big event.

22. In terms of her apologies for the past, she said at times the children did show reluctance to go and see their father and that she was in error in that she overly listened to them and that they now have one week with her and one week with him, and that the basis of the move to Rome was to give them an international experience and she stressed that she was very against the idea of dividing the children. Her husband is also of the view that the children should not be split up. She said that when the marriage broke up in December, 2016, she indicated a desire to stay in Rome but she said she did not want to return to a poor damp house in Ireland.

23. The parties did buy a car, a seven-seater car in February, 2016 with a view to bringing it back to Ireland in 2017 in order to avail of tax benefits relating to same.

24. This witness complained that the husband unilaterally applied for a fifth year in Rome and it was put to her that he would describe it as a misunderstanding about the fifth year because his case is that he applied for it when he discovered that the wife had re-enrolled the children in the school in Rome for another year or at least paid a booking deposit.

25. Her Italian lawyers had advised her that diplomatic immunity would not apply to family law proceedings in relation to the Italian proceedings.

26. The applicant and moving party describes the five years being up in the summer, 2018 and she was not aware that her husband had given notice regarding that employment. She sent him emails and papers for signatures and, in 2018, she found herself stuck in Italy and she said he realised she was stuck as well. She agreed that at that point he had to get a new job and that the stress levels between them were very high.

27. She agreed that she formed the intention to abduct the children when they were on the island of Elba and the Italian judgment came through. She was supposed to take the

children back to Rome on the 28th July, 2019 as they were to go to holiday camping with their father's family and cousins in Ireland but, instead, she made a unilateral decision and decided to move the family forward, as she saw it, and she said that was a mistake and that it was an unreasonable mistake which did lead to delay, and she said that, if she had to do things again, she would do things differently. She did not see it as wrong at the time, her logic was that she was moving things forward. She said that she took the view that the children were not habitually resident in Rome and she said she now understands and she said that they did have difficult communication problems which they tried to resolve with Dr. Rossi in Rome in or about March, 2018 and she said, at that stage, the agreement they entered into about the children only lasted two and a half months until mid-June.

28. It was quite clear from the evidence that she did object to the Irish grandmother collecting the children in Rome. She said that she objected to not knowing who was collecting them at one stage, that it was nothing against her mother-in-law, Granny K, collecting them *per se.*

29. Difficult communication around passports was also a huge issue where the husband retained the passports of the children in December, 2018 because he believed that, at that stage, she was looking at a particular school at Rosskilda, Denmark.

30. Her parents afforded the option of a holiday in Majorca when she was in Denmark after she had retained the children there on the 28th July, 2019. She went on that holiday and told the husband that there were travel difficulties. Then, she said that in hindsight, she would have done things differently. She apologised to her husband for the deep hurt he felt at the time.

31. On her case, she is almost 50 years of age, she describes herself as a highly professional woman who has had to live off her parents for the last number of years. She said that her parents sold a house in England and they bought his car for €20,000 and the balance of the €50,000 sat in an account, was invested in Denmark and that the first investment was carried out by her father.

32. There are numerous disputes about property and assets but this Court does not believe that they are really material to the location itself because there are ongoing proceedings where the wife's own discovery is outstanding in the judicial separation proceedings, on the husband's case.

33. In terms of communications, at exhibit 19, made on the 19th December, 2019, when one of the children was locked in the bathroom and she was asked were those communications appropriate. She said, at that stage, the enforcement decision was not made and that they were not appropriate messages for her to have sent but she was very worried about the welfare of the children and the children told the judge that they did not want to return to Rome and he offered the father to come and talk to the children, she was under police surveillance and her phone was beside her and that the father spoke to

them for 45 minutes and that there were distressing calls received by her from the children and she said that the fault lies actually with the family system.

34. This witness apologised for sending those WhatsApp messages to the children.

35. The mother said that the final appeal lasted for six days and that there was no preparation time given for the return and she had an opportunity to say "*when will you return the children?".* She was informed by the police and denied contact. She said E had a fever over 40 degrees and wanted physical contact, the children needed her and that they lived through 36 hours of extreme trauma.

36. The mother was very critical in the way in which the husband followed the Danish order and never gave her a chance to bring the children back to Italy. He had applied for the extradition order on the 14th December, 2019. He brought the children to Scotland then back via Scotland to Rome, she objected to this, that on his case, he had a brother in Scotland and they were flights he got and he thought that the brother would be able to help him as the children needed clothes to be bought for them. He said also he was afraid to stay in Denmark

37. This witness was cross-examined about the fact that she had put posts on Facebook about this case of the child abduction etc., and that they were not reasonable and that she should not have done this. She said that in her own way she apologises for taking them to Denmark but thinks it is the best place for the children. She said retaining them there was not the correct thing to have done but moving forward would be the right thing. She apologised again for the way in which she told the husband about her email.

38. Subsequently, she has a correspondence address in Rome and a second address where she and the children have been resided. The lease is up on that on the 1st August, 2021. She said access has worked pretty much week on, week off. COVID intervened on the 10th March, 2020 but she says that access stabilised around October, 2020, where her husband says it stabilised in November, 2020. This witness said they worked with both Dr. Moane and Dr. Latini to work out access and that the half term holiday in October was split equally, every second weekend in 2020 and that they split Christmas holidays evenly in 2020/2021 and that, on the 17th April, 2021, the one week on, week off restarted. This appears to have worked very well to date and the holiday programme has been worked out by the parties and shared equally with a plan in place to take them to the 8th August, 2021.

39. L is in middle school and I is going into three years of middle school and the father said that the children are thankfully thriving since thriving since they were returned from Denmark in December, 2019 and that they have had one and a half years of time settled back in Rome. He says it is an amazingly good school with an international flavour and is 30 years in existence. He said that all nationalities and creeds are represented. E is the lead singer at choral events and she won a scholarship. He described on-site extra technology classes, maths classes, sports and a wide range of activities after 3:30pm.

40. He lives fourteen blocks away, in an apartment, which was originally a wooded area with trees, lawns and a pool and he said that the children have lots of friends there. He said the children have done well in the school they are in and that E had an experience in a previous school, which his wife referred to, where they had to change her and she now has a lot more friends as has L. I has attended preschool or crèche and then on to the present school. It is common case that their Italian is mediocre and that E has a form of dyslexia and that she did not have to attend Italian classes in elementary school, but she is doing it now. L is good at Italian and I is better and that English is the school language. He stressed that his wife had not lived in Denmark since she was twelve and that her parents had moved abroad, as she described. She said her parents have a holiday home, as has she, in Spain and that her parents bought a holiday apartment in Jutland.

41. The husband's case is that he and his wife have shared parenting. He has always been active in the children's lives. The husband's main case is that it is in the best interest of the children to build now on the stability they have in Italy since their return post-abduction. He says E goes to Irish dancing and does horse riding, L enjoys basketball and soccer, and they are good swimmers, and that they are all good at skiing and go to the mountains in winter. He describes them as having friends, particular friends, who walk to school with them. The week on, week off shared parenting is working really well and the children have responded very well to it and his general work life is now more flexible and he can work from home. He walks the children or takes them in the car and they like to be there at 8:10am even though school does not start until 8:30am. If he were stuck, he has an employee who will give him backup. He describes her as cleaner, cook and a person who helps with homework and is very flexible. He has other people and he described the roles they perform if he is in difficulties. He described a number of people and friends they have in the apartment block.

42. He said that evening work events are now rarer and he said it used to be once a fortnight with his previous job at the Embassy. He says that the Irish Government employ him and that the children's allowance is available and he pays tax in Ireland. The father's case is that, as a person with diplomatic status, he moved to Rome with his wife's agreement and their common intention to embark on this international experience. He said he was seconded to the EU Action Service and he works alleviating and preventing famine and building knowledge around food and agriculture organisations. He said that contract will last until July, 2022 and he said the contract is renewed annually and he thinks that he will have a role until July, 2024 in his current role because he is very well qualified in food regulation and has done a number of further courses and is very experienced. He says because of the quality of the work he is doing, he is reasonably confident that he will get a job with one of the other UN organisations but that he cannot yet be specific about that.

43. He described his children as performing very well and that E is doing very well despite initial difficulties with a form of dyslexia and that they are now all at the upper or top of their class in some subjects. E dropped out of Mandarin on the advice of a teacher and is taking French next year. Places have been kept in the school for the children as happened during the abduction.

44. He described never having heard of Odense and it is the furthest city from an airport in Denmark with a €35 toll in a car to cross the bridge. He described leaving work at 3:30pm on a Friday and arriving at 2:00am in Odense, often on a frosty winters night. He said that there would be very few direct flights on a Friday evening and he said Billund Airport is like Knock Airport with very few flights, and the flights themselves would be one and a half to two hours long. He was not that convinced about the number of relatives his wife had near her in Odense and said that her aunt lives one hour from Odense in Horsens and he said it takes an hour and twenty minutes to get from the house she has in Odense to her parents' summer house/holiday home where her parents live. He said he flew once to Billund on I's birthday and he had two flights to get to Copenhagen and that it was difficult with no direct flight and a return ticket cost him €450. He says if one arrives in Copenhagen, the arrival time is 10:30pm, the car rental closes at midnight and you have to get a bus to the car hire, queue to get the car, pay €250 to €300 for the car for the weekend; add that to the cost of an Airbnb and he says the whole thing costs about €1,600 which would include one meal out with the children.

45. He said that direct flights on a Sunday evening were easier and he would leave the children at 2:30pm on a Sunday, after midday, and he would be back in work Monday morning for 9:00am. He said that it was a unique period when they were retained in Denmark with three court hearings and, every second weekend, he would try for a longer weekend once a month. The father said that he would be devastated if he could not have the children and be with them because now, on Tuesday and Thursday, he takes them to school as much as possible and he has 75% of the holidays. He said it was always his hope to have them as much as possible, but, unfortunately, the marriage broke down. He said they have had lots of counselling. He said that he always spent a lot of time and was very involved with the children and he always thought he would be co-parenting and he said he would be committed to facilitating the best access to mum if she were not in the country, that they could have 75% of their holidays with her.

46. He said that in 2016 when they were in their third year in Rome, there was complete agreement about another year, so they extended their contract from three to four years, that by November, 2016, they had done up to a year of counselling and had agreed to separate. When his wife came back from a party in Malahide in 2016, she asked him would he consider another year, so, on his case, he extended the post and they got sanction in July/August, 2018. He was shocked by the issue of Italian proceedings in 2017 and he said, when they were living in the very huge apartment even though they had decided to separate, there was constructive spirit and said the fifth year was hard to get and he was pleased that he got it. He was shocked also because he she had never said she wanted to go to Denmark but, when he was handed the summons, he was both shocked and embarrassed and had to talk to his own ambassador. A note verbale came to him from the Department of Foreign Affairs in Italy saying that he had diplomatic immunity (see exhibit A, Department of Foreign Affairs correspondence). An email was sent from the EU ambassador confirming the situation. The husband thought at that time that he would be able to deal with the case in Ireland. He said it did not suit either of them, that the Italian court decided to decline jurisdiction.

