Neutral Citation No. [2015] NIMaster 2

Ref:	**KHW/2015**

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

Delivered:	**20/02/2015**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF X, Y & Z, children

Reasons for Decision on the issue of Jurisdiction

BETWEEN:

McK(A)

Applicant;

v

McK(R)

Respondent

Master KH Wells

Anonymity

1. This judgment has been anonymised to protect the identity of the children concerned. Nothing may be published concerning this matter that would lead directly or indirectly to the identification of the children in this case.

Background

2. The Respondent Father has requested written reasons in respect of the Court's decision that it has jurisdiction to hear this application and to determine the issues in this case. He is entitled to make this request.

3. I do not intend to address in any detail in this judgment the Applicant Mother's reasons for bringing this application or the Respondent Father's response because

this judgment is only intended to record in writing my reasons for deciding that this Court has jurisdiction to deal with the issues in this case. Further, the case is listed for 24th February 2015 to conclude the Hearing on the substantive issues.

Background

4. The parties in this case are the parents of three children - X, Y and Z who are aged 12, 10 and 6 years of age respectively. Both parents share parental responsibility for the subject children.

5. The Mother is the Applicant, by bringing this application in this jurisdiction, has clearly demonstrated her acceptance of this Court's jurisdiction to determine the issues. This is confirmed in legal arguments submitted by her Counsel on the issue of jurisdiction.

6. The parties were married in 1996. When first married they resided in D, Republic of Ireland for one year, then moved to W, Northern Ireland in 1997 where they lived until 2004. The oldest children X and Y both spent the first years of their lives in W. X was born in a neighbouring hospital and Y was born at home. The family then moved to A, Northern Ireland in 2004 or 2005 where they lived until 2008.

7. In June 2008, when X was 6 years (now 12 years) and Y was 4 years (now 10 years), just prior to Z's birth, the family moved to D, Republic of Ireland which is the former matrimonial home. Z was born in Hospital C in the same year as the change of address and lived in D for the first two years of her life until her parent's separation.

8. After residing in D as one family unit for just two years, the parties unfortunately separated in January or February 2010. The Father remained and still resides in the former matrimonial home. The Mother moved to rented accommodation outside B, Northern Ireland and in late 2014 she moved to another rented house within that village. The distance from D to B is approximately 16 miles, and crosses the border from The Republic of Ireland and the United Kingdom.

9. The children have always attended school A in the Republic of Ireland. All three children attend the primary school within this campus.

10. The children are involved in a number of social and sporting activities after school and at weekends in both the Republic of Ireland and Northern Ireland.

11. All three children have medical cards from this jurisdiction and they have been registered with a GP in Northern Ireland since 2004 despite moving to the Republic of Ireland. They have also been registered with a GP in the Republic of Ireland and have Irish PPS numbers in respect to medical care. The oldest child, X has attended

a number of medical appointments to include attending with a Consultant Paediatrician and CAMHS in this jurisdiction; in addition, from 2011 until 2013 he attended classes in a hospital in the Republic of Ireland to help him with motor skills.

12. Before the proceedings commenced the Respondent had cause to contact Social Services in this jurisdiction to raise concerns in respect of the youngest child, Z, allegedly sleeping in the same bed as the Applicant Mother and her boyfriend at that time. Also, before the proceedings commenced the Applicant contacted Social Services in the Republic of Ireland to raise concerns regarding the hygiene and state of the Respondent's home where the children were staying three nights each week. Apparently due to lack of resources the Social Services informed the Applicant that they could not intervene, which caused the Applicant to commence these proceedings.

13. The Mother receives Child Benefit in this jurisdiction. The Father receives the child-care component of unemployment benefit in recognition that the children are in his care for approximately half of each week, though the sharing arrangement changed in September 2014.

14. Prior to separation the parties attended marriage guidance. Since separating, they attempted mediation in 2010 and 2011, and until the commencement of these proceedings in June 2014, they did manage to agree upon parenting issues, to include sharing (residence and contact) arrangements and choice of school for the children. At the commencement of these proceedings the children resided with their Mother in this jurisdiction from Wednesday after school until 3pm on Sunday (four nights) and they resided with their father from 3pm on Sunday until Wednesday morning (three nights) when they went to school.

