

Neutral Citation No: [2021] NIFam 10

Ref: KEE11462

ICOS No: 19/115223 &
20/13326

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 31/03/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

Between:

A HEALTH AND SOCIAL CARE TRUST

and

A MOTHER

Applicant

IN THE MATTER OF MATT (A CHILD) (ARTICLE 15 BRUSSELS IIa:
TRANSFER TO LATVIA)

Andrew Magee QC and Lisa Jennings (instructed by Paul D Thompson Solicitors)
for the Applicant Mother

Moira Smyth QC and Mr Tim Ritchie (instructed by DLS Solicitors) for the
Respondent Trust

Mr Michael Bready (instructed by O'Rorke McDonald Tweed) on behalf of the
Guardian ad Litem)

KEEGAN J

Introduction

Nothing must be published which would identify the child or his family. The name I have given to the child is not his real name.

[1] This is an application brought in the context of care order proceedings under the Children (Northern Ireland) Order 1995 to transfer the proceedings to Latvia pursuant to Article 15 of EU Council Regulation 2201/2003; Brussels IIa. The

application is dated 23 December 2020 and is made on behalf of the mother. The father has played no part in these proceedings. Given the nationality of the child the court has placed the Latvian authorities on notice of proceedings. The Latvian authorities have become engaged in these proceedings and have formally written to the court with submissions seeking a transfer of proceedings. This correspondence is dated 21 January 2021. The two applications have been heard together as they seek the same relief. This is a case instituted before 31 December 2020 and so the framework of the Brussels IIa Regulation continues to apply.

[2] The child who is the subject of this case is now 5 coming 6 in May. He has been placed in foster care in Northern Ireland since 7 August 2019 under a voluntary arrangement. It is reported that the placement is meeting all of the child's needs and that the child has integrated well into this foster family.

Background

[3] This may be summarised as follows. The child was born in Glasgow. His parents are Latvian. At the time of his birth, his mother and his father were presenting as a couple and resided together in a flat in Glasgow with another Latvian family. In October 2016 and again in July 2017, Matt came to the attention of Greater Glasgow and Clyde Children's Services due to the mother being caught shoplifting and reports of domestic violence incidents between the mother and father. In July 2017, the mother terminated her relationship with the father and social services supported her and the child in securing alternative accommodation.

[4] It is clear from the social services reports that Matt's mother led a transient lifestyle and that she has had limited periods of stability since his birth.

[5] In May 2018, the mother and child arrived in Northern Ireland and settled in Banbridge for a short period of time before moving back to Scotland for three weeks. In May/June 2018, the mother and child moved to Markethill in Northern Ireland where they lived from June to July 2018. In October 2018, the mother and child moved to Enniskillen with another gentleman for four months. In February 2019, the mother and child moved to Armagh for one month. In March 2019, the mother and child moved to Portadown for one month. Between March and July 2019, the mother and child moved back to Scotland. In July 2019, the mother and child moved back to Northern Ireland to Magherafelt to reside with another gentleman. On 2 August 2019, the child was admitted to care under a Police Protection Order following a joint visit by the Police Service of Northern Ireland "PSNI" and social services to the home in Magherafelt. This was due to reports of domestic violence between the mother and her partner. The child was admitted into a foster placement on an emergency basis and on 7 August 2019 he was placed with his current foster carers.

[6] The above chronology highlights the fact that the mother has moved around on a number of occasions and between different Trusts within Northern Ireland. She

remains a vulnerable person who is currently unemployed. At present, she lives in a Women's Aid Hostel in Mid-Ulster. She has limited English and she has indicated that she is not in a relationship at present. The mother has no family in Northern Ireland as any family are all living in Latvia. It is reported that the mother's parents are deceased. Her twin sister lives in Latvia with her husband and children.

[7] Matt is a Latvian citizen by virtue of his parents. However, he has always lived in the United Kingdom and since 2018 he has been living in Northern Ireland. It is accepted that he is habitually resident here. Since his removal into foster care, Matt has developed English. His mother states Latvian is his first language and she stresses the need to maintain this and to keep up his cultural identity.

[8] The mother has now indicated that she wishes to return to Latvia to reside permanently. However, upon probing this assertion during the hearing it is clear that no plans have been made for this move and it is dependent on the outcome of these proceedings. I have also received a letter from the Latvian school authority saying that if the child was returned to Latvia he would get a place in school and also a statement has been filed by the mother's sister in Latvia. This indicates that she lives in Latvia and is married with three children and is in employment. She says in this statement that her relationship with her twin sister is very good and that her family are willing to give Matt a family. She also states that "I cannot tolerate the idea that he would be placed with a completely different family, we are relatives, and I feel strongly that he should be with his family and live with us in Latvia."