47. They were coming to the end of the fifth year in Rome in 2018, the wife made it clear that she would not return to live in Ireland. She enrolled the children in M using her own means, so he reacted to that and thought she was going to stay in Rome and stay with the children and looked for a job to stay for another year. He is on a secondment from the Irish Government. The apartment cost €3,800 per month plus €800 a month, being €4,600 in total which is being paid by the Department of Foreign Affairs. He gets a *per diem* payment of €200 a day and he pays the rent out of that because the apartment he had was not affordable in his new role. He now has changed to a three-bedroomed apartment and it has two bathrooms, a kitchen, lounge and is much smaller. His wife, at that stage, had already moved to another apartment in any event. Cohabitation had ceased by mid-June, 2018.

48. This witness confirmed that his wife took at least €100,000 from joint savings and a further £50,000. While these matters are not predominantly the focus of this aspect of the case, his wife, he argued, had all the income from the family home in the United Kingdom and she had another house rented out in the UK and had the income from that. There was a substantial mortgage on that property and there was property in Monaghan which had been his related to his work as a vet there.

49. He describes severe difficulties with access in July, 2018 but then Dr. Rossi began to work as facilitator with the children and he and Dr. Rossi were keen that that would go ahead but his wife would not at that stage. He says the week on, week off, four-week rotation, began in April, 2019. By mid-summer, he took the children dancing and swimming, had them a few days before Christmas and one or two nights every second weekend and that his wife took them swimming on a Wednesday. He described his holidays in 2019, when the children were supposed to have been returned to him but were retained in Denmark. He referred, in an email to him, to travel complications. He had to return to Ireland on his own with empty seats on the plane beside him where had intended bringing to a holiday with their cousins camping. He described extreme difficulty getting access during the post-abduction period. Initially, his wife insisted in supervising the access, then he had to deposit passports with a lawyer, then she allowed unsupervised access. But for a period, her parents were watching him while he was with the children during access. At one stage, he went for I's birthday and it was never explained that there would be no overnight access and he had hired a vehicle, and Airbnb and he did take the children out to play etc. He explained in detail what was in relation to obtaining the return of the children and the difficulties he had with the Scottish police having been involved, and all the difficulties of that. He was very upset that his wife had posted document on social media and he felt it added insult to injury and she now accepts that she sent these messages and apologises but he stresses he bears no bitterness to her, he says he endured this and many other things. His wife insisted on coming to Rome a day or two after Christmas, 2019 and he had to request that the passports, she held, which were Danish ones, be sent to her lawyers in Ireland.

50. He stressed the type of difficulty this all has caused, that in February, 2021, E was going with her school choir to Berlin and he had the passport at that stage, but when the child

came back, the envelope to the teacher asked that the passport be returned to him but it was given to the mother because he just happened to have had flu at the time, he could not deal with it, and he said he then had to seek the return of that passport through the lawyers. He said post an assessment in October, 2020 through Dr. Rossi and Dr. Latini, he got more access with the children and was able to bring them as described to school twice a week and have them every second weekend and then shared parenting week on, one week off began, and he said they had made progress, up to the 8th August, 2021, holidays were agreed and his parents were going back to Rome on the 10th July, 2021 and she was agreeable to that. She said that she was planning summer camp in Denmark and she was to return the children to Ireland and he would have a holiday the first week up to the 8th August. He was very hopeful in relation to Dr. Moane's report that option 3 would continue. He does not want to live in Denmark and he felt that since his wife does not want to live in Ireland, Rome was a good option. His case was that, with her language difficulties and her interest in English, E is better placed in Rome and he is happy to continue with Dr. Latini and he is not going to relocate to Denmark. He said it would be impossible for him to get work in Odense and, in Copenhagen, he would be dislocated viz-a-viz the family. He said he does not have very transferable skills, that if it did not work out in Rome, the only other choice would be to go back to Italy. He realised that Dr. Moane had found it difficult to come to any decision, He was very concerned for the court to hear E and he is very anxious to put aside differences and work for what is best for the children. He acknowledged that while his wife might have very many wonderful qualities, some of her actions have not been in the best interests of the children and that he feels they benefit from his calmer approach and that they need respite and that her anger was one of the reasons the marriage ended.

51. He is of the view that I and himself have made substantial progress and that a lot has been achieved with the one week on, one week off rotation over four such cycles. He felt that it was Dr. Moane's view that the wife could be more proactive helping I's relationship with her father. He gave evidence himself of another incident with E where she was distressed and having what looked like a panic attack and that the child saw Dr. Latini after that. Were his wife agreeable (he understood she is not) to returning to Ireland, he thought there were possibilities there and mentioned Celbridge. He would say that his wife is a great networker and he did not accept that there were adequate supports for the children in Denmark in terms of support network available to the wife and cited when L fractured his arm as once such experience. He said he, on the other hand, when it happened in Rome was able to ensure the child got to hospital etc.

52. He describes great joy when he got the initial posting on both their parts. He stressed that his wife has adequate Italian to get by and went to the dentist herself recently and explained everything. He is of the view that she certainly could work in Rome.

53. He just mentioned that in Denmark because he did not have a Danish insurance number for there, and, as a result, he was never able to set foot in the school, for example. The main priority was of decisions to give a routine of stability and he feels powerless in the light of her desire to go to Denmark and he wants to be there for the children.

54. He stressed that the children's primary connection is to Ireland and the children do have diplomatic status, i.e. habitual residence in Ireland and the country of origin under the Vienna Convention. He stressed that two of the three children were born in Ireland and that they went to Rome from Ireland and they have a lot more relatives in Ireland than they have in Denmark. He said if he were to go to Denmark, he would have no home, no job, no language and he said there was never an argument raised about him renting a home in Rome and that they had lived very happily together in Malahide. In relation to Dr. Moane's report, the husband noted that he was denied access to the children the day before the assessment with her. He said that before the assessment, he had agreed that his wife would have the first week on of access but that she did not return the children to him on the second week and that Dr. Moane did not seem to think this was an issue, He took two rentals in Donnybrook Manor and he said L wanted to speak to Dr. Moane and did so, but E would not return to her mother's house. At one stage, he said his wife admitted that I was hitting her father with a stick and accusing him of having abducted the children, despite this being untrue.

55. Both parties spoke about a breakdown of trust between them, he was encouraged to give back the passports he had held for fourteen months prior to the abduction which he said he did hold to prevent the abduction but he was encouraged to give them back to encourage trust between the parties but he also said that there was an abuse of the situation by his wife because she was threatening him that he would not get access unless he returned them and then of course the abduction occurred after that.

56. He said he simply did not realise that there was the possibility of a waiver in terms of his diplomatic immunity in relation to the proceedings in Italy and, therefore, did not seek one. He said he had submitted full vouching and, on the last submission, the day before the final hearing, the issue of immunity was raised and he did an immense amount of work on it and that the Department of Foreign Affairs themselves presumed that the jurisdiction would switch to Ireland and that he was as frustrated as his wife was by what the Italian court did. He also pointed out that the summons in the Italian proceedings was not valid as it should have been served on the Department of Foreign Affairs. The husband had his own difficulties during the course of the case in this jurisdiction and had to obtain an *ex parte* order confirming and establishing jurisdiction. In addition, his own solicitor got COVID which caused delay on the Italian side. He changed solicitor in the meantime. Then in Italy with the global pandemic in order to get access, which he could not get, he actually filed a criminal complaint because it was being denied and a court letter was furnished. Again, at that stage, his wife was saying to him that there could be no access unless he gave her passports.

57. He does not understand the mechanics of family law proceedings and he was told if he wanted to bring another motion that he could not afford same. He felt that he had taken advice from solicitors in Ireland and Italy and had paid substantial monies to a criminal lawyer in Italy and had attended the police station and made a statement when access was being denied him.

58. He admitted transferring €17,000 out of joint funds to his sister and he said his wife took €120,000 out of a joint account as well as £50,000. He said the €17,000 he moved was to the only registered account that he could access, that of his sister.

59. He contends that the wife's affidavit of means shows millions in an account in Italy but that pre-June, 2020, he had supplied all of his financial information and a maintenance order was granted in favour of the wife in September, 2020 in this jurisdiction.

60. In addition, he said that he did not realise there was a diplomatic ruling regarding children at the end of a posting. He applied speculatively as a backup plan that the application for enrolment should be signed by both parents.

61. In any event, the apartment required a four-year lease which was signed in terms of the regulations in Italy from September. He said he did not take much notice of it at the time. It was put to him that on the 5th January, 2018, he caused a letter to be sent his landlord and he said the reason was that there was €4,600 a month cost and he had a duty to the Embassy to regulate his affairs. While he had an interview coming, he did not have an offer of a job.

62. This witness stressed that, on three occasions, he applied for work as an attaché and got it on the third attempt. His attitude at that stage was that his wife had made it clear that she had resources and she rented an apartment and he said that it was clear to him then that if he were to go back to Ireland at that point, he would lose his children because she was of the view that she would be staying with the children. He was the respondent in all her applications and he was reacting to her moves.

63. He said that he does not accept that no relief is sought by him from the Irish Court, he said it could not be further from the truth. He said he has no money left and he is borrowing for these proceedings and using solicitors as sparingly as he can. He says that he is in a weak position in the context of her denial of access to the children and that the courts were not sitting. In Ireland, he was advised by very lawyers about making a complaint to the Legal Services Regulatory Authority which he later withdrew because he says he was very exasperated by the whole sorry saga and that he was under pressure to keep everything going.

64. There were huge problems getting an assessor to carry out the report and, indeed, four assessors in all were appointed. The first was not sure of her role and did decline to undertake it and I think COVID affected another person carrying it out. A second person was nominating €40,000 as the fee and, finally, Dr. Moane agreed to carry out the report.

65. He said the house in Odense does look lovely and that her parents specifically bought it in the period when the children were abducted there. He stresses that she was an Irish civil servant when they went abroad.

The Section 47 Report of Dr. Fiona Moane, PsyD, Consultant Clinical Psychologist

Evidence of Dr. Moane

66. Dr. Moane's evidence was to the effect that the mother had done a lot of research regarding Denmark and that Ms. Moane did discuss the schools both in Denmark and Rome and she came to the conclusion that the children would do well wherever they were. She said Denmark seemed to have very good services and family support. Her summary at p. 26 was referred to and she said that in Italy, she did not see Italy as a long term solution and that she was aware that the husband had extended the contract but that he had told her that Italy was not long term. In the long term, he saw a relocation to Ireland or Denmark and she feels that it was in their interests that it be resolved in the longer term and, if a parent finds it untenable, that impacts on all of the family. She said the children are both adaptable and resilient and that parental agreement is the key and that the children are very aware of the uncertainty which is the biggest factor in parental conflict. She said that it was highly stressful for the mother and that marital conflict was the problem of uncertainty.

67. The mother does not have any power or control in Italy, she does not have legal rights, she cannot work at her chosen profession there and she has no family support there. She also said that it is a transitory community and that the continuing problems will impact on her stress levels and her mental health and that it will impact both parties. She said that they have excellent parenting qualities and the life revolved around the children and the children are thriving and that that is a credit to both and that everything is done with the children in mind, that there is a high level of parental engagement with the children, no stress observed in the children (a point with which this Court disagrees), and she said the structure around school, meals, activities, nurturing, all is excellent. She said that, consistently in all three children, it was evident. She said that the older child who was withdrawing, one has to respectful that she is withdrawing somewhat and wanting a closer bond with her dad and that she is always trying to balance the different needs and she said that E may be the least impacted at her age because of her strong bond also with her father. Dr, Moane felt that I would miss the mother most and has the most difficult relationship with her father but that she is now spending 50% of her time with her father and that, if they separate that, it provides a solid foundation with each parent and that the children would miss their dad. This Court does not agree that to allow relocation would provide a solid foundation as described.