15. On 25th August 2014 the Criminal Assets Bureau raided the Father's home when the children were staying with him. The Father did not inform the Mother of the raid. When the Mother found out about the raid, she withdrew her consent to the children having overnight contact with their father. An Interim Contact Order was granted to the Respondent, on an agreed basis, on 15th September 2014. In a Position Paper dated 2nd September 2014 filed by the Respondent's Counsel, the Court was informed that the Respondent had: *"instructed solicitors in the South to initiate proceedings against CAB in respect of this raid"*. The Respondent believes that the Applicant was involved in making a complaint to the Garda which resulted in this raid. No evidence has filed to substantiate this.

The Proceedings

16. The Mother has a substantive C1 application dated 23rd June 2014 and filed on 24th June 2014 pending before the Court for a Residence Order and a Prohibited Steps Order. She wants the children to reside with her in this jurisdiction, in particular in B and to attend school in this jurisdiction.

17. The Mother also has a pending C2 application dated 19th December 2014 filed on 2nd January 2015 in respect of the choice of the children's schools for the next academic year commencing September 2015. The Mother wants X to be enrolled in School B, and for Y and Z to attend School C. In June 2014 the parties were in disagreement regarding the choice of school for the current academic year; an application was made to the Court last Summer to determine this issue, however after the children had been interviewed by the Court Children's Officer and their views made known to the Court and parties, an agreement was reached at Court on 15th September 2014 that the children remain at School A for this academic year. Unfortunately agreement has not been reached regarding the children's school placements for the next school year and beyond.

18. The Father wants the pre-proceedings sharing arrangement to be reinstated, for the Court to grant a Shared (referred to as Joint) Residence Order and a Prohibited Steps Order to prevent the Applicant from removing the children from School A, with the oldest child, X being allowed to enrol in School D in September 2015. The Court Children's Officer has reported to the Court that X wishes to attend School E from September 2015.

19. The children have been interviewed a number of times for purposes of these proceedings by Máire Bennett, Court Children's Officer/Senior Social Work Practitioner. A number of Article 4 Welfare Reports have been filed. Ms Bennett reported orally to the Court on 16th December 2014 that the children all wanted to have contact with their Father and to have overnight contact with him.

20. The first hearing on 25th June 2014 was an ex-parte application by the Mother for a Residence Order. This was refused, and the case was listed for an inter-parte Review Hearing on 27th June 2014. At this Hearing the Court directed the parties to file inter alia Skeleton Legal Arguments on Habitual Residence and this Court's jurisdiction. The case was listed for an Inter-Party Hearing on 28th July 2014 to determine jurisdiction.

21. Counsel for each party filed their respective Skeleton Arguments both dated 21st July 2014. Both Counsel cited the same authority in respect of habitual residence and jurisdiction, which is set out below.

22. At the Inter-parte Hearing on 28th July 2014 there was no hearing on the law relating to habitual residence and jurisdiction because Counsel for the Respondent informed the Court that her client now agreed to the Family Court in this jurisdiction determining the issues in respect of the children's residence, contact and place of school so as to avoid delay. In light of this agreement, and having considered the parties Statements of Evidence and the initial Article 4 Welfare Report prepared by the Court Children's Officer, the Court accepted that it had jurisdiction to hear and determine the issues in this case, and deemed it to be in the children's best interests to do so.

23. The wording in the Court Order of 28th July 2014 stated:

"*AND the Respondent indicating via his Counsel that he agrees to the Family Court in this Jurisdiction determining issues in respect of the children's residence, contact and place of school*".

24. By letter dated 8th August 2014 the Respondent's Solicitor requested an amendment to the Court Order of 28th July 2014. The letter stated:

"*Our client is keen that the Order of the Court reflects his reasons for accepting jurisdiction for the High Court to continue to deal with the case*".