[9] It is clear that this woman has spoken to social services before and has been ambivalent about her ability to look after Matt. She explains this in the statement at paragraph 4 where she says:

"We have talked about this with social services. They tried to help me pursue this. I had started a written application to begin my family's assessment to provide care for Matt but when my social worker showed me a questionnaire that had to be completed on everything that Northern Ireland asked for, we realised that we may not meet some of the requirements - our home is quite small, we have a stove heating system not central heating, our home is at the side of the road with no fence and due to this being a shared space it is not possible to have one erected."

[10] However, it appears from this statement that this lady has had a change of heart and she has contacted the authorities and advised that she would like the child placed in her care.

The position of the Latvian authorities

[11] There has been engagement with the Latvian authorities from an early stage which is entirely appropriate. Correspondence has been received from the Plavinas Region Orphans and Custody Court which I summarise as follows. Upon my invitation, the Head of the Orphans Court, Maruta Zalite, attended by Sightlink and made submissions to me in this case. These submissions confirmed the position of the Latvian authorities in support of a transfer of proceedings to Latvia and placement of this child in foster care in Latvia. The Latvian authorities have provided the approval of a foster family by way of a decision of 3 October 2019. Attached to this are opinions of 9 September 2019 regarding the suitability of the proposed foster parents. A document dated 4 September 2019 provides consent of these foster parents to accommodate Matt. The availability of this foster family was officially communicated in correspondence of 7 September 2020.

[12] The Latvian authority's correspondence of 21 January 2021 is the most detailed correspondence in relation to this matter. It is also the formal application for transfer of proceedings. This correspondence states that on 18 January 2021 "Plavinas Region Orphans and Custody Court received the request for information from the Ministry of Justice which is the Central Authority in Latvia for the purpose of the Hague Convention of 19 October 1996 from the Competent Authority in Northern Ireland regarding Matt. The Competent Authority of Northern Ireland informed that the case had been forwarded to the Northern Ireland High Court Family Division and it was requested to the Custody Court to provide information, whether the Custody Court will ask to transfer the jurisdiction to Latvia and will submit a relevant application to the Court of Northern Ireland, as well as whether Matt would be placed into a foster family or delivered for adoption in Latvia."

[13] This correspondence refers to the fact that the child has relatives in Latvia, the maternal aunt of the child and her family lives in Latvia. The letter states that "currently relatives of Matt cannot undertake performance of the duties of a guardian." The correspondence then refers to the United Nations Convention on the Rights of the Child and refers to the fact that a foster family has shown an intention to undertake care for Matt in Latvia. The letter refers to the fact that this foster family has appropriate training and accommodation. The letter continues:

"The Custody Court has considered the possibility to request to transfer the jurisdiction to Latvia in order to implement valuable protection of rights and interests of the children, who are nationals of Latvia, with the highest sense of responsibility."

[14] The correspondence also states there is no information available in full at the disposal of the Custody Court regarding the arising situation and needs of the child, Matt, (for example about the health status of the child), and the custody court has

not had a possibility to assess all aspects of the relevant issue, however, considering the circumstance that it is possible to provide a family environment for the child in the Republic of Latvia, ensuring care and supervision of the child in a foster family, the Custody Court considers that the best interests of the child, Matt, can be provided in the Republic of Latvia. The correspondence goes on to state that appropriate medical care will be provided and that the application in relation to the Custody Court asks the Competent Authority of the United Kingdom to transfer the jurisdiction in relation to the court proceedings regarding the child, Matt, to the Competent Authority of the Republic of Latvia and to return the child to the Republic of Latvia. By correspondence of 23 March 2021, the Latvian authorities also provided a plan for transfer of Matt into foster care should I decide to transfer the case.

The Law

[15] I have dealt with the issue of transfer in two recent cases, namely *In the matter of Ian and Jack* reported at [2020] NI Fam 29 and *In the matter of Tom* reported at [2021] NI Fam 7. The legal principles in a case of this nature are set out there. First, I must mention that this case comes to me at a time when the regulation at the heart of the case is revoked by virtue of the Withdrawal Act 2020 on 31 December 2020. However, by virtue of Article 67 of the Withdrawal Act as legal proceedings were instituted before the end of the transitional period the following acts and provisions will apply including Council Regulation 2201/203, namely Brussels IIa. In any event the mother has made her application pre-withdrawal from the European Union. The Latvian authorities also invoke the Hague Convention 1996 but as Brussels IIa still applies here I proceed on the basis of the Article 15 provisions. In any event, both the mother and the Latvian authorities effectively seek the same relief in terms of transfer of proceedings to Latvia.

