THE HIGH COURT

FAMILY LAW

[2022] IEHC 733

[2022 No. 5 HLC]

IN THE MATTER OF THE CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT 1991

AND

IN THE MATTER OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

AND

IN THE MATTER OF R. AND I., MINORS

(CHILD ABDUCTION: GRAVE RISK, VIEWS OF THE CHILD)

BETWEEN:

J.K.

APPLICANT

AND

L.E.

RESPONDENT

Judgment of Ms. Justice Mary Rose Gearty delivered on the 14th of December, 2022

1. Introduction

1.1 This is an application by a father for the return of his two children, called Rachel and Isobel for the purposes of this judgment, both of whom are already the subject of

family law proceedings in Sweden. The defence of grave risk is raised, and the Court is also asked to consider the views of the children. The two issues are related; Rachel has threated to harm herself if she is returned to Sweden. There is no evidence that this specific risk was raised in recent court proceedings in Sweden, although Rachel had expressed unhappiness in respect of her school and there are references to cutting and self-harm. There is no comparable issue as regards Isobel. The Court has a report prepared for an unsuccessful application to relocate the children to Ireland, which was made in Sweden in 2019, but there is no comparable report exhibited in relation to later hearings. At the most recent hearing in Sweden, in May of 2022, there was no relocation application and joint custody was not contested.

1.2 Continuing care and professional help will be needed for Rachel. This is best addressed in the child's home, which is in Sweden, where the child's medical, educational and social welfare records are kept and where the relevant trained professionals are familiar with the family. Taking all matters into account, including the educational and social work involvement with Rachel in Sweden, this Court must return both children who have been retained here since last August.

1.3 If the children are to be moved to any other country, this can only be done with the consent of both parents. The history of chronic conflict between the parents is a major cause of their oldest child's distress and the parties to this action should

consider this in deciding how to approach their parenting in the medium to long term and in determining what will be in the best interests of both their children.

2. Objectives of the Hague Convention

2.1 The Hague Convention was created to provide fast redress when children are moved across state borders without the consent of both parents (or guardians) and to mitigate the damage sustained to a child's relationship with the "left-behind parent" by returning the child home. There, the courts where the child lives and where social welfare, school and medical records are held and witnesses are available, can make decisions about the child's welfare with the best and most up to date information. The Hague Convention not only vindicates the rights of children and ensures comity between signatory states but bolsters the rule of law generally, providing an effective, summary remedy against those who seek to take the law into their own hands.

2.2 The Convention requires that signatory states trust other signatories in terms of the operation of the rule of law in their respective nations. This international agreement, to apply the same rules in signatory states, addresses issues arising from the normal incidence of relationship breakdown which, given the relative ease of global travel and employment, can also lead to the re-settlement of parents in different countries. It is recognised as an important policy objective for contracting states that parents respect the rights and best interests of the child and the custody rights of the co-parent in deciding to move to another jurisdiction, taking the child from her

habitual residence and, potentially, from social and familial ties in that jurisdiction and from daily contact with the other parent.

2.3 The Convention requires an applicant to prove, on the balance of probabilities, that he has rights of custody, that he was exercising those rights and that the child was habitually resident in the relevant country at the time of removal or retention. If he succeeds in establishing these matters, the burden then shifts to the respondent who must establish a defence and persuade the Court to exercise its discretion not to return, as a result of that defence. Here, the defence raised is that of grave risk. There is a related argument that the Court should consider the views of the children in the case and refuse a return on the combined basis of Rachel's objection and the risk of harm to her if she is returned. The same point is made, less strongly, in respect of Isobel. If, having found as a matter of fact that Rachel does object to being returned, the Court retains a discretion on the question of whether or not to return the children.

3. Grave Risk: The Legal Test

3.1 The Convention provides, at paragraph 13(b), that:

> "*the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that …*
>
> *b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*"

3.2 Ms. Justice Finlay Geoghegan set out the legal test for grave risk in *C.A. v. C.A.* [2010] 2 IR 162, at paragraph 21:

> *"[T]he evidential burden of establishing that there is a grave risk … is on the person opposing the order for return … and is of a high threshold. The type of evidence which must be adduced [must be] 'clear and compelling evidence'."*

3.3 Case law establishes the kind of risk that has persuaded a court to refuse to return a child; a risk of violence to the child (usually based on evidence of previous violence), a risk of suicide to either the child or to the respondent, or evidence of an event such as famine or war which would render the child's position unsafe, as set out by Fennelly J. in *A.S. v. P.S. (Child Abduction)* [1998] 2 I.R. 244, at paragraph 57.