68. She said that the mother's concern and motivation was to do everything she can for her children and that the children would maintain a relationship with their father. She accepted that the mother had not made ideal choices in the past but told the court how she would want them to have contact and that, in the past times, her husband found her overwhelming. This witness told the court that the parties had very different conflict resolution style and she saw her own style as putting everything on the table, whereas she felt her husband was more conflict avoidant.

69. This witness told the court that when the mother became pregnant with I, her husband questioned whether this was an unplanned pregnancy or planned and this was only discussed in the context of the assessment. She said that her husband agreed that she has health difficulties. He was more reluctant to going for therapeutic help and took the

view that this heralded or spelt the end of their relationship. Dr. Moane said that she felt that they were different in the way they both express emotions and that her husband is more private and that, in his own family, emotions are not expressed. She said she found that he had a certain lack of empathy for other people's emotions. She felt her husband would have brought the case probably in Ireland and not in Italy but that he vacillated in his attitude to her and she found him quite scathing and undermining of her. She said that the complexities were quite incomprehensible for him and that he felt very hurt. What for him was most difficult to understand was that he felt she was trying to take the children from him and that, to him, she taking the children away felt like punishment. He did not demonstrate insight into how she felt and she said that he found it overwhelming and that his taking of the passports was to save his children as he saw it.

70. Dr. Moane confirmed that the decision was made as a couple to take the posting. Since the marriage broke down, she felt that he had the most power in terms of controlling things and that he had to take control but, prior to the breakdown, it was fairly even, He had more power on the question of extending contracts and there were no deficits because she was the primary carer.

71. With regard to access to medication, when he was in vulnerable state of mind, he took this extreme view on board and he was underestimating his wife's ability. She was seeing a psychiatrist regarding the breakdown of their marriage and she had suffered depression in the past and he was overshadowed by his fear of losing his children. He has reason to fear that she did take the children illegally to another country and, while he agrees that they are back in Rome, the wife has suffered the consequences of that and the psychiatrist found that it was a damaged, not an alienated, relationship between himself and I. She also said that at the end, he was able to consider the children living in Denmark, that it was not easy for him, that the children were achievers and have done well and that mum was a source of great support to them but that the conflict is not good for them. E is detaching but also very sensitive and attuned especially to her father and to his helplessness around the situation and she sees him struggling more than mum whom she sees as stronger and that this is pulling on her and that she wants to help her father and that she should be released from that situation and that both need to be released and that her father can release her from that. She was not sure that E was adopting the father's negativity to the mother, that things were beginning to settle down in Rome and that that allowed E to ask questions about both parents and that there was a healthy process being able to look, more realistically, at the two parents.

72. She described a situation after Christmas that the second child was less concerned either way and getting to like his dad a bit more. The mother is described as the primary attachment figure to all three children and that L, the second child, wanted to go to Denmark. She described I as very vulnerable and it was harder to say her opinions are her own. She said that she is very bright but that her cognitive development is not at the stage where she could assess things. I is now able to spend more time with dad and says what she saw was very good. She is being encouraged to have a relationship with her dad and her mum and that she is trying to balance it. Together, though, it was a very

disruptive phase until the children have had time to settle down and the suggestion is that were they to go to Denmark, there would be liberal access to the father and, in relation to the question of how much access that would mean, the answer was at least two-thirds of all holidays, 75% would be the maximum and 25% would be the minimum

73. She was asked about the relocation and she said it was not an ideal solution, that it was difficult to come to that decision, it was difficult to decide and she would prefer the court to decide laying out all the options. She was asked about Denmark being more family orientated than Ireland and she said the structure in Denmark meant that children have more free time but she could not say that with authority. She said there were pros and cons each way. It was put to her that there was one more adult at home, they are both significant carers and she agreed with that and she said that just to be with the primary carer was not an ideal approach. She agreed that the wife agreed to move to Italy, that the problem was that that stay was extended without her agreement and that became a problem when the marriage broke down. There is a dispute between the parties in that the husband will say that the wife asked for the final extension between 2007 to 2018 and he agreed and that five years was the maximum and, the following year in 2018, she enrolled the children and the response to that was that she did not know what was happening.

74. This witness was cross-examined that, in late February/early March, 2017, they knew the five-year period was up in the summer and he found out that his wife had actually enrolled the children and that was confirmed that she had paid the enrolment fee and was accepted and that there was email evidence on that.

75. In 2016, a right-hand car was bought and it was put to this witness that her husband thought that they would be going back to Ireland in 2017. In November, 2016, the marriage broke down. He was an agriculture attaché to the Irish Embassy with diplomatic status and the response to that was that there was appalling communication between the two of them and that she said that she left out the form for him to sign and that it was very unreasonable some of the decisions which were made. It was put to this witness that, on the 13th July, 2017, proceedings issues in Italy and she said that it was pretty sure that the initial separation regarding relocation was applied for at the same time and it was put to her then that she had reason to stay in Rome after July, 2017 because of the proceedings and she agreed with that. It was also put that the reason he applied for the fifth year of diplomatic status was to be in Rome with the children and that the rent on the apartment they had cost €4,000 a month and that was paid for by the Department of Foreign Affairs and that the reason they stayed in that apartment was that there was a conscious decision to stay on the wife's part the response to that was that she was an EU citizen. Dr. Moane agreed and she said that she was not destitute in Rome but that there was no legal agreement and that she would have been living on savings. Dr. Moane said that she was told that the father had asked Ireland to revoke his diplomatic immunity but that the wife's solicitors did not forewarn her of this issue before she took the Italian proceedings and that the husband had all the power on which P did not realise and asks was he able to waive diplomatic immunity and it was put to her that he could not have.

76. This witness felt that once the marriage broke down, the wife wanted out of Rome and that she found it extremely stressful, the length of time which passed before the legal issues in Rome were clarified and that did add unnecessary stress.

77. It was put to her that after an agreed road trip in Europe, the wife was opposed to going back to Rome in July and the response to that was that waiting for the result of the case in Rome for all those years, she was at the end of her tether and the view was that this was not necessarily the same as saying that it was a good choice.

78. It was put to this witness that the parties have different psychological makeups and that the husband was very exercised by the issue of abduction and she agreed that he was very shocked. It was further put to her that access was skewed all this time and she was asked if that was appropriate, and she responded no, that there was no legal agreement and that agreeing access was very difficult especially because of the possibility of losing a case and that the children were not wanting to go on access.

79. She was asked about the 17th April, 2021 and the current access and she said that COVID interrupted what was a reasonable access situation.

80. It was put to this witness that the wife would not let the husband see the children except on her terms and that it was linked to the child abduction that he was very upset and very stressed and his view is that the school in M is where the children should be and that both agree and all agree that all of the children are way above average. The husband's view was put that I had been in Italy since she was three years of age, the other two five years and seven years, and the response to this was that the school is not the most important issue, that parenting is the issue. It was further put that if he can get secure employment with the fees paid, that it makes sense that they stay in Rome, that good access holidays to the wife would be available if she herself wanted to live in Denmark and she said that the children are resilient and talented and that the overriding issue is the availability of parents after school and she said a minder is not an adequate parental arrangement. She did agree that neither Denmark nor Rome was ideal. It was put to this witness that the husband is three years now into his EU posting and he has a fourth year until 2021 and that that would be a total maximum of six years.

81. The response was that the needs of the children are best met with the mother at this time and that she is more attuned to their emotional needs and she provides more structure and stimulus for them. She agreed, however, that E is at a different stage of her life, she agreed that it was a good idea if E talks to the court. She agreed that the children thrived overall, no matter where they live, they have the resources of good schools and that they have only tourist Italian. This Court does not accept that the needs of the children are best met with the mother and feels that the father is actually more attuned to their emotional and psychological needs and more in tune with what they want and why that is so.

82. It was put to this witness that the wife says while she cannot work, her husband will say the opposite and the response was that she will not change her mind about that, that they have been eight years in Rome and she wants to go to Denmark.

83. Then looking at the time distance travel-wise from the wife's parents home to where they stayed in Odense in Denmark, it takes one hour and twenty minutes by car and that a similar distance is needed to go to Copenhagen. It was mentioned that the wife's parents have a house in Jutland but the question was whether they reside there most of the time or not and that the husband's evidence would be that they live in England most of the time and it was put to her that her brother lives in York in England, the response was that she was not sure that this was s holiday home but they do have a home in England also and P herself has a home in Spain which is a holiday home. She has two cousins in Denmark but most of her relatives are in Copenhagen or Jutland and the response was that she does have family there whom she can visit and that there is no comparison the difference it makes to have family in the same country.

84. It was put to this witness that she is taking more of the story of the wife on board and that with the abduction there was very little access and she said yes, she is considering that also and she has given Rome consideration and that it was put to her that the husband is happy to extend his stay in Rome to 2024 for the welfare of the children who would then be going to university.

85. Under re-examination, Dr. Moane was asked about E who would be sixteen in December, 2022 and that she is fourteen and a half years of age at the moment and that her primary care is with the mother, she is the stronger parent and that her whole emotional involvement is how well she understands that. She said that if there is a balance to be struck, maybe there cannot be a balance with co-parenting, but she said that E best needs the complex needs of both parents and that educationally she would thrive well in both countries and that the school in Denmark is good enough. She did discuss with the husband work commitments after school and the issue of the minder. She said that she would not like to see the wife less involved, that a teenager needs to know that a parent is there. She agrees that she supported his career and that the plan was initially to come back to Ireland.

86. She was asked about 2017 again when the wife took steps to reenrol the children and she was asked whether that indicated a commitment to staying and she said that they were enrolled as a safeguard but that the wife was hoping to be out of Rome. She said that the wife was good at networking and that it is a transient international community whereas Rome was temporary. She had a readymade job with the HSE had she been in Ireland. She understood that both wanted and planned to come back to Ireland. She talked possibly about joint custody because both have the resources to fly back as often as is suitable and that, in an ideal world, they would live in the same country. She said she is the most involved logistically and equal access becomes more difficult and she said at least once a month or twice, that twice can be overly disruptive. She agreed that it mattered what each child needs and they change as they grow older and there have to be

joint agreements between the parents. She said that up to 75% or 80% should go to the parent having them because that parent must have leisure time with them as well.

87. Dr. Moane was asked if the father was definitely a good enough parent in the context of the marriage and she said she would not be so confident about that, that the mother is more able to stand back and is more balanced, and that he developed a more distorted view of the wife.