[16] Article 15 provides as follows:

“Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court's own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3. A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1(c); or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the

best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.”

[17] The case of *Child and Family Agency (CAFA) v JD* CJEU Case C-42815 [2007] 2 WLR 949 confirms that the public law protection proceedings fall within the Article 15 rubric. This was a referral by the Republic of Ireland to the Court of Justice of the European Union. In that case, the Court of Justice of the European Union (CJEU) also held as follows:

“(a) Article 15(1) is a special rule of jurisdiction which must be interpreted strictly.

48. It is a derogation from the general rule of jurisdiction under Article 8(1) of the Brussels IIA, which provides the jurisdiction will lie in the first instance in the member state of the child’s habitual residence. The criterion of proximity (Recital Brussels IIA) is a way of ensuring that the best interests of the child are considered when determining issues of jurisdiction.

(b) If a court is going to seek an Article 15 transfer of jurisdiction, it has to be able to rebut the strong presumption in favour of jurisdiction in the state of the child’s habitual residence.

49(c). Article 15(3) contains an exhaustive list of factors which indicate proximity with another member state or a particular connection Article 15(1).

(d) The existence of one of more of the Article 15(3) factors does not of itself indicate that the courts of another member state would be better placed to hear the case. The court with jurisdiction has to make an assessment of whether transferring the case would give a genuine and specific added value with respect to the decision to be taken in relation to the child compared to the case remaining where it is.

57(e) In deciding whether the requested court is better placed to hear the case the court with jurisdiction should not take into consideration the substantive law of the requested state. Considering the law of the requested member state would offend against the principles of neutral recognition of judgments and mutual trust between member states which forms the basis of the regulation.

(f) When considering whether transfer will be in the best interests of the child the court must be satisfied the transfer is not liable to be detrimental to the situation of the child.

58. The court must assess any negative effects that such a transfer might have on the familial social and emotional attachments of the child concerned or on that child's material situation."

[18] There are essentially three elements to a transfer consideration to be drawn from the jurisprudence in this area, namely:

- "(i) Whether any of the requirements in Article 15(3) are met.
- (ii) Whether the other contracting state is better placed to hear the case.
- (iii) Whether the best interests consideration which is explained in the case of *Re N (Adoption: Jurisdiction Children)* [2016] UKSC 15 is satisfied."

[19] As counsel have pointed out, the second and third questions are often inter-related. In *Re N*, the Supreme Court emphasised that the assessment of whether a transfer would be in the best interests of the child "should be based on the principle of mutual trust and on the assumption that the courts of all member states are in principle competent to deal with the case." It is not for the courts of this or any other country to question "the competence, diligence, resources or efficacy of either the Child Protection Services or the courts of another state."

[20] The issue of best interests has developed in the jurisprudence and is not an assessment of ultimate outcome but the court can take into account the effect of transfer on the child as part of the analysis. In *Re N*, the Supreme Court also stated as follows:

“The “case” cannot be transferred in the same way that a case between parents or other private parties can be transferred. The proceedings in the other member state will inevitably be different proceedings, with different parties, different procedures, and possibly different substantive law. Indeed, there may not be proceedings in a court at all, but only within administrative authorities, as in this case. As Black LJ elegantly put it, what is being transferred is not “the case” but “the problem” (para 189(i)).”

The Arguments

[21] Mr Magee QC on behalf of the mother argued that the Article 15(3) consideration is met given that the child is a national of Latvia. He also argued that the Latvian court would be better placed to hear the proceedings given that the mother intends to return to Latvia also that she speaks very little English and would be in a better position to actively engage in proceedings in Latvia. He also argued that the mother has the benefit of family support in Latvia and she is extremely isolated in Northern Ireland. He said that while significant assessments have been completed of the mother in Northern Ireland, those assessments can be translated and shared with the Latvian authorities and also that there have been limited proceedings in Northern Ireland by way of substantive hearing. Mr Magee relied on the Latvian authority’s expressed wish to have the child transferred and also the mother’s sister’s confirmation that she can provide a home. Finally, Mr Magee argued that the Latvian court or Public Authority would be in a better place to ensure Matt’s cultural and linguistic needs are met.

[22] Mr Magee pointed out that whilst Matt is in a foster placement, it is not a long term placement, and a move to a placement in Latvia to reside with his aunt or an alternative placement would be in his best interests given that it would be to a country of his citizenship and his mother will return there as well. Mr Magee said that as this child is 5 years old he would be able to settle and integrate into an environment which, whilst initially unfamiliar, will in fact meet more appropriately his cultural needs.