3.4 In *C.T. v. P.S.* [2021] IECA 132, Collins J outlined the history of the cases relevant to an understanding of the objectives of the Convention. He concluded:

> *"…there cannot be any serious doubt that factual disputes about the care and welfare of children are best resolved where the children reside. That is of course a fundamental animating principle of the Hague Convention."*

This explains why the burden of establishing such a defence is a heavy one and why a discretion remains for the deciding judge even if a grave risk is identified.

3.5 In *R. v. R.* [2015] IECA 265 Finlay Geoghegan J., noting that the risk in that case was of physical harm to a child, emphasised the trust to be put in the courts of the

home state to protect the child even in such an extreme situation. In *S.H. v. J.C.* [2020] IEHC 686, this Court rejected the argument that the risk of children being placed in foster care in the requesting state constituted a grave risk in this context, concluding at paragraph 6.11 of the judgment:

> *"It is clear that the courts in England are both willing and competent to vindicate the rights of these children and safeguard their welfare. It cannot be argued, tenably, that returning the children to a situation where Interim Care Orders are now in place, made by a court of competent jurisdiction with the sole aim of protecting the children, amounts to placing them in a situation of grave risk or puts them in an intolerable situation within the legal meaning of those terms, in the context of the Convention*."

3.6 In this context, it is worth quoting (as Denham J. did in *R.K. v. J.K.* [2000] 2 I.R. 416) from La Forest J. in *Thomson v. Thomson* [1994] 3 SCR 551 at p.596:

> *"In brief, although the word 'grave' modifies 'risk' and not 'harm', this must be read in conjunction with the clause 'or otherwise place the child in an intolerable situation'. The use of the word 'otherwise' points inescapably to the conclusion that the physical or psychological harm contemplated by the first clause of article 13(b) is harm to a degree that also amounts to an intolerable situation."*

Thus, to paraphrase the conclusion of Denham J., whereas any movement of children from one country to another and from one home to another is upsetting and may involve harm, that is not the level of risk contemplated by the Hague Convention.

3.7 Finally, and importantly, the Court must consider the facilities available in the requesting State to assess or mitigate the risk presenting. To paraphrase Fennelly J. in the Supreme Court decision in *P.L. v. E.C.* [2008] IESC 19, [2009] 1 I.R. 1, the real issue for this Court under this heading is whether, given that the Swedish courts have already embarked on a welfare hearing, there is evidence to suggest that the Swedish courts are unable or unwilling to protect Rachel if she is at grave risk of harm.

4. The Views of the Children

A. Relevant Law

4.1 The argument is also made that the children have objected to being returned, that they are old enough for the Court to consider and act upon their views and that, accordingly, they should not be returned to Sweden, even after balancing their views against the main objectives of the Convention, which tend to favour immediate return.

4.2 The three-stage test applicable is one articulated by Potter J. and involves ascertaining if a child does in fact object and, if so, what the weight of the objection is given the maturity of the child. Finally, if established and when assessed in that way, the Court considers if an objection is sufficient to outweigh the counter-balancing objectives of the Convention. Article 13 requires the Court to take account of the views of the child. It does not vest decision-making power in the child, and it would be wrong to treat a child's objection as the deciding factor; apart from anything else, this would place an unfair burden on the child in question. Nonetheless, it is very

important to consider the views of the child and whether they may influence the Court to take the exceptional step of refusing to return a child.

4.3 In *A.U. v. T.N.U.* [2011] 3 IR 683, Chief Justice Denham commented that: "*A court, in deciding whether a child objects to his or her return, should have regard to the totality of the evidence.*" The weight to be attached to views of a child increases as the child gets older, see for instance *M.S. v. A.R.* [2019] IESC 10, at paragraph 64.

4.4 In considering whether the child's objections to return are made out, the expression of a mere preference is not sufficient; the word "objection" imports strong feelings as opposed to a statement of preference on the part of the child, to use the words of Ms Justice Whelan in J.V. v. Q.I. [2020] IECA 302 (at para. 69).