25. The Applicant's Solicitor agreed to the proposed amendment. The Respondent's Solicitor provided the Court Office with the wording for the amendment, and the Court Order of 28th July 2014, duly amended under The Slip Rule, was re-issued. It now has the following additional words added after the words set out at paragraph 23 above:

"*The Respondent accepted Jurisdiction of the High Court on the basis delay would be caused by transfer of the case to the Republic of Ireland and therefore in the children's best interests for the High Court to continue to deal with the case given the work already done*".

26. This Order has not been challenged or appealed within the time limits permitted by the relevant legislation. The case has proceeded for determination since that date on the basis that jurisdiction was agreed and accepted on a consensual basis by the parties and the Court.

27. The Respondent's Solicitors wrote to the Court Office by letter dated 9th October 2014 to indicate that they wanted to come off record for the Respondent. They informed the Court that the Respondent was not prepared to accept his offer of legal aid provided to him by The Legal Services Commission, and that the Respondent will defend his case as a litigant in person. Said Solicitors informed the Court Office that their client sought a long adjournment to enable him to pursue a Judicial

Review of the Legal Services Commission in respect of their financial eligibility criteria.

28. On 20th October 2014 the Respondent in his own capacity as a Personal Litigant filed a document with the Court entitled: 'Draft Submission and Application by Respondent …' In this document the Respondent cited **The Hague Convention on the Civil Aspect of International Child Abduction** as the relevant law and governing authority on the question of jurisdiction in issues such as this case.

29. This pleading filed by the Respondent attempted to re-open the issue of jurisdiction.

30. The Respondent stated in this pleading that he had commenced proceedings in a District Court in the Republic of Ireland which were listed for hearing on 14th November 2014. No copies of Orders or Judgment on jurisdiction from that Court have been produced to this Court.

31. The Respondent's Solicitors formally came off record at a Review Hearing on 23rd October 2014. Since that time the Respondent has been a Personal Litigant. He has been informed of the NICTS/DOJ publication 'A Guide to proceedings in the High Court for people without a legal representative'. The Respondent has and continues to unequivocally engage fully in the proceedings, to provide evidence and to make submissions, both oral and in writing, to the Court.

32. On 23rd October 2014 the Court listed the case on 25th November 2014 to hear and determine the Respondent's application on jurisdiction, and if unsuccessful to determine the pending applications.

33. In an Addendum Position Paper dated 20th November 2014 filed by Counsel for the Applicant on the issue of jurisdiction, Counsel reiterated what was contained in her Skeleton Argument dated 21st July 2014.

34. By letter dated 21st November 2014 the Respondent sought an adjournment of the Hearing: "*until I am placed in a position to finalise my submission to the Hearing*". The Respondent wrote a separate letter to the Court Children's Officer on that date asking her to re-interview the children. By email dated 24th November 2014 the Applicant's Solicitor agreed to the adjournment. An administrative Court Order issued on that date regarding arrangements for the adjourned Hearing, which was re-scheduled for 16th December 2014.

35. On 15th December 2014 the Respondent filed a Skeleton Argument on Jurisdiction; save for a few minor alterations, it is the same Skeleton Argument dated

21st July 2014 that was presented on his behalf and he has removed his former Counsel's name from the foot thereof.

36. On the same date Counsel for the Applicant filed a further Addendum Skeleton Argument in which she raised **Article 12(3)** of **Brussels IIR**, which is most relevant to the legal issue of jurisdiction in the circumstances of this case at this time.

37. The Final Hearing commenced on 16th December 2014. The Hearing ran for almost six hours, from 11.05am until 5.45pm. Both parties presented their evidence to the Court under Oath and were cross-examined. After the Court Children Officer and the parties had finished giving their evidence Mrs Anne Miller, Principal Social Work Practitioner, who manages the Court Children's Officers, to include Måire Bennett, was called. I was anxious to hear her views regarding the Southern Health and Social Care Trust's continued involvement in the case upon conclusion of the proceedings as a number of concerns had been raised by the CCO and the parties during the Hearing. Contrary to the recommendation made to the Court by Måire Bennett CCO that the children should have weekly overnight contact with the Respondent, Mrs Miller expressing concern in respect of the Respondent having overnight contact with the children at this time, and she recommended further involvement with the parents by the Trust before the Court made a final determination.