Recommendations of Dr. Moane as set out in her Report dated the 28th January, 2021

88. This psychological assessment is in order to assist the court in determining issues concerning the welfare of E, L and I, specifically with regard to custody, relocation and access to both parents:-

(1) It appears from the recommendations at p. 30 of Dr. Moane's report that the children are working, as are the parents, with Dr. Latini, child psychologist, in Rome. Dr. Moane sees it necessary that all three children process and speak about how they experienced the traumatic events in Denmark. Dr. Moane suggests that Dr. Latini makes a recommendation as to whether or not work with other professionals at present will hinder or help her work. Dr. Moane suggests that the children, on this basis, remain in Rome until the summer of 2021 until Dr. Latini assesses the relationships to be repaired enough to withstand an international separation. She says that the relationship between I and D requires most repair and that it will be important that P supports and facilitates this happening. This Court does not accept this finding and holds that necessary therapy is ongoing.

(2) With regard to her second recommendation, she says that the children require certainty and that they might finish off this academic year in Rome (2021) after which they are told they will be relocating to a different country and that both parents work at helping them to prepare for this, also supported by Dr. Latini. It is recommended that the children have more access to D as close to 50/50 as his work schedule allows and suggests that every second weekend and week on, week off would be a suitable arrangement, and that D is allowed to make his own decisions, without informing P of whatever childcare arrangements he needs to put in place. In the event that Dr. Latini assesses the relationships are not prepared enough to support an international separation, Dr. Moane then suggests that the stay in Rome is extended to January, 2022.

(3) Should P and D agree to live in the same country, it is suggested that they have joint access initially on a week on, week off basis, for at least one year, at which time it is suggested that E and L have more input into the amount of time they spend with each parent, then I in perhaps three years' time. In this respect, it is noted that due to circumstances, I is closely aligned and probably overly enmeshed and identifying with P, and negative about D, and it is emphasised that D's role will become more important for her over the next two to three years in terms of her developmental task of separation and individuation. Regardless of whether they are living in the same country or not, Dr. Moane suggests that vacation times should be

divided between both parents, with each having the children every second Christmas and Easter and summer vacations divided equally.

(4) If both parents cannot agree to live in the same country, the court might consider her assessment that, on balance, and as a single parent without a second parent readily available, P has greater capacity for providing for the needs of L and I at present, notwithstanding that D is also a vital parent in their lives. Given that P has more supports in Denmark and can work and be financially independent there, *"I believe her wellbeing will be overall better served by living in Denmark versus Ireland*". This is supported by the Danish ethos around the importance of family life and work life balance which is also likely to provide the children with an enriched childhood and adolescence as appropriate for their ages. Whilst E's needs may be equally met by either parent, she respectfully suggests that it would not be in the best interests of any of the three children for the sibling unit to be separated at this time. Nevertheless, E could be given the option depending on where D resides, of completing her senior school cycle whilst living with her father. This leaves D a number of choices including staying in Italy where he appears to be well integrated within his community, Denmark where language would be a barrier but he would likely obtain work and enjoy the lifestyle, Ireland where his roots are or another country such as Belgium where he might obtain a diplomatic posting with easier access to Denmark. Firstly, it is recommended that both P and D continue at their own individual therapy, not only to process the highly stressful events of the past three years, but also to work on their own individual psychologies. For P, this would be more awareness around how she expresses herself emotionally and the impact this has, in particular her anger, on others. For D, it would be around being more attuned to both his own and other's emotions, and developing a more authoritative parenting style (blending both caring and sensitivity and structure).

(5) Both P and D would benefit from attending a suitable course in Rome on co-parenting after separation which perhaps Dr. Latini could recommend, including whether they should attend separately or together.

89. In her evidence seemed to place great emphasis on relocation to Denmark as the ideal solution. This Court does not agree with her view on many aspects of her findings. Her evidence is opinion evidence, albeit from a clinical psychologist, and the court fundamentally disagrees with her assessment of the father. The court fundamentally disagrees with her assessment of the children. The court does not find that the mother is without any power or control in Italy, nor does she lack legal rights and nor is she incapable of working. While it is true that both of them, while they do have a network of friends and acquaintances and while they did have many visits from grandparents on each side of the family, they do not actually have family support in Rome.

90. The argument is made that to stay in Rome with the continuing problems will impact on the wife's stress levels and her mental health and that, in turn, will impact on both parties. It seems that further claims of the wife re-establishing a life in Denmark are

available while still working the week on, week off arrangement with some modification whereby her children would see her, for example, on week one and then on week two she might travel to Denmark and work there on a week on, week off basis and she would be able, in those circumstances, to work five full days as opposed to half days which she had been doing when in Denmark before. That would not be ideal but she is not restricted to staying in Rome herself but it is not what the children want. They need to have both parents at this stage in the same country. While she has done a lot of research on Denmark and has explained that in detail to the court, it is not a point scoring exercise for either place in fact, rather it is an assessment of what is in the best interests and welfare of the children at this point.

91. In terms of status, viz-a-viz the children, while she stayed at home to mind the children for a long number of years, this Court acknowledges that the father has always been a hands-on parent and was very involved with the children and both parties excelled in their respective parenting roles. It is noted that they had two au pairs when both were working in Dublin.

92. This Court felt that there was a lack of balance in Dr. Moane's assessment and that she was unnecessarily negative about the father and about the father's parenting role in circumstances where the children clearly love both parents and are dependent on both parents. As matters stand and since they re-established access post the child abduction, the reality of the case is that, by virtue of their marriage to one another, they are both joint custodial parents of these children, they are both joint guardians and they have worked successfully a week on, week off arrangement with certain other arrangements as described in this judgment so that the children see the other parent when they are not with that parent for one week at a time and vice versa.

93. The mother has full rights as an EU citizen and she is to travel within the EU as she wishes and her problem is that she wants to uproot the children now that they are settled again and undergoing therapy successfully and take them to Denmark for a new further start. This Court found that that was contra indicated on the evidence, particularly having regard to the views of the children and particularly having found the children as particularly mature and of an age when their respective views ought to be taken into account.

94. The husband's own personality cannot be used as a feature against him anymore that the wife's personality should come into this assessment of what is best for these children at this point. They are highly different in manner and personality. Their common intention and design has always been to co-parent their children and to do the very best for them, in particular, with regard to their educational needs, but it is quite clear from the therapeutic engagements that they are also very concerned to do what is right for them in terms of their physical and psychological needs.

95. Essentially, the father's case is that they went from England and back to Ireland after the birth of the first child and that the two other children were born in Ireland and that they

moved as a family unit with the same intention and aims and objectives so that he could take up a prestigious post in Rome with diplomatic status at that time.

96. With regard to her second recommendation that they would move to Rome at the end of this academic year or, alternatively, until January, 2022, this too is contra indicated on the evidence, having regard also to the best interests of the children and their stated views. They are clearly not in a position to tolerate an international separation, in the view of this Court.

97. With regard to option 3, they should still live in the same country and have the week on, week off basis access for a joint arrangement for at least a year, obviously as children get into their mid to late teens, that will be fluid situation. The court found that the youngest child, while her situation is quite complex, this Court did not find her negative as such about her father but she is anxious herself to overcome what she sees as a lack of connection with him. This Court is also of the view that what the children need now is certainty and that that certainty can best be served by having them remain where they are continuing in a system they know well where they are doing extremely well in academic terms and spreading their vacation time equally between the parents.

98. With regard to recommendation 4 of Dr. Moane's report, it is not the view of this Court that the mother has a greater capacity for providing for the needs of the two younger children at present notwithstanding their father's vital role in their lives. The court simply does not accept the evidence of Dr. Moane in this regard and feels that the father is a vital component in this unit of five people where they badly need the stability and calm of their father.

99. This Court prefers option 3 for the reasons out in this judgment save that the scheme going forward must give the children the security they crave in that it should be allowed evolve naturally, as they mature, but should not be subject to constant challenge as this would not be in their best interests.

The Children's View/s

100. The court has directed that the interviews with each of the individual children be provided in transcript form, placed in a sealed envelope and kept on the court file. Each interview took approximately fifteen minutes. The older child, E, presented as very mature for her age and certainly of an age and degree of maturity where significant weight ought to be given to her views. She is more mature than the average fourteen-year-old. L, aged twelve years, is extremely sensible and level-headed and this Court deemed him sufficiently mature of his age, to be of such an age and degree of maturity, that significant weight should be given to his views.

101. I is aged ten years and is exceptionally articulate for her age. While she is described by the psychologist as enmeshed with her mother's view, she is quite mature and of an age and degree of maturity where considerable weight has to be placed on her view. Ongoing therapy is available to all children but more particularly deemed to be needed in the case of I.

102. It is very clear that the court must pay attention to the views of these young people. They have lived with a level of conflict between their parents for a great number of years, more particularly since the breakdown of the marriage in the last five years. They appeared as well adjusted, very pleasant and very able young people, each with their own individual personality with different emphasis, different aspects of their lives.

103. Thematically, the importance of missed friends and missing the other parent were their parents to live in different countries are expressed. Overall, the preference for week on, week off contact and seeing the other parent on a Tuesday night for a meal was very popular. It was not deemed to have been too difficult organisationally.

104. A common theme was the desire to remain as a unit of three. The separation of the siblings was not something they could envisage, or would want.

105. It struck the court that these young people were exceptionally close to one another and, indeed, very positive and loving about both their parents.

106. It was a theme causing great stress in their lives that there is continued acrimony between the parents and it appeared very urgent and a necessity for them that this acrimony and fighting would cease.

107. It is absolutely contra indicated that there would be any rapid moves, that they would be moved suddenly again to go somewhere. They see the situation as needing to be sorted out.

108. There was a real fear of losing out contact with the other parent were their parents to live in different countries. They missed their dad a lot when they were living in Denmark and they do not agree that their parents should live in two different countries. The access difficulties of the move would not be in their best interests at this time.

109. They are at an age and stage of development, especially the two older children, where they really want to get on with their lives and to be able to tell their friends what is happening, which is vitally important to them, with the issue of having been in Italy for eight years and having formed good solid friendships being important to them. Real concern was expressed at the possibility of only seeing the father for two days on a weekend from time to time; a strong preference for equal time with both parents was a theme. Some consideration has to be given to their actual needs and the sharing out of their equipment between two houses. They tend to like planning and neatness, no rapid movements, time to sort out their stuff is important to them. Having lived with their parents for the whole of their young lives, it was quite a shock to them to have been separated, as they were, from their father. They have not yet recovered from this.

110. In the opinion of this Court, I has made great progress since the report of Dr. Moane was compiled in January, 2021. She seems to be fighting to achieve a better relationship with her father and it seems she is succeeding in that. It is not something she wishes to have in terms of her vulnerability on that point. I had a great understanding of the different

parenting styles of both parents and feels closer to mother. Her view on siblings being separated was that they had never been separated and she just simply did not know what it could be like. She would like the odd extra night with her mother so that they can talk. She herself likes to be part of the decision and likes the discussion around a decision as to what they might do. She feels better understood by her mother and saw her dad as great fun. While she had some critical points on each parent, overall, she has a very positive view and with more therapeutic work will make further progress. The feeling of the court is that she craves spending some more time with her dad in a concentrated way, he giving her his full and entire attention. While she is not without criticism of her mother, overall, she is definitely closer to her. She would love the extra Tuesday night with her mum on the weeks when she is with her father. In terms of careers, their views on same show the influences of the wider family. Two instances were given of influence of career choices coming from the father's family.

111. Above all, there is a strong desire that the parents sort out their disputes and it appears very urgent and significant that they feel that ought to happen fairly immediately.