5. Background Facts Relevant to the Convention

A. Wrongful Removal

5.1 The parties married and had two children. Rachel is now 12, Isobel is 8 years old. The parties have separated and proceedings in relation to the divorce and custody of the children are ongoing in Sweden. They have lived as a family since the children were born until the relationship ended, since which time the parents have had shared custody of the girls. There is no issue about the habitual residence of the children, who have lived in Sweden for a number of years. While both parents have family links with Ireland, the children only lived here at a time when they were very

young. There is no issue in respect of exercise of custody; the Applicant was clearly exercising this right in respect of both girls.

5.2 The Respondent brought the children to Ireland for a family holiday and decided to remain here. To avoid any further identifying details in relation to this family, this judgment will not rehearse the cities with which the families have links. Suffice to say that any argument about where the family might settle is not relevant to the core of the case: grave risk. The Respondent gave notice by email to the Applicant that his daughters would be remaining in Ireland but there is some ambiguity about the position in that the Respondent's father was ill and the Applicant appeared to consent to a longer stay in Ireland on that basis but sought reassurances about them coming back for school. In fact, he was misinformed, as it is clear from exhibit JK3 that the children were enrolled in school in Ireland on the 10th of August, suggesting that the Respondent had decided to stay in Ireland before her father became ill.

5.3 The very latest retention date in this case was the 28th of August of 2022 on which date a Swedish court made an order for the return of the children. But even if the retention began, in truth, on the 10th of August, these proceedings began on the 1st of September. In those circumstances, the Applicant has established wrongful removal of the children within the meaning of the Convention and has applied for their return well within one year of retention. Therefore, unless a defence is established, he is entitled to their immediate return.

B. Child Care Proceedings in Sweden and the 2019 Report

5.4 At paragraph 6 of her affidavit, the Respondent sets out details of what she avers creates the grave risk to Rachel should she be returned to Sweden. These events took place at various times before May of 2022. May of 2022 is a key date as it was the date of the last court hearing involving these parties and, on that date, there was no application to relocate to Ireland and no objection to joint custody of the girls.

5.5 At least two Swedish court decisions in respect of the girls' custody and care have now been made, one in 2019 and one in May of 2022. The most recent hearing post-dated all of the issues raised at this point in the replying affidavit. The context is important: in the first application in 2019, the Respondent sought to relocate to Ireland and referred to many reasons why this would be a better location for her, both personally and financially. The Swedish court ruled against her and she did not renew her application to relocate in May of 2022. Neither party exhibited any report prepared for the 2022 hearing. The Court relies, therefore, on the contents of the 2019 report as this is the most recent professional report about the circumstances of the children in Sweden. The Court is proceeding on the basis that nothing relevant was contained in any report for the 2022 hearing as, if there was relevant material, it would have been exhibited by one of the parties.

5.6 In the 2019 application, two officials referred to as investigators and as "family law secretaries" had prepared the 2019 report which is exhibited at JK1. The material available to the investigators is described and includes:

> *"… two individual investigations with the mother and father respectively.*
>
> *Investigators have had child talk with [Rachel], [Isobel] did not want to talk to the investigators. Investigators have made home visits to their father, as also Isobel and Rachel were at home. The investigators have been to a home visit at the mother when Rachel was also home.*
>
> *Investigator [named] has had reference talks with Isobel's teachers, Rachel's teacher and family therapist."*

The investigators had registry extracts and relevant investigation material from the social services. The father also provided copies of SMS messages.

5.7 The parties were shown the information on which the report was based and given the opportunity to correct anything that was inaccurate and to comment on the report, which comments are attached to the report. In her comments, under the heading Caring Skills, at page 22 of the pdf copy of the report the Respondent stated:

> *"The children are curious, and would have asked lots of questions about who the social workers were, so it was necessary to explain to them, that it is because, life in Sweden; is much harder and more lonely, than life in Ireland would be and that I would like us*

to return to Ireland, but their father does not want to, and so people need to help us, or make a decision for us … if we both as parents, have to make them together. I do not regret telling my children this. I believe it is OK for them to know things, and for them to understand what is going on, rather than wonder silently, what is going to happen and whether these people interviewing them, might remove them from their parents."