38. The case adjourned until 15th January 2015 so as to afford the Trust an opportunity to outline its proposed further involvement. At the conclusion of the Hearing the Court confirmed, and as stated at No.1 in the Court Order of 16th December 2014:

"*Having determined, by agreement of both parties on 28th July 2014, that this Court has Jurisdiction to determine issues in relation to Residence and Contact for the three subject children, the Court affirms this view today by virtue of Article 12 (3) Brussels II revised.*"

The Law on jurisdiction

39. It is relevant to the legal issue of jurisdiction to consider - what stage the proceedings have now reached; the earlier representations made to the Court by both parties on the issue of jurisdiction; the involvement of both parties in the proceedings since the Court accepted, by agreement of both parties, that it had jurisdiction; and the close proximity to the Final Hearing - when the Respondent then requested written reasons in respect of the Court's decision on jurisdiction so that he could consider his position in respect of appeal on the grounds of jurisdiction.

40. The issues to be determined in this case are matters pertaining to the exercise of parental responsibility. The dispute is between two parties who, although they live geographically in close proximity, their places of residence are in two different legal jurisdictions – the Applicant Mother in Northern Ireland, and the Respondent Father in The Republic of Ireland.

A. Habitual Residence

41. The relevant law is **Council Regulation (EC) No 2201/2003 November 2003** known as **Brussels II Revised** or **Brussels IIR.** Both The Republic of Ireland and the United Kingdom are signatories to this Convention which has direct application in this jurisdiction and takes precedent over our national law, namely **The Children (NI) 1995**. **Brussels IIR** applies to persons who are either nationals of a Member State of the EU or who are habitually resident in or – in the case of the United Kingdom and The Republic of Ireland- domiciled in a Member State of the EU.

42. In cases concerning children falling within the scope of **Brussels IIR**, the crucial issue for the establishment of jurisdiction by the courts of a particular Member State is therefore the child's 'habitual residence', not that of the parent.

43. **Brussels II, Article 8 (1)** provides that "*the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised".* **Article 8(1)** is subject to the provisions of **Articles 9, 10 and 12.**

44. **Regulation 2201/2003** provides that although one person can effectively have more than one "de facto" residence, that person cannot have more than one habitual residence. For it to be held that there has been a change of habitual residence, there should have been a "loss" of the first habitual residence and "acquisition" of a new habitual residence.

45. In the case a **Re A (Area of Freedom, Security and Justice) (Case C-523/07) [2009] 2FLR 1**, when considering the meaning of 'habitual residence' under **Article 8** of **Brussels IIR** it laid down three important principles:

First: "*The case-law of the court relating to the concept of habitual residence in other areas of European Union law….cannot be directly transposed in the context of the assessment of the habitual residence of children for the purposes of Art 8(1) of the regulation."*

Second: "*The 'habitual residence' of a child, within the meaning of Art 8(1) of the regulation, must be established on the basis of all the circumstances specific to each individual case."*

Third: "*In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.*

In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in the State must be taken into consideration."

46. In **S-R (Jurisdiction: Contact) [2008] 2FLR 1741** despite the fact that the child had established a substantial connection with England following the start of Spanish proceedings, the Spanish court, which had jurisdiction under **Article 12(1)**, retained jurisdiction as none of the three trigger events in **Article 12(2)** had yet occurred. In order for the English court to achieve jurisdiction on issues of parental responsibility, the Spanish court would have to transfer jurisdiction on those issues to England under **Article 15.**

47. In the case of **Re L (Brussels II Revised: Appeal) [2012] EWCA Civ 1157; [2013] 1FLR 430 LJ Munby** held that an agreement for a child to reside equally with each of his parents across two jurisdictions for alternating two-month periods did not have the effect of changing his habitual residence before the arrangement came into being. This decision is particularly relevant to the case in hand.