112. The present position is that two older children and, in particular the eldest child, are in the role being concerned for their parents, worrying about them and the level of dispute between them. Young people of the ages of these two older members of this family should not be in this position in the circumstances at their ages.

113. The importance of maintaining familial relationships is deeply important to them. They see their family very much as a group of five people and see them/envisage them as people who really live in the same country. They also are very anxious to maintain familial relationships in the context of the grouping of three children and cannot conceive a separation. Neither can they countenance parents in different countries.

114. Both parents are highly skilled in the care of their children. When the children were younger, the mother did not work outside the home and was their primary carer. Since the return from Denmark, however, a shared parenting arrangement has been put in place, albeit with initial difficulties and COVID difficulties, it is deemed to be working well at this time. I would like a slight adjustment and would like to have the Tuesday evening just with herself and her mother.

115. It seems to this Court that Dr. Latini's work as a child psychologist, working with the children as a group, and individually, since September, 2020, has been helpful to them, in particular to I, who she sees as most in need of therapy and if making progress with her in expressing her feelings and is hopeful of repairing the relationship between her and D.

116. Dr. Moane's ideal situation for this family is for the parents to willingly agree to live in the same place with equal access between them, whilst allowing this to be flexible enough to adapt to the children's evolving needs.

117. She sees value in P relocating with the children to Denmark as set out in para. 6 of her report and notes that, while D is adverse to this scenario were it to happen, he would

want to see his children as much as possible. It seemed to this Court as the case unfolded that D was anxious to remain in Italy for as long as possible and envisaged him being able to obtain employment there in a variety of possible scenarios. Were P to be committed to basing herself in Denmark, it would be a question then of organising access for her in Ireland.

118. Overall, this Court sees notice of motion hearing cutting across a system of therapeutic endeavour being intensively carried on in Italy as well as a co-parenting regime. It was achieved through a great deal of parental therapeutic involvement and with the great work and help of Dr. Latini, Dr. Rossi and, indeed, Dr. Moane to some extent. The conclusion of this Court in relation to that process is that, having had regard to the views of the children, it is an incomplete process and that these young people have not yet processed what happened to them in Denmark. L, in particular, is deemed to have certain features of his father's personality in that both suffer from stress and worry about such things as exams. The conflict is having a very adverse effect on L. It simply must be stopped in the best interests of the children. The court sees I as in the middle of a very important therapeutic endeavour for her and agrees with Dr. Latini's assessment of I.

119. It is of note that, prior to removal of the children to Denmark, Dr. Rossi had been seeing the children in Rome and trying to regulate access between D and P so that there was a period before Denmark when he did have regular access. Dr. Rossi confirmed by telephone to Dr. Moane that she had been making progress in terms of agreeing access between the parties before the period of abduction. Dr. Rossi acknowledged the wife's frustration about her situation in Italy and believes that the father and husband was more positive about her interventions than was the wife.

120. It is a factor that, between January, 2019 and 15th March, 2020, when the COVID lockdown in Italy began, this was a chaotic time with the mother of the children attempting to see the children more than the agreement allowed for, leading on one occasion to him calling the police. There was also a difficulty, as is witnessed in this report, of her having objected to Granny K collecting the children. Her argument about this was that she had not been told who would be collecting.

121. There is a theme in this case which is causing concern and that is the anger the mother expresses towards the children, sometimes using bad language. She appears to excuse her anger blaming their father. It is frightening for these young people to have that level of anger vented. It is accepted by this Court that the wife had physical difficulties in and around the birthing of children and medical complaints at that time. She has had depression at different points in her life and has seen a psychiatrist(s) for same. She also has a form of arthritic condition and the court accepted her evidence in that.

122. The court also accepted the evidence of the father, that he had a form of cancer as a young student which was treated successfully but that he is prone to being a worrier and suffers from stress all his life. He is, however, in the eyes of his children, a person who enjoys good fun and enjoys a good lifestyle in Italy, enjoying skiing with them and weekend pursuits out of Rome. Undoubtedly, both parents love their children and care

very much for how they develop in life. The court also accepts that each party has put enormous work into the rearing of the children and that they are exercising by agreement, for a considerable period now, a joint parenting week on, week off scheme, with the father bringing the children to school on Tuesdays and Thursdays, usually walking them but sometimes by car and that, on the week when they are not with one parent, they have dinner on a Tuesday night with the other parent. The children have adapted to this, expect it and want it to continue. It is working very well. Particularly the two younger children have not yet processed really what happened in Denmark and L is just beginning to process this. I is in the middle of a very important therapeutic process for her and that should continue as it should continue for the entire family. The best interests of the children in terms of their wishes mean that these three children as a sibling group want to have the benefit of a meaningful relationship with each of their parents and they both love their parents dearly. They have significant relationships as far as this Court can see with the grandparents on each side of the family. There is no question but that it is in the best interests of this sibling group that they continue to have good contact with both parents. They envisage week on, week off as giving sufficient contact for them to maintain the family relationships.

123. The views of the children being ascertained both by virtue of Dr. Moane's comprehensive report and by the court interviewing the children individually on the DAR with a Registrar in court and the transcript of that interview is to be kept on the court file in a sealed envelope.

124. The court has reflected and finds that the physical needs can be met by either parent. In terms of their psychological needs, it is the view of this Court and finding that they need both of their parents, the father affording constancy and stability and calmness. Their mother is highly organised and highly active in her involvement with the children. It is the view of this Court that in terms of their emotional needs, they need the mix of parenting, the blending of parenting in their adolescent years in particular and, at their various ages and stages of development, any change in the present situation is likely to have very adverse effects as set out above. They need both their parents and they need and wish them to be in the same country.

125. They are happy with the way their summer access and holiday access has worked out, both in 2020 and 2021 and it was an even split as far as the court can see and that gave them the possibility of contact with both extended families and that is desirable that those links be preserved and strengthened.

126. In terms of their linguistic upbringing and needs, the language of the family is English and they are at an international school where English the main language of the classroom and of the school and, indeed, of most of the people they mix with. They are learning and have learnt Danish in the five months they spent in Denmark in particular. They are making progress in that language but it must be remembered that the eldest child has dyslexia and it is more suitable for her to continue her education in a school where she is used to the system and doing study through the English language in which she herself

has a particular interest. L speaks Danish well as set out above. For the reasons set out above, it is contra indicated in his case to have any more movement other than what is absolutely necessary and, for him, it would need long term planning as it is exceptionally stressful for him and has been very stressful. He is only now beginning to process the effect on him of the abduction. The children's religious and spiritual needs are being met well by both their parents.

127. There is a lot of pressure on the children in terms of their intellectual and educational upbringing and needs. It is not at all a question of whether one school is fee paying or another. It is more a question of them remaining in the system which is very familiar to them, which they have known all their lives and which is working very well indeed for them. Another move is not in their best interests and not what they wish. The court has already dealt with their different ages and stages and characteristics as set out above.

128. The court sees the week on, week off arrangement, which is the *de facto* situation by agreement of the joint custodial parents and as joint guardians of the children, as the existing arrangement. Both parents have much to offer these young people going forward.

129. The model which the parents have worked out themselves with the help of therapists is working and it is desirable that they continue to work on these proposals and cooperate with each other in relation to them, modifying them where necessary to accommodate the wishes of the children to some extent. These changes which the children have mentioned have been already set out herein.

130. The court believes that it is absolutely essential that the parents continue to work with their therapists to ensure that they will work out and facilitate, encourage and otherwise develop a close and continuing relationship between the children and the other parent. These parents had good relationships with their in-laws, while the wife indicated that that had changed for her, nonetheless none of this is beyond repair given a will to repair same. The children's relationships with their grandparents are important to them.

131. Both parents are well capable of caring for and meeting the needs of the children. Provision must be ensured at all times with teenagers and children of the ages of these children. It does seem to this Court that a good system has been put in place which can always be improved on if necessary. It is important to ensure that the working life does not interfere with the late afternoon time which the children need with their parents.

132. While communication and cooperation has been extraordinarily difficult, nonetheless there is extraordinary warmth and affection quite obvious in the children towards both parents and it is very much a family unit of five people. In the view of this Court, the two older children cannot be coerced to moving given their stated views and it would be against the spirit of cooperation and communication which has existed in terms of the parenting approach, especially of the mother, were she to insist on this with regard to these children. The third child is going through a very difficult regime of therapy and is working well through that and really deserves great praise for the progress she has made. It is

clear that she loves both her parents dearly. She badly wants, in the view of this Court, to overcome the point of vulnerability to her, i.e. to improve her connection with her father.

133. Both of the parents have a huge responsibility at this point to ensure that this arrangement which they have put in place themselves of joint parenting week on, week off will work seamlessly from this point on.

134. Pursuant to s. 31(4) of the Guardianship of Infants Act, 1964, as amended, the court understands the objectives underpinning the legislative approach as being to direct the focus of the inquiry away from recriminations, blame or fault finding with regard to past conduct of either parent unless it *is "relevant to the child's welfare and best interests only"* (s. 31(4)). Point scoring, therefore, as to what happened in the past is not that helpful in this case; this case is about the here and now and where the children are and where they see their best interests and welfare lying at this point.

135. The child abduction is a fact and it is a fact that that case was appealed and it is also a fact that the children were extradited from Denmark to Rome. The court cannot look behind those orders. The Danish court found that the father shared parenting and had a nurturing and caring role towards the children.

136. Likewise, with the Italian proceedings where the Italian court refused jurisdiction, this Court cannot look behind that decision and must accept it.

137. Regarding to the diplomatic immunity issue, the court asked for clarity to be sought from the Department of Foreign Affairs as follwos:-

> *"If the parties are in agreement that diplomatic immunity be revoked so as to enable the Italian court to have jurisdiction for the specific purpose of implementing orders made by the Irish High Court in Family Law proceedings, can the Department confirm that this can be done?"*

By way of background, it was noted that the father is currently on secondment. As a seconded national expert (SNE), he works at the delegation of the European Union to the Holy See, Order of Malta, UN organisations in Rome and to the Republic of San Marino as an Alternate-First Secretary. It is the Department's understanding that the Italian Ministry of Foreign Affairs has been informed by the European External Action Services (EEAS) via the usual diplomatic channels that the father took up functions on the 16th July, 2018 as First Secretary at the Delegation of the European Union. The court asked two separate questions as follows:-

> *"If the parties are in agreement that diplomatic immunity be revoked… can the Department confirm that this can be done?"*

138. The Department confirmed that any applicable immunities can be waived by the relevant authorities, not by the individual himself or herself. Moreover, the individual concerned need not consent to the waiving of his or her immunities.

139. A request for immunity to be waived should be conveyed to the EEAS via the Ministry of Foreign Affairs of the receiving State (in this case Italy). If the EEAS were notified through the Ministry of Foreign Affairs of Italy of a request for a waiver of immunity, the EEAS has advised that Ireland would be consulted and any decisions on waiving immunity would be taken jointly by the EEAS and Ireland. In such a case, consideration would be given by Ireland to the request, taking into account of all relevant facts including the position of the EEAS and the wishes of both parties. The question was then asked to enable the Italian court to have jurisdiction for the specific purpose of implementing orders made by the Irish High Court in family law proceedings, can the Department confirm that this can be done? The advice from the Department is that, in the event that any applicable immunities were waived, it would be possible to provide for a limited waiver.