5.8 At page 23 of the pdf document, under the heading Communication and Collaboration, the Respondent lists a number of medical conditions from which she suffers and in respect of which she states she did not have support from the Applicant. She refers to agreements and makes various allegations in respect of the Applicant's failure to account for money, or to provide sufficient financial support for her.

5.9 Under the heading Custody and Accommodation, in paragraph 3 at page 25 the Respondent confirms that: "*the decision to move back to Ireland is not impulsive, it is one I have spent two and a half years pleading for.*" At page 27, the Respondent states that the primary reason for her "*wanting to return to Ireland, with the girls, is because my quality of life. My life in Sweden, is of a very poor quality. It is a ceaseless battle against exhaustion, and everything I do with the children, we do alone, we have no network here, and no friends, to whom we can call*." She refers to her limited options for housing and, at page 29, states: "*The fact that the girls have no other adults to support them in Sweden, other than their parents is a huge issue, and is a damaging way to be brought up, with no cousins, or aunts or uncles, or grandparents, to spend time with, and to have to talk to…*".

5.10 At the very end of page 31, having described difficulties in Sweden and the very poor communication between the parties, the Respondent refers to the proposal that she would move back to Ireland, even without the girls, and she concludes that:

> *"The move back to Ireland, is a financially necessary one, as well as being necessary for my physical health, which is damaged by the stress of living in Sweden, and for my mental health, because isolation is extremely harmful to anyone suffering from depression. That the investigators can't see that my choice to leave Sweden, without the girls, is partially a way to end the conflict also surprises me. Sometimes, one parent needs to step back."*

5.11 In the final paragraph of page 33 and the first of 34, the following appears:

> *"At the very least, I hope the court understands, that I will leave Sweden, and when the girls, are twelve, they may wish to be heard by the court, and given the opportunity about whether they can be held here indefinitely, by their father, or whether they can return to Ireland, to attend secondary school there, and to live with their mother, that they will be heard. I love my children more than anything. They are my reason for living …. I believe their father is an extremely poor role model for them, as he denigrates the value of my contribution to their life and their welfare thus far, never acknowledging all the personal sacrifices I made for them, and instead contacting social services, to declare me an unfit parent, and to have me investigated. I sacrificed my career, for that of [JT], at his insistence. Everything is about his career and what he wants. The fact*

that [Rachel] adapted to her new school, in an extremely short period of time, is proof that our children are adaptable, and would thrive in their own country, surrounded by their family and friends."

5.12 It is clear from the exhibit that, in 2019, Rachel was settling in well in the school that has since become one of the main issues in this case. The whole document also confirms that, in 2019, the Respondent wanted to relocate to Ireland for reasons which are outlined in detail, but which relate largely to her concerns, rather than to those of the children. She also considered that the children would be happier in Ireland and that the family and social connections were referred to in detail but the primary reason appears to be, from her own comments, her unhappiness. Her conclusion is at p. 34:

"…staying in Sweden, is what will damage me financially, emotionally, and physically to such a degree, that I will be unable to take my children, every other week."

5.13 The investigators praised the efforts made by both parents at the time but concluded: *it is not constructive to portray the father as the one who ruined her life, it neither benefits their cooperation, her own power of action nor the children's psychological well-being*. At pages 47 and 48, the investigators confirm that they are not worried about the Respondent's mental health generally, but add:

The worry the investigators have is that the mother occasionally gives ultimatums, that she is impulsive, and she has illogical solutions and reasoning. The investigators also form the opinion that she is harsh and categorical in her judgment of the father. The school teachers,

who see the children a lot, do not mention anything about the father's inability to dress or prepare the children, or that he lacks any ability to be a good father. For example, the mother accuses him of not caring for the children when it isn't his week, even though he devotes a lot of time to picking up and dropping off the children in order to help the mother's everyday life ... The investigators do not in any way experience that the mother intends to affect the children negatively by her behaviour, but that this a consequence of it. This might be due to the mother's mental well-being. One example is the mother reasoning [sic] about informing the children. Based on our investigation, this is not done in a way that benefits the children.

The mother presents the children with an idealized picture of Ireland, from her needs and wishes to move back. When the investigators bring this up, the mother says she has to keep the children informed about what will happen. On a follow up question, on whether she has asked [Rachel] how she feels about her mother leaving them in Sweden, the mother says she hasn't asked her about this since she doesn't want to burden [her] with it. In other words the mother chooses to share selected parts, which might leave [Rachel] and also [Isobel] with uncertainty they should not have. It would have been better to let the legal process finish, and then inform the children of the consequences. The investigators conclude that there is no reason to give either parent sole custody and the level of cooperation was working reasonably well in 2019.