[23] Ms Zalite of the Latvian authorities stressed the need to maintain Matt’s cultural links. She said that a foster family was ready to accommodate him in Latvia and that they could speak some English. She said that the mother could see him when in Latvia as she was moving. Overall, Ms Zalite said it was in his best interests to have the case transferred.

[24] On behalf of the Trust, Ms Smyth accepted that the first requirement in Article 15(3) is met. However, she argued that Northern Ireland would be better placed to hear the case and so the case should not be transferred given that Matt lives in Northern Ireland. Also, Ms Smyth highlighted that the mother has not returned to

Latvia since 2013 when she left to go to Peterborough and that Northern Ireland has now become her home. Ms Smyth also pointed out that the mother has not had direct physical contact with her own family for some considerable time and that this family have not supported the mother during the crisis. It was submitted that Matt has never been to Latvia and he has never met any of this maternal or paternal family. Ms Smyth also stressed that this child has English as a language and would find it difficult adjusting to Latvian social services and to the system there.

[25] Ms Smyth also reminded the court that the case has been ongoing since August 2019. She said that as a result the child and his mother have been involved in a range of services locally and so considerable work has been done in Northern Ireland. Reference was made to the Latvian culture which is maintained in this jurisdiction. It is disputed that the mother cannot actively participate in proceedings here because she has done so with the assistance of an interpreter. Also, Ms Smyth said that the Trust rely on the fact the transfer would precipitate the removal of Matt from his longstanding home without any evaluation of the impact of this upon his psychological wellbeing. In relation to best interests, the Trust maintain, that this is in the favour of a retention of jurisdiction in Northern Ireland given Matt's age and his progress at school. Reference is also made to the fact that he requires 14 teeth extracted which will necessitate specialist dental surgery in hospital. He has also been living in his foster placement from 7 August 2019 and this is stable. The Trust point out that his foster carers told the Trust they wish Matt to remain part of their family and now desire to care for him long term.

[26] Ms Smyth also stressed the transient lifestyle exhibited by the mother in Scotland and in Northern Ireland with the child. Overall, the Trust maintained that transferring to Latvia would result in Matt being again uprooted from his foster home here and going to a country he has never visited and to strangers (whether his aunt or a foster carer). In essence, the Trust maintained that transferring to Latvia would result in the end of Matt's foster placement here and the loss of this is a potential long term home. This, it is argued, would detrimentally affect Matt's familial, social and emotional attachments and wellbeing. Such matters were cited as a negative in the CJEU decision and also in the case of *Re N* by Lady Hale. Therefore, the Trust argued that the transfer is not in the best interests of Matt. This view was also supported by the Guardian ad Litem.

Conclusion

[27] I have considered all the evidence in this case. I have paid particular regard to the representations made by the Latvian authorities which I have considered on the basis of mutual trust. Having done so, I am not convinced that the case should be transferred to Latvia. I much prefer the arguments made by the Trust and supported by the Guardian Ad Litem in relation to this issue. I accept that Article 15(3) of Brussels IIa is satisfied in that the child's nationality is Latvian. However, this child is habitually resident in Northern Ireland, he has never been to Latvia, and the Northern Irish courts have primary jurisdiction and are clearly seised of the case.

I do not consider that the strong presumption in favour of the child's habitual residence hearing the case has been rebutted. It seems quite clear to me that Northern Ireland is best placed to hear this case and that it is in the best interests of this child not to have his case transferred and have him move to foster care in Latvia as proposed.

[28] I reach this decision on the basis of the evidence that the mother has been living outside of Latvia since 2013. She has not returned to Latvia during the past 8 years. She has no clear plan to return to Latvia and any prospective return is extremely vague and clearly conditional. The mother has not demonstrated a strong link to Latvia or her family by virtue of her living arrangements over the last number of years.

[29] Meanwhile, the child has become immersed in a life in Northern Ireland. He has developed English as his language however his cultural links with Latvia have also been maintained by virtue of his contact with his mother and social services and the current carers are alive to this. The jurisdiction of Northern Ireland is best placed to decide on Matt's future as all of the evidence about him has been generated here. I do not consider that there is a "genuine and specific added value" to transferring the case.

[30] Also, I consider that a transfer would affect this child's social and emotional attachments and that would be detrimental prior to final decisions being made for him. It would mean a move from a settled placement before that option has been formally approved or rejected. As part of the final hearing, consideration will be given to all options including kinship options if they are viable. I am content that there is ongoing liaison with the Latvian authorities and that relevant information is provided particularly as the Latvian authorities seek information about the child's health and wellbeing. Accordingly, I refuse the transfer application.