140. The Department was available to provide any further clarifications as required by the court. Both parties were furnished with this advice and this letter was also copied to the European External Action Service and the in-camera rule had been lifted to allow this query to be clarified.

141. The parties are in the course of their judicial separation proceedings which have yet to be finalised in this jurisdiction. Because of COVID-19 restrictions, the courts have initiated a very comprehensive capacity to hear matters remotely. This can be done *ex parte* or, indeed, on notice of motion which is the preferable way of course. There is no blocking of access to the Irish Court in the context of these proceedings. In certain circumstances, it is also possible for an immunity for a specific purpose be achieved.

142. The views of the children have been ascertained comprehensively so.

143. Great consideration has been given to this Court by Dr. Moane's report. The court felt that it was very much in favour of allowing a relocation without due regard to the implications of same as set out above.

The Law

144. Article 42A.1 of the Constitution states:-

> *"The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights."*

Article 42A.4.1 states:-

> *"Provision shall be made by law that in the resolution of all proceedings—*
>
> *ii concerning the adoption, guardianship or custody of, or access to, any child,*
>
> *the best interests of the child shall be the paramount consideration."*

Article 42A.4.2 provides:-

"Provision shall be made by law for securing, as far as practicable… in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child."

145. Reference to the best interests of the child which is set out at s. 31 of the Guardianship of Infants Act, 1964 (as amended).

146. Section 31(2)(a) to (k):-

"(1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

(2) The factors and circumstances referred to in subsection (1) include:

(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;

(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);

(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

(f) the child's social, intellectual and educational upbringing and needs;

(g) the child's age and any special characteristics;

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,
(ii) to communicate and co-operate on issues relating to the child, and
(iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates."

Relevant Case Law

147. Principles to be applied are set out in a number of relocation applications in this jurisdiction. In *E.M. v. A.M*. (Unreported, High Court, 6th June, 1992), Flood J. identified the following criteria as being relevant:-

"(1) Which of the two [hypothetical outcomes] will provide the greater stability of lifestyle for [the child].

(2) The contribution to such stability that will be provided by the environment in which [the child] will reside, with particular regard to the influence of his extended family.

(3) The professional advice tendered…

(4) The capacity for, and frequency of, access by the non-custodial parent.

(5) The past record of each parent, in their relationships with [the child] insofar as it impinges on the welfare of [the child].

(6) The respect, in terms of the future, of the parties, to orders and directions of this Court."

148. Another authority referred to herein is *U.V. v. V.U*. [2012] 3 IR 19. The High Court refused a Spanish native permission to relocate to Spain with two children aged twelve and six years respectively. MacMenamin J. set out the applicable principles:-

"40. In light of the authorities, it seems to me that a decision of this nature is one in which a balancing exercise is involved. Having regard to the criteria just identified and enumerated by Butler-Sloss P. that balancing exercise must have regard to the constitutional rights of children to have issues of custody or upbringing taken in the interest of their welfare. Such interests include the rights of the child, subject to their welfare, to have access to or contact with their parents as part of a family unit, even where there is marital breakdown… But this is in no sense to disregard the rights of each parent individually to have each of the factors weighed. The court must assess all the factors together."

149. MacMenamin J. approved the test set out by Butler-Sloss P. in *Payne v. Payne* [2001] 2 WLR 1826:-

> *"(a) The welfare of the child is always paramount.*
>
> *(b) There is no presumption… in favour of the applicant parent…*
>
> *(c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.*
>
> *(d) Consequently, the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.*
>
> *(e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.*
>
> *(f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.*
>
> *(g) The opportunity for continuing contact between the child and the parent left behind may be very significant."*

150. MacMenamin J. then stated, later in his judgment:-

> *"89. The fundamental constitutional and legal principle applicable here is the children's right to have decisions taken as to their welfare with that welfare being the prime concern. The same principle is embodied in the case law which has been cited. Having weighed the factors, I do not think that relocation should take place now. There are many strong reasons which might favour such a course; but to my mind, the rights and welfare of the children must and will determine the outcome. They enjoy close relations with both parents, not one. Their material circumstances are, for the moment, tolerable. I think the consequence of making the order sought runs a substantial risk of very substantially reducing the contact which the boys have with one parent, in this case, the father. The risk is that they would become de facto a one-parent family, where now, they have two parents in their lives. In my mind, this outweighs the many other apparent advantages of relocation. Even the misconduct of one party towards the other must be weighed against the children's welfare principle."*

151. Reference was made to *S.P. v. J.E.* [2013] IEHC 634 by White J. he said it was a matter for balancing factors applied in relation to the child's welfare in issue and that past failures or conduct were not an issue. This was a case where the mother had removed a child to England and was then directed to return. The court found itself guided by the best interests and paramount welfare of the child and granted relocation with detailed orders as to access.

152. Jordan J. in *L.C.W. v. K.C.* [2019] IEHC 945, *L.D. v. M.D*. [2020] IEHC 267 and the currently unreported decision in *D.K. v. K.C.* (Record No.2020/69M, Unapproved judgment, 13th May, 2021). In these cases, Jordan J. set out the law as aforesaid and referred to the Court of Appeal decision by Whelan J. in *S.K. v. A.L*. [2019] IECA 177. In the decision of Whelan J.

153. Whelan J. set out that where a parent seeking liberty to remove a minor who is habitually resident within the jurisdiction of this State for the purposes of relocation to another state where the other person or holder of rights of custody does not consent to such relocation, the approach of the court is governed by the provisions of the Constitution, the Guardianship of Infants Act, 1964 (as amended) and the jurisprudence governing the best interests of the minor in question. In that judgment, Whelan J. set out that:-

> *"In any trans-national child location case, there are a variety of conflicting or competing interests potentially engaged, including the best interests of the child in question, the rights and interests of the parent who proposes to relocate and including their circumstances vis-a-vis any spouse, partner or family and the rights and interests of the left-behind parent and his or her spouse, partner or family. Such an application frequently, if not invariably, brings into stark relief the conflicting aims and objectives of the parent who proposes to relocate and who is usually the primary carer of the child with the rights of the left behind parent to maintain a relationship with the minor."*

154. In her judgment, the learned Court of Appeal judge set out that:-

> *"In this jurisdiction, having regard to the constitutional mandate and the clear provisions of the relevant legislation, including the Children and Family Relationships Act, 2015, Part 4, and the Guardianship of Infants Act 1964 (as amended), in any application to relocate a child there can be no presumption in favour of or against either the applicant parent or the remaining parent. It is purely an exercise in welfare assessment."*

155. Reference was made at para. 43 in that judgment to the importance of Article 42A of the Constitution, where the best interests of a child were required to be the paramount consideration when the High Court determined the application for liberty to remove and relocate:-

> "The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights."

156. Article 42A.4.1 provides:-

> *"Provision shall be made by law that in the resolution of all proceedings –*
>
> *(i) …*

(ii) concerning the adoption, guardianship or custody of, or access to, any child,

the best interests of the child shall be the paramount consideration."

157. Article Article 42A.4.2 provides that:-

> *"Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1 of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child."*

158. It is clear that, as a matter of principle, that where orders have been made pursuant to The Hague Convention following a wrongful removal or retention, for a summary return of a child to the state of the habitual residence, the parent who is the subject matter of such an order of return whether made on consent or otherwise has the entitlement to bring an application before the courts of the state of habitual residence of the minor seeking leave to temporarily or permanently remove the child and liberty to relocate to a new jurisdiction. In determining such an application pursuant to the Guardianship of Infants Act, 1964, a judge is unfettered by any order, be it interim or otherwise, direction or step taken or as may have occurred in a context of The Hague Convention proceedings.

159. At para. 47 of the said judgment, Whelan J. describes:-

> *"The functions of a judge dealing with any aspect of an application pursuant to the Hague Convention or the Child Abduction and Enforcement of Custody Orders Act 1991 are wholly distinct from the functions of a judge dealing with issues of custody, welfare and the best interests of a minor."*

In such circumstances:-

> *"…no breach of any principle of comity can arise since the functions of the judge under each regime are wholly distinct and different. The best interests of the minor is the paramount consideration in all determinations of welfare pursuant to the Guardianship of Infants Act 1964 (as amended). However, the best interests of a minor are not paramount pursuant to the Hague Convention since the purpose of that instrument is to achieve restoration of the status quo ante leaving all considerations of welfare and best interests to the courts of the habitual residence of the minor in question."*

160. At para. 48 of the said judgment, it is set out that:-

> *"…the trial judge is expressly limited in considering the conduct of either parent. S. 31(4) provides:-*
>
> > *'For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only.'"*

161. With reference to paras. 50 and 51 of the said judgment:-

"Part V of the Act in particular includes s. 31 which is of relevance… as [to] the applicable law governing the application of the mother seeking liberty [in the instant case considered] to remove and relocate. It provides as follows: -

(1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

(2) The factors and circumstances referred to in subsection (1) include:-

(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;

(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);

(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

(f) the child's social, intellectual and educational upbringing and needs;

(g) the child's age and any special characteristics;

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,

(ii) to communicate and co-operate on issues relating to the child, and

(iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates."

162. As set out in para. 52 of the said judgment:-

> *"The objectives underpinning the legislative approach is to direct the focus of the enquiry away from recriminations, blame or fault finding with regard to the past conduct of either parent unless it is 'relevant to the child's welfare and best interests only' (s. 31(4))."*

Ascertainable Views of the Minors

163. Paragraph 53 of the said judgment refers to "*an application of this nature*" where it is set out that *"it is imperative that the views of the child are considered and taken into account".*

164. In para. 54, it is set out that:-

> *"In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—*
>
> *(a) shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and*
>
> *(b) may make an order under section 32."*

With a clinical report, such a person is in the nature of a witness to the court rather than a witness for either party. Factors which may be of relevance in a best interests assessment in the context of a proposed relocation may include particular factors deemed to be of relevance, including:-

"(a) The minor's emotional and/psychological dependency upon the primary carer.

(b) The relationship between the child and the remaining parent.

(c) The relationship between the child and his or her extended family, including siblings, step-siblings, step-parents and grandparents and the extent to which the dynamics of those relationships that operate positively and beneficially for the minor may be affected by the relocation, and considerations as to how such changes might be ameliorated or addressed.

(d) The reasonableness of the proposed relocation and, so far as relevant, the motivation of the parent who proposes to relocate which is required to be objectively assessed.