5.14 In paragraph 9 of her affidavit, the Respondent refers to Rachel's desperation in respect of residing in Sweden. This is said to date to 2018 and yet, in the court report exhibit, written the following year, including at least one interview with Rachel and

interviews with both parents, there is no reference to any such risk. More disturbingly, there is no evidence of risk to Rachel having been raised in court last May, but whether it was or not, there was no application to remove her from Sweden.

5.15 The Court has sympathy for this Respondent, having read the history of the family's movements, disputes about money and her struggles with her own health. The difficulty for this Court is that, until 2022, although there is ample evidence of professional support for Rachel in Sweden, there is no reference in any document, email, or SMS message, to Rachel having thoughts of self-harm or any related issues. This is an issue that appears to have arisen, or at least arisen in this acute form, for the first time in the assessment prepared for this Court. Nor is there any indication as to how the risk is being managed in Ireland. There is no evidence of the child being counselled or treated in that regard.

5.16 If it is the case that Rachel's views of Sweden, as opposed to her school situation, pre-dated her holiday to Ireland, there is no evidence of this in the exhibited materials. The Applicant makes the point that the children were given an idealised view of Ireland but even if this was not the case, they had little real idea of what it would be like to live and attend school here before August of 2022. They are now in Ireland for over 3 months and getting on very well at school and with extended family.

5.17 While the Respondent links Rachel's threat of self-harm to the possibility of the child being returned, the views outlined by this child show that she is very vulnerable

at present and, as the Court Assessor pointed out, she needs professional help, wherever she is living. It is not sufficient to conclude that because the threat will be carried out if she is returned that, if Rachel is not returned, there will be no further problem. At this point, I turn to the contents of the Assessor's report.

6. Report on the Views of the Child

6.1 An independent Clinical Psychologist was appointed as the Court Assessor. He met the children last month and prepared a report setting out their views. The responses in respect of each child were as expected for a child within the relevant age range. He described Rachel as having excellent verbal ability.

6.2 Rachel described her school experience in Sweden extremely negatively, stating that she felt "*tormented*" by her peers, and she reported that she had engaged in self harm on numerous occasions. She told the assessor: *"I'd rather be dead than go back. Sometimes I think about it. This isn't worth it…Dad took the sharp things from the house."* Rachel reported that she had last experienced thoughts of self-harm before the summer holidays and that that her mother was aware of her having had thoughts of self-harm. When asked whether she had any objection to returning to live in Sweden, she replied "*Yes, I would probably chain myself to my bed and refuse to move.*"

6.3 Rachel told the Assessor: *"My father betrayed my trust. He took my phone and was checking my messages and took photos of them. I was angry with him. He never told me. I was told by my Mum*." She added that she had not attempted to cut herself since before the

summer and has no current thoughts of self-harm. She said she would tell her mother if she was feeling at risk of self-harm.

6.4 Isobel reported that she liked both Sweden and Ireland. She described her experience of school in Sweden as "*ok*". She said that "*It would be a bit hard*" to return to Sweden. While she was "*not really sure*" about where she would like to live in future, she added "*I'd like to be in Ireland, all my family are here and I like the weather here.*"

6.5 As can be seen from the quotations above, the two children take different views of the prospect of returning to Sweden. The views of Rachel do, in my view, amount to objections and those of Isobel amount to the expression of a preference.

6.6 Rachel's age and degree of maturity must be taken into account in assessing whether her objection should mitigate against returning the children, which is otherwise mandated by the Convention. The Assessor notes:

> *"Young people within [Rachel]'s age range are able to engage in abstract thought and develop problem solving strategies. They have the capacity to assume multiple perspectives and to think more logically and objectively. Rachel is an extremely vulnerable child and has been exposed to chronic parental conflict. Her current capacity for problem solving is negatively influenced by her environment."*

6.7 Rachel is of an age and level of maturity that the Court should take her views into account, it seems to me. Her objection is strongly stated. The basis for the

objection is, however, narrowly understood by the child herself from what is revealed in the report. The passage above was addressed in legal argument. It appears to me that the reference to Rachel's poor capacity to solve problems refers to her *current environment*, not to her previous geographical location or her previous school environment in Sweden. I understand the Assessor to be referring to the two problems identified elsewhere in the report as factors which caused him concern. The word "current" indicates that the issue is ongoing and environment in that context can only mean her environment in Ireland, not in Sweden.

6.8 The assessor concludes that Rachel's opinions "*seem to be predominantly centred around her unhappiness regarding her experience of school rather than through adult influence*." However, he adds that she has been seen by a variety of professionals in Sweden, where concerns were raised regarding Rachel being exposed to adult information by the Respondent**.** The Assessor reports Rachel's account, quoted above, of her being told by her mother that her father had taken pictures of messages on Rachel's phone. The Assessor concludes that if the professionals in Sweden are correct, and there has been previous history of Rachel being exposed to adult information, it is possible that Rachel *could be exposed to such information in an ongoing manner*.

7. Evidence of Grave Risk

7.1 In this instance, the threat of harm comes from the child herself, as recounted to the independent Court Assessor. The threat, in its most serious form, is a risk that

appears to have been documented for the first time in Ireland, and despite an established, and comprehensive, support system in Sweden for this child. This raises concerns about how this risk to the child is being managed currently. There was no evidence of any professional support system for the child here in Ireland.

7.2 The Court is urged by the Respondent to see the allegations in light of the inability of the Swedish courts to address the situation. There is no evidence of the Respondent having brought the issue of suicidal ideation, still less of such a risk connected with living in Sweden, to the attention of any Swedish court, despite proceedings in being and social workers assigned to, and familiar with, the family. On the contrary, when the Swedish court was last involved, in May of this year, arrangements were made for continuing joint custody and there was no application to relocate to Ireland.

7.3 At the hearing of this matter, it was argued that by remaining in Ireland, the children would be happier and the risk of harm eliminated as her objection was connected with problems at school. There are several difficulties with this argument.

7.4 Firstly, a risk of harm to Rachel was not raised in the hearing in May of 2022 or, if it was, neither party averred to it. This Court must proceed on the basis that it was not sufficiently significant to merit attention just a few months ago.

7.5 Secondly, one of the earlier difficulties for this family centred on the issues the same child had in a different school. The school now being criticised, both for the

actions of fellow students and for the failure of the school counsellor to resolve these issues, is the school to which the child was moved after a debate about whether a move was warranted, the school to which she was described as adapting quickly and well.

7.6 The Respondent places particular emphasis on how well she is getting on in school in Ireland but when she moved to her most recent school in Sweden, it appears she initially got on well there. The Court Assessor, who saw the children most recently, in November 2022, reports that this child insists that she will harm herself if forced to return to Sweden but he does not conclude that she was being mistreated at school although this is where the child sees the threat to her wellbeing. He makes no recommendation in this regard, instead he recommends that both parents work to adopt and implement a joint parenting plan and he points to chronic parental conflict as a major source of stress for her, along with the fact that the Respondent appears to be sharing inappropriate information with her.

7.7 This inappropriate sharing appears also in the 2019 report but in that report the Respondent frankly acknowledges that she shared information with her daughter, some examples of which are set out above, and she states that she considers it appropriate to tell them what is going on rather than keep them in the dark.

7.8 In an email exchange in May of 2021 about this allegation, the Respondent asks the Applicant to name and provide contact details for the professionals who take the view that she shares inappropriate information with Rachel. The Respondent

concludes the exchange that this is hearsay otherwise. However, the 2019 report is clear on this topic and the Respondent herself not only accepts it, but tries to justify telling her children that, for instance, she would like to return to Ireland but their father does not want to and that life in Sweden is hard and lonely.

7.9 Rachel's responses to the Court Assessor, along with the contents of both parties' affidavits and exhibits, provides sufficient evidence for the Court to conclude that the Respondent has shared, and may be continuing to share, inappropriate information with her. This appears in detail in the 2019 report (including the material quoted above) and also in the Assessor's report in that Rachel describes her mother revealing that the Applicant had copied messages on her phone. The Respondent's attempt to justify this and, more recently, not to accept it without proof (as the email quoted suggests) causes concern. In a case heard on affidavit it is impossible to conclude that this sharing of adult information has probably continued but if it has, this is a problem that will not be resolved by changing where the child lives.