(e) *The practical consequences of a refusal of the application for all of the directly concerned parties and in particular the minor, the directly concerned parents or guardians."*

Balancing the Rights of Parties

165. As set in para. 56 in the said judgment:-

> *"Parents in relocation proceedings may invoke rights, including freedom of movement under the EU treaties and Protocol 4, Art. 2 of the European Convention on Human Rights which provides, 'Everyone shall be free to leave any country, including his own.' In the case of a remaining parent, Art. 8 ECHR rights to family relations may also be invoked.*
>
> *However, the paramount consideration in an application seeking leave to relocate must always be the best interests of the child."*

Access

166. As set in para. 57 of the said judgment:-

> *"In evaluating the right of a parent to access, it is to be borne in mind that not alone is access a right of the parent, particularly a non-custodial parent, it is also a right of the child and is, in the absence of evidence to the contrary, presumed to be in the best interests of the child that they maintain a constructive relationship with the non-relocating parent. Care must be taken, accordingly, to structure contact arrangements so as to preserve and vindicate the child's relationship with the non-relocating parent so as to minimise disruption to same and ensure so far as practicable that the relationship is maintained in such a manner as operates in the best interests of the minor.*
>
> *Whilst no international convention or protocol at this time governs international family relocation, in March, 2010, following a conference considering issues arising in the context of international family relocation, the Washington Declaration on International Family Relocation was published with the support of the Hague Conference on Private International Law International Centre for Missing and Exploited Children.*
>
> *The said declaration provides, inter alia: -*
>
> > *'Factors Relevant to Decisions on International Relocation*
> >
> > *3. In all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.*
> > *4. In order to identify more clearly cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in*

particular, but not exclusively, by the following factors listed in no order of priority. The weight to be given to any one factor will vary from case to case:-

i) the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;

ii) the views of the child having regard to the child's age and maturity;

iii) the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;

iv) where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;

v) any history of family violence or abuse, whether physical or psychological;

vi) the history of the family and particularly the continuity and quality of past and current care and contact arrangements;

vii) pre-existing custody and access determinations;

viii) the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;

ix) the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;

x) whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;

xi) the enforceability of contact provisions ordered as a condition of relocation in the State of destination;

xii) issues of mobility for family members; and

xiii) any other circumstances deemed to be relevant by the judge.'"

167. At para. 59, Whelan J. set out as follows:-

> *"59. The Washington Declaration has no legal effect and can be characterised as 'soft law'. Neither was Ireland represented at the conference where the declaration was drafted. At most, it is merely representative of international juristic thinking in an area concerning children which is increasingly litigated. It does appear to resonate with the provisions of the Guardianship of Infants Act 1964 (as amended)."*

UN Convention

60. It will be recalled that pursuant to Art. 3 of the UN Convention on the Rights of the Child the best interests of a child shall be a primary consideration and further, pursuant to Art.

12, the child's views must be considered and taken into account in all matters affecting him or her."

168. The court has also consider *J.McD. v. P.L.* [2010] 1 ILRM 461 where Hedigan J. followed the main findings of the s. 47 report and, on appeal, the Supreme Court said that the court has no obligation to accept the report and adding that any such obligation would erode the court's decision-making role. Denham J. set out the clear position:-

> *"The person writing the report remains an expert giving his or her opinion to the court. The report is produced to assist the court. While it is a matter to be weighed in all the circumstances of the case, it should not, as a mandatory matter, be accorded great weight. A court is neither obliged to accept the report, nor is it required to expressly specify its reasons for its non-acceptance of the report. The report should be considered carefully, by the trial judge, together with all the factors and circumstances of the case, and it may assist the trial judge in determining what is in the best interests of the child, whose welfare is the paramount consideration."*

169. By way of submission on behalf of the respondent in the Court of Appeal in *R.L. v. Her Honour Judge Heneghan and M.M.* [2015] IECA 120, it is argued that it does not fetter the discretion of the court to make orders and directions in respect of access to and the welfare of the dependent children in the within proceedings. It is argued on behalf of the respondent that the applicant has sought orders directing that the dependent children be returned to her primary care with an order regulating the father's access as well as directions in relation to the welfare of the children and an order permitting the relocation of the children to Denmark. It is submitted that, if the court refuses to permit the relocation sought, the court has jurisdiction to make orders and directions regulating access to the dependent children and in respect of their welfare.

170. Submissions were made regarding diplomatic and consular immunity. It was argued on behalf of the respondent that these are subject of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. The Diplomatic Relations and Immunity Act, 1967 gives the two Conventions the force of law in Ireland and both are scheduled to the 1967 Act. In Italy, judgment was given in the Italian Court on the 24th June, 2019 in which it was held that the Italian Courts did not have jurisdiction in family law proceedings initiated by the respondent, which, *inter alia*, sought a judicial separation and the relocation of the children of the marriage to Denmark, as the applicant enjoyed immunity pursuant to Article 3.1 of the Vienna Convention VC on Diplomatic Relations from the civil and administrative jurisdiction of the Italian Courts.

171. It is submitted that this Court should not seek to go behind that judgment. Insofar as the issue of diplomatic and consular immunity is relevant to the matters before this Court, it is important to note as in Articles 9 and 43 of the Vienna Convention on Diplomatic Relations, that immunity can only be revoked by the sending state or, in certain circumstances, by the host state but not by the diplomatic agent himself.

172. It is further submitted in this case that, as a diplomatic agent, the ordinary and habitual residence of the applicant remains in Ireland for the jurisdiction of his diplomatic posting and he has a temporary residence in Italy and continues to do so while his posting as a diplomatic agent to that country continues.

173. It is further submitted that jurisdiction rests with this Court in this jurisdiction regarding the within proceedings and that any orders made by this Court are capable of being recognised and enforced by the Italian Courts, whether pursuant Brussels II Bis, Council Regulation (EC) 2201/2003, or otherwise. The fact that the applicant's diplomatic immunity precluded the Italian Courts from having jurisdiction in the family law proceedings initiated by the respondent in 2017 has no bearing on the capacity of the Italian Courts to enforce Orders validly made by this Court in these proceedings. As Denmark is not a party to the aforesaid Council Regulation, any orders made by this Court are capable of being recognised and enforced in Denmark pursuant to The Hague Convention of the 19th October, 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, which Convention has been ratified by Denmark and Ireland and has entered into force in both jurisdictions.

174. It is a fact in the case and no more than that that child abduction proceedings issued on the 13th August, 2019 seeking the return of the children from Denmark to Italy. The Danish court ordered the return on the 1st November, 2019 and made a finding that the respondent had illegally removed the children from Italy. The respondent unsuccessfully appealed that order. On foot of extradition proceedings brought by their father, the children were transferred to him on the 19th December, 2019 by orders of the Danish court and the father returned to Rome via Scotland thereafter.

175. It is noteworthy that the appeal court in Denmark decided on the 21st February, 2020 that E should not have been forcibly returned to the applicant mother without first having a child expert assessment of whether the execution was done taking E into consideration and safeguarding her best interests. It is correct to say that the respondent never issued motions seeking access to the children but it is accepted by this Court that there were a great deal of difficulties; difficulties initially when the mother returned to Rome post the abduction, she did have difficulty getting access and, indeed, in turn, she caused difficulties for the husband to access the children both during the period of the abduction when she insisted on various forms of, what could loosely be called, supervision and even subsequently there have been difficulties regarding access for both parents. The point about this is that the report of Dr. Moane is dated January, 2021, this hearing and interviews with the children took place following the court hearing which began at the end of June and the children were heard on the 10th July, 2021. The children have developed since that time and have become used to the week on, week off situation and have clearly expressed a strong view in relation thereto, and in relation to their desire to live with both parents in the same country. The eldest child is very against being moved to Denmark and separation of the siblings is not an option.

176. Great stability, as opposed to instability and uncertainty, has come into their lives since their return to Rome from Denmark insofar as they have had the full benefit of extensive therapeutic intervention, a process which, in the view of this Court, is continuing and needs to continue. They have recovered their certainty and security and are still processing what occurred. It has had and continues to have a significant effect on them and further therapy is required in the view of this Court.

177. Although the point is made that the father does not have secure employment, he does, however, have a Civil Service position and very steady income, has worked throughout the marriage and has provided for the family. The mother has also made some contributions to the family purse although she has not now worked save for the time when she worked in Denmark, for a considerable period of time. While the husband's EU posting may be due to end in 2022, he is fully confident that he will seek alternative work in the same area and gave his evidence on that. This Court accepted that he was realistic in his aspirations to continue living and working in Italy and that he would be in a very strong position to access further employment there. The terms of his employment are such that school fees are not a concern.

178. While the husband did state in his pleadings that he wished to return to Ireland, he was willing to do that if his wife were willing to come as well, he would have relocated and felt that there was a new facility for veterinarians in Celbridge, County Kildare and that both would have been able to get employment there and he gave evidence of that. It is quite clear that it is his intention, if he can possibly achieve this, to remain working in Rome where he has set down roots, albeit in temporary capacities at various times, and he has never been out of work. He freely agreed that he had reported the respondent's solicitor to the LRSA in relation to correspondence relating to access but was advised by his present solicitor to withdraw and he did so.

179. The court recognises that the respondent to the motion had changed solicitors and that he had been told by them that he could not afford a further motion to the court. It is a fallacy to hold that one is more critical than the other party in this case because they are entirely different types of people and that just has to be accepted. The court did not see the father as attempting to control the mother as presented to the court and does not accept the submissions in that regard. He appeared to the court as calm, balanced, very able, quite organised in his thinking and determined if he could at all to have his children in a stable environment which is a reasonable aspiration given their wishes, in the view of this Court.

180. It is accepted that the mother was the stay at home mother for a long number of years but circumstances did develop in the last two years since the children were returned in that there has been the therapeutic endeavour, the parties have, despite difficulties, managed to achieve a joint and shared parenting arrangement which they have trialled and is working.

181. There is a dispute as to how long the posting in Italy was to be, the court accepts the evidence of the father that, when his wife booked places for the children in their present

school in Rome, he felt it incumbent on him to obtain employment to go along with that even though they both knew at that stage they were separating. The court saw the husband as reacting to various steps taken along the way by the wife and was finding the separation, as a fact, difficult to accept in the earlier stages. The children, in the view of this Court, have now been eight years in Rome, save for the abduction period and have been longer in Rome than anywhere else and they are integrated in a social and family environment as established by the evidence. The terms and conditions governing their stay in Rome evolved as the years went on and they both went there with the common intention that he would progress in his career as a veterinarian at that point and that the mother would be free to take care of the children. The children are now growing up very fast and the mother would like to work. The court remained unconvinced that every effort had been made by her to obtain employment as a veterinarian in Rome. No proof positive was provided for the court and, in fact, the husband had researched the matter and referred to particular documentary matters which had to be complied with by her to apply and he had looked into that with her and for her. She is non-EU qualified as a veterinarian. There was absolutely no evidence offered in terms of documentary proof of any application for any employment at all. She gave evidence of having applied for a care assistant position which she was not able to obtain because the school felt that there might be a conflict of interest given that her son was in the same class as the child concerned.

182. The purchase of the wife's property by her parents in Odense was completed one month prior to her wrongful removal of the children. It is not viewed by this Court that the abduction was an impulsive matter for her and the court formed the view that this was a planned move. It was done without the husband's knowledge and/or consent in circumstances where they were joint guardians of the children and remain so by virtue of their marriage to one another.

183. The court maintains that given what it has said about easy access to the Irish court in terms of implementation of any decision of this Court, normal regulations for enforcement can apply and there is always the possibility that in the future of the father seeking to waive immunity for specific purposes, for example, for the implementation of orders if and when required. It is also the case post COVID that access to this Court system while remote can be dealt with either *ex parte* or on 24-hours' notice by way of notice of motion. Hearings can and have been heard remotely.

184. *Payne v. Payne* [2001] 2 WLR 1826 is followed.