7.10 Looking only at the matters which have been established on the evidence: This "sharing" of information in the past is a serious matter which has had a negative effect on an already vulnerable child. The Respondent does not appear to recognise how damaging this kind of information is for a 12-year-old child to hear. I note also that, at the time of the 2019 report, Rachel was only 9 years old. As regards the copying of messages, sharing this information undermines the other parent and the treating

professionals. Most parents would consider it necessary to monitor the electronic communications of one's own young child, particularly when it is intended to help a parent understand bullying or mental health issues.

7.11 Some contemporaneous correspondence is exhibited in the affidavits: messages between the parties and members of their family or friends. These were sent before these proceedings began and are therefore likely to have been written without court proceedings in mind. The text messages reveal that these parties had a fractious relationship. None of the messages appear to the Court to reflect serious childcare concerns on the part of either parent. Meanwhile, clearly, the children were spending time with both parents, which confirms that neither party had concerns sufficient to justify preventing or restricting contact between children and that parent. Even allowing for incidents including running away or suffering a medical mishap, there is no contemporaneous message indicating that either child had a difficulty in school (or in Sweden, for that matter) such as would lead to a general fear for her safety.

7.12 The Court is very sympathetic to Rachel's views and conscious of the happy situation in which the child now finds herself, but this decision must consider the evidence supporting her current threats and consider the wider picture of support for her. The Court is also bound by the law and any decision must reflect the aims of the Convention. The law requires that this Court prioritise the relationship of a child with both parents and the security of children generally, all the while keeping the child's

best interests in mind. The important objective of ensuring mutual respect of laws in contracting states is also upheld by ordering the return of these children. This is not a welfare hearing, which might reach a different conclusion. It cannot be stated strongly enough: this Court does not have the information available in the Swedish courts, medical and welfare systems. It is in Sweden that this risk to Rachel can best be assessed and addressed.

7.13 I conclude that there is a risk to Rachel but that there is insufficient evidence to determine that it is grave, within the meaning of the Convention, such as to justify an order of non-return. The burden of proof being on the Respondent in that regard, there has not been sufficient proof of a grave risk to the child nor is there proof of any risk that cannot be managed in Sweden. The Respondent's comments in the 2019 report reveal a potential risk to her, the mother's, health, but this was not raised in these proceedings. That report contains no such apprehension about Rachel. Finally, even if the risk to Rachel proves to be grave, only the Swedish courts have the information to assess this risk accurately and appropriately and the personnel is already in place to mitigate that risk. There is no evidence that the Swedish authorities are unable or unwilling to address this risk.

8. Assessing the Objection of the Child

8.1 I have already identified Rachel's views as an objection and consider it important to take her views into account. The objection voiced by one child in this

case is an objection that has become acute since her wrongful removal here rather than being one which was documented during her daily life in Sweden and where there has been no evidence of professional assistance put in place in Ireland as there has been in Sweden. That being so, it is not sufficient to outweigh the other factors which must be taken into account under the Convention. In the child's mind, the objection relates to her experience in school, but the picture painted by the Assessor is one which is more complicated. It is also relevant to recall this child's experience in a previous school which led to the move to a second school, in which she was initially happy.

8.2 The Court is also conscious that, in a case such as this where there is little documented history of self-harm and no apparent history of suicidal ideation, the evidence to support the defence of grave risk must be strong. Equally, a child expressing such ideas, while always disturbing, must be supported by previous history, medical opinion or documented threats. The Respondent's averments support Rachel's account and yet she made no such case to the court in Sweden in May, or, if she did, no material has been made available to this Court to support the proposition that Rachel was at risk in any way because she was living in Sweden.

8.3 To hold that the child must remain here because she has expressed this strong objection and adds that she will pose a threat to her own life, without more evidence as to the real risk posed, creates a further problem in this case and for future cases. Should the court always return a child who makes such a threat? If a threat of suicide,

unsupported by psychiatric evidence or a previous history of credible threats, is sufficient proof of a grave risk defence, alone or in combination with the discretion afforded when the views of that child are taken into account, it will become an easy task for a parent to frustrate the aims of the Convention. The stated objection by Rachel in this case is weakened by the fact that this family has been under the care of professional social workers in another signatory state, they have been working diligently for this child and they are in a better position to assess and mitigate any risk. Further, in this case, any acute risk to Rachel does not appear to have manifested as recently as May of 2022. There is no evidence that this issue was addressed at the last court hearing and no relocation application was made at that time.

8.4 Finally, the assessor's report reveals an unrealistic view on the part of Rachel that if she is not returned, she can stay in Ireland and be cared for by both parents. As she understands it, her father will give up his job and move to Ireland if she is not returned. While that is possible, there is no other evidence that this will in fact occur and it runs contrary to the Applicant's averments on this issue. That being the case, not returning the child to Sweden carries other difficulties that she herself has not considered, namely that she will no longer see her father other than for holidays or occasional weekends for the foreseeable future. The Applicant, until now, has been a primary carer and significant source of security for both girls, along with their mother, the Respondent. It is perhaps inevitable that the two will choose to live in different

countries in due course but, if and when this happens, it should be after a parenting plan is put in place, as recommended by the Court Assessor.

8.5 This Court has seen no evidence of grave risk, as it is understood under the Convention, to either child before they moved to Ireland. The Respondent may have legitimate preferences about where her children should live and the children may be happier here, however, there is insufficient evidence to support the conclusion that the children are at grave risk of physical or psychological harm if they are in the Applicant's care or if they are returned to Sweden.

8.6 The evidence suggests that the difficulties being encountered by Rachel would be reduced by a reduction in conflict between the parents and by the Respondent refraining from sharing information about their relationship or the possible outcome of court cases with her. The Applicant may also wish to consider the Assessor's report in deciding what the next steps for Rachel may be. In a future relocation application, which has more of the characteristics of a welfare hearing than this application, Rachel's views can be given greater weight than the law allows this Court to attach to them. This is a matter for the parties to consider before making any decision as to how, and whether, to implement the Order that the law requires this Court to make.

8.7 The return of the children to Sweden may be difficult in terms of Rachel's adjustment, particularly if she is returned to the same school but, as made clear by Denham J. in *R.K. v. J.K.*, this is not the level of risk contemplated by the Convention.

Further, and given the evidence of sustained and comprehensive support, this Court must place trust in the professionals already assigned to this case and in those who will review the case in light of the child's more recent threats. This is a vulnerable girl who needs all the support she is offered and the continuing love of both parents. She is too young to be brought into their disputes or to be given information about parental conflict or about court proceedings generally; this is damaging for any child.

8.8 The Respondent's wish to relocate to Ireland does not justify removing children from their home without the consent of the Applicant or, failing that, an order from the Swedish courts. While she may have been unhappy in Sweden, there was no evidence of grave risk to either child which justified the retention of the children here. Any risk that Rachel will self-harm, which has since developed or become more acute, is not one which is solely related to return and is probably also related to her distress at the chronic conflict between her parents. The inappropriate sharing of information with her is another probable factor in her distress. Her objection may also be partly based on her mistaken view that, if she is not returned, her dad will move to Ireland.

8.9 For all these reasons, Rachel's strongly stated objection does not outweigh the counterbalancing factors, particularly the Convention aims of ensuring a relationship with both parents, of comity with and trust in other signatory states and upholding the rule of law. These require findings that the children should be returned and that the courts in Sweden are best placed to manage the risk in Rachel's case.

9. Conclusions

9.1 Rachel's objections arise in circumstances where there has been ongoing evaluation and support for her in Sweden. Any risk to her will require professional evaluation beyond the contents of the Assessor's report in this case, and what is contained in that report is insufficient to sustain a defence that Rachel will be at grave risk should she be returned. There is no evidence that the relevant authorities in Sweden are unable or unwilling to treat and mitigate any risk arising.

9.2 The children were wrongfully abducted from Sweden, despite childcare proceedings which are ongoing in the relevant family courts. There having been insufficient evidence to establish a grave risk to the children or to conclude that they will be in an intolerable situation should they be returned, the Court is not required to consider the exercise of its discretion in this regard.

9.3 The views of Rachel amount to a strong objection but, for the reasons set out above, her objection does not counterbalance the factors in favour of return, particularly when I consider her best interests: her relationship with both of her parents and ongoing professional support for her. Isobel would prefer to remain in Ireland but no objection to a return is made out in her case.

9.4 The Court will make the Order sought and will hear the parties as to the exact terms and timing of return.