185. While the husband has pleaded relief in his replying affidavit to the motion before the court, he has not brought a cross application for directions. The context of the order which the court is now making refusing the right to relocate these children to Denmark which is the relief sought by the mother at para. 3 of the notice of motion, an order "*granting the respondent liberty to permanently relocate the children to Denmark from Italy"*.

186. The court was told at the beginning of the hearing of this notice of motion that this was the only relief being sought by the respondent to the proceedings and applicant in this notice of motion, the mother.

187. Given the parameters of O. 70A, r. 9 of the Rules of the Superior Courts which clearly states:-

> *"An application for:*
>
> *(a) a preliminary order pursuant to section 6 of the 1995 Act; or*
>
> *…*
>
> *for any other interlocutory relief, shall be by notice of motion to the Court."*

188. In relation to *R.L. v. Her Honour Judge Heneghan* [2015] IECA 120, a case in which other reliefs (a transfer of primary care to the father) were granted pursuant to s. 11 of the Guardianship of Infants Act, 1964 (as amended) in the context of relocation application (brought by the mother) and an access application (brought by the father). The father unsuccessfully argued that the court had jurisdiction to do so. The court noted:-

> *"20. …Specifically, it was contended that an application under s. 11(1) of the 1964 Act necessarily raised issues regarding the custody of the child, so that by making any application under the sub-section the mother must be taken to have been on notice that her status as the primary carer of the child might ultimately be at issue.*
>
> *21. Section 11 (1) of the 1964 Act (as amended) provides that:*
>
> > *'Any person being a guardian of a child may apply to the court for its direction on any question affecting the welfare of the child and the court may make such order as it thinks proper'*
>
> *22. Section 11 (2) of the 1964 Act further provides:*
>
> > *'The court may by an order under this section –*
> >
> > *(a) give such direction as it thinks proper regarding the custody of the child and the right of access to the child of his father or mother;*
> >
> > *(b) order the father and mother to pay towards the maintenance of the child such as weekly or other periodical sum having regard to the means of the father and mother, the court considers reasonable.'*
>
> *23. It is clear from the language and structure of s. 11(1) that the jurisdiction of the court is conditioned by the nature of the application which has been made. Accordingly, the reference to 'may make such order' is governed by the words 'may apply to the court for its direction on any question affecting the welfare of the child.'"*

189. The court accepts that it does not have a free standing jurisdiction.

190. It seems to this Court that the same situation applies as has applied in this case de facto, that the parties have entered into by their own agreement as joint custodial parents of the children and joint guardians with shared parenting arrangement. Two of the children are now teenagers. The course of dealing between the parties shows capacity to work this arrangement and the children are happy with it and wish it to continue. The argument was made before this Court that *R.L. v. Heneghan* could be distinguished by the court in this instance on the basis that, in that case, what was in question was the appellate jurisdiction of the court and they could only affirm or vary the order and that this Court has full original jurisdiction. The court does not feel it appropriate to distinguish the above case.

191. In relation to the submissions on behalf of the mother, as the applicant in the motion and respondent in the proceedings, where the court has had due regard to these submissions, the point about this is that this a relocation case where the fact of abduction of children and subsequent return is merely just a fact and is not something which is to be held against the abducting parent. The court has noted the contents of *S.K. v. A.L.* of Whelan J. delivered on the 3rd July, 2019 and notes, in particular, at para. 42 that there is no presumption for or against relocation, it is purely an exercise in welfare assessment and not a presumption in favour of or against either the applicant parent or the remaining parent. It is important to point out, as she did at para. 47 of that judgment, that the *"functions of a judge dealing with any aspect of an application pursuant to the Hague Convention or the Child Abduction and Enforcement of Custody Orders Act 1991 are wholly distinct from the functions of a judge dealing with issues of custody, welfare and the best interests of a minor". The distinction is made that "the best interests of a minor are not paramount pursuant to the Hague Convention since the purpose of that instrument is to achieve restoration of the status quo ante leaving all considerations of welfare and best interests to the courts of the habitual residence of the minor in question".* It is also worthy of note, as set out at para. 48 of that judgment, that s. 31(4) of the Guardianship of Infants Act, 1964 (as amended) sets out:-

> *"For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only."*

192. The importance of a meaningful relationship with each of the parents, the contents of Part V of the Act are important. In the view of this Court, to some extent the linguistic issue is somewhat a neutral one because, in Denmark, the children did manage to learn Danish, although for the eldest child that could be problematic going forward and would have been difficult given her form of dyslexia and the second child learned quickly and well as did the third child. In Rome, however, English is the current language used and they have tourist-type Italian. Both parties in this case are well able to care for and meet the needs of the children and to communicate and cooperate on issues relating to the children and to exercise the relevant powers, responsibilities and entitlements to which the application relates.

193. At para. 56, in terms of balancing the rights of the parties:-

> *"…under the EU treaties and Protocol 4, Art. 2 of the European Convention on Human Rights which provides, 'Everyone shall be free to leave any country, including his own'. In the case of a remaining parent, Art. 8 ECHR rights to family relations may also be invoked."*

The court has had regard to the entirety of the terms of this test and feels that to relocate these children is clearly not in their best interests. To allow the relocation would affect the non-relocating parent in terms of causing difficulty in terms of the children's rights to their father being vindicated as well as a great deal of disruption in circumstances where it could not be deemed, in this case, to be in the best interests of the children.

194. In relation to the submissions made in respect of habitual residence, it has to be noted that this term ordinary or habitual residence has emanated from child abduction legislation and jurisprudence. While these children reside in Rome, and they have done so for the last eight years, their primary connection is with Ireland. Given their father's status, he enjoys certain diplomatic rights and status. While they have a residence address in Rome, it is not for this Court to decide where they are habitually resident or to decide that they are not habitually resident in Ireland. The reality of the case is that they are the children of a person with diplomatic status for certain roles. Since July, 2018, the father holds a diplomatic posting in the European Extension Action Service (EEAS) and Article 31 of the Vienna Convention on Diplomatic Relations applies. He enjoys similar diplomatic immunity to his previous position as First Secretary (Agriculture) at the Irish Embassy in Rome. It is noted that the Italian proceedings ought to have been notified through the Ministry of Foreign Affairs of the accrediting state by a named person in charge of the sector in which he operates. The father was not bound to come within the exceptions as of the 24th June, 2019.

195. To that extent, the case is one very much based on the guardianship principles and best interests and welfare of children as to whether they would move from one situation where they are well-established to another and whether they should be moved against their best interests and against their wishes. The court has taken an entirely child-centred approach and not withstanding that the father is in fact capacity for a period of time, the court accepted his evidence that, on the balance of probabilities, he will more than likely be able to access continuing employment in Rome given his highly specialised area of work. The essential point in this case, at this stage, is whether or not it would be in the best interests of the children having considered all the factors as set out in the legal principles to be applied which have been applied in this case, to move these children to Denmark with their mother.

196. Naturally, this Court considered, to a great degree, the wish of the mother to leave and the extensive research she had carried out. It is a very particular case which turns very much on its own facts. It is an entirely different proposition when children are much younger, for example, young babies or toddlers, which appears to be the situation in a great number of the cases referred to. It is an entirely different matter when the young

people concerned are actually emerging towards adulthood and have been through, what has been, quite a traumatic series of events for them.

197. Given that the judicial separation proceedings have not concluded and given that this notice of motion cuts across, as it were, therapeutic regime put in place by agreement of both parties for the benefit of children, in all the circumstances, it is not deemed appropriate to move these children at this time.

198. In the notice of motion before the court, the court was told, at the start of the case, that the mother was not seeking primary care and access and welfare issues to be decided but only the issue of relocation was being fought, that this Court is not dealing with a judicial review hearing, that it is an entirely different function. It is common case that if the children were being allowed relocate, then access orders could be made and the law is that if the relocation is not allowed it is not possible for this Court then to embark as the pleadings stand on making access orders. The court notes, however, of course, that they are a married couple with joint guardianship rights and joint custodial rights of the three children. Two years and nine months have passed since the summer of 2018 until April, 2021 The husband's case is that from July until December, 2019, his access was not working at that stage. The wife is very critical of the husband that in early, 2020, she felt that she should have been able to resume care and control which had been the situation pre the abduction but the court takes the view that what happened is not that unreasonable on the evidence and, thankfully, the week on, week off has eventually really worked well, especially since April, 2021, noting that COVID-19 intervened and caused further difficulties for both parties in the interim period. The position still remains, therefore, that the court recognises the existing week on, week off arrangement provides shared parenting as described by them. It was argued on behalf of the wife that they would object to any directions being given to the de facto position, that they would have to advise their client. In itself speaks volumes because many apologies were given by the mother in relation to her behaviour in and around the abduction and they are noted but moving on and with a decision not to allow the children relocate, leaves the wife in the position where she is either willing to cooperate with the existing arrangements or she is not. Evidence has been heard that each party would facilitate the access of the other party, so the onus is now on the parties to ensure that their children are facilitated with the week on, week off arrangement as heretofore and on those terms.

199. As a diplomat, his temporary residence may be in Rome but his habitual residence remains in Ireland and, by virtue of the Vienna Convention in Irish law since 1967, the language used might be slightly different in the future, nonetheless the position has been clearly set out. He retains his ordinary habitual residence. He went by those protections governed by centuries of international law. It is argued that he should not have to waive his diplomatic immunity and that it does him a disservice to argue this. The husband has the option of seeking to waive immunity in limited circumstances.

200. It was argued that it is unsatisfactory that legal relief would not be available to a family in the place where they live. The issue of the meaning of habitual residence in the context of

European legislation and applicable to persons with diplomatic status is currently being considered by the CJEU, albeit in the context of a diplomatic posting to a non-Member State, as has yet been no determination.

201. It is further argued before this Court and accepted that under Article 21.1 of Brussels II, judgments of this Court can be recognised in another state without anything further being required. It is also argued that orders concerning Denmark can be made under The Hague Convention.

202. While the wife's counsel is arguing that the father and children were not habitually resident in Ireland, he says diplomatic relations have nothing to do with habitual residence and that it is not defined and it is a practical pragmatic tests. What they do in their day to day lives, i.e. a factually based test.

Conclusion

203. While there has been much argument about diplomatic immunity, given the court's findings, the court takes the view that orders are enforceable as set out above and if deemed appropriate and necessary in the future, the husband may in certain circumstances decide to seek to have a limited waiver of immunity if necessary. Of course the court has balanced the rights of the parties and their children and understands the desire of the mother to relocate to Denmark but the court has had to balance the needs and wishes and legal entitlements of both parties and their children. In addition, the court has had to balance the mother's depression in the past and her health difficulties physically, her desire to work in Denmark, her desire to live in Denmark with the children as well as the fact that access has been extremely difficult at times for the father to achieve same despite his best efforts. It is determined that the children have a better chance of seeing both their parents in a meaningful way in Rome and Italy. The court concludes that it is not in the best interests and welfare of the children to be relocated to Denmark at this time, and refuses the mother's request to relocate the children to Denmark. The effect of this ruling is that both parents enjoy joint guardianship rights and a shared parenting arrangement and agreement and the children are and have been based in Rome, the place of their usual residence, given their father's employment and that situation is to continue pending further court orders and for agreements between the parties.