48. The case of **Mercredi -v- Chaffe [2011] EWCA 272** held that when determining the habitual residence of a child the Court must have regard to "*all the circumstances of fact specific to the individual case*". The intention of the parent will normally be a relevant factor and the duration of time spent in a Member State is to be considered but it is not determinative. The Judge in this case stated:

"*in order to distinguish habitual residence from mere temporary presence, the former must as a general rule have a certain duration which reflects an adequate degree of permanence. However, the Regulation does not lay down any minimum duration. Before habitual residence can be transferred to the host State it is of paramount importance that the person concerned has it in mind to establish there the permanent or habitual centre of his interests, with the intention that it should be of a lasting character. Accordingly, the duration of a stay can serve only as an indicator of the assessment of the permanence of the residence, and that assessment must be carried out in the light of all the circumstances of fact specific to the individual case*".

49. In the case of **Re A (Jurisdiction: Return of Child) (SC) [2014] 1FLR** the Court affirmed the approach in the **Mercredi** case, stating that the official approach was

the "*degree of integration in a social and family environment*". The nature of the enquiry is essentially factual and case-specific.

50. In the leading case of **Re LC (Children)(No 2) [2014] UKSC 1** it was held that a child can have a separate habitual residence from the parent with whom they reside. Again, this judgment is relevant to the case in hand. Previously the habitual residence of the child had been intertwined with that of the parent with whom they are living. The court ruled unanimously that a child's 'state of mind' is a relevant factor in determining whether he or she has lost or gained habitual residence and that by extension their state of mind and therefore their habitual residence may be different from that of the relevant parent. Lord Wilson, delivering the lead judgment said:

"*Where a child of any age goes lawfully to reside with a parent in a state in which that parent is habitually resident, it will no doubt be highly unusual for that child not to acquire habitual residence there too. However in highly unusual cases there must be room for a different conclusion, and the requirements for some degree of integration provides such room…references have been made to the 'wishes' 'views' 'intentions' and 'decisions' of the child. But, in my opinion, none of those words is apt. What can occasionally be relevant to whether an older child shares her parent's habitual residence is her state of mind during the period of her residence with that person'.*

51. Habitual residence is relevant in terms of determining which Member State has jurisdiction to determine issues of residence and contact. It does not however dictate what Order the Court with jurisdiction should and will make in respect of residence, contact or choice of school. The date for determining these issues has been fixed for 24th February 2015.

52. Matters relevant to habitual residence in this case include:

(i) Applying the factual test as required by **Brussels II** to the facts in this case, the parents separation and the Applicant Mother's return to this jurisdiction may have caused the children to acquire and indeed for X and Y to re-acquire, habitual residence in this jurisdiction. But that argument has not yet been made to or decided by the Court.

(ii) X and Y have both factually lived longer in this jurisdiction than in The Republic of Ireland. Since their parents separation in 2010 until the commencement of these proceedings, all three children have effectively had shared care, with four nights per week in this jurisdiction and three nights per week in The Republic of Ireland.

(iii) It is only possible for a child to have one habitual residence at any one time for the purposes of **Brussels IIR** – see **Re L (Brussels II Revised: Appeal) [2012] EWCA Civ 1157.**

(iv) The children have medical cards, GP and medical support within this jurisdiction. HMRC recognises their residence here for purposes of child benefit. In addition, the Respondent receives a care component as part of his unemployment benefit to reflect the sharing arrangement, which altered after the commencement of these proceedings on an interim basis, pending final determination. The children can and indeed X has received medical assistance in The Republic of Ireland.

(v) The fact that some or all of the subject children may hold Irish Passports does not mean that the children are de facto habitually resident in The Republic of Ireland for purposes of determining the legal concept of ' habitual residence' pursuant to **Brussels II**. The children were all born in this jurisdiction and are eligible to hold passports issued in both The Republic of Ireland and the United Kingdom.

(vi) The children attend Mass in the Republic of Ireland and Northern Ireland, though it has been accepted by the Mother in her evidence on 18th December 2014 that the children do not attend Mass every week.

(vii) The children attend a significant number of sporting and other interests in both jurisdictions. I would be concerned if the parties felt that there may be some legal advantage in respect of the issues to be determined in this case if each can show that the children participate in more activities in one jurisdiction than the other.

(viii) The fact that at the commencement of these proceedings and to date that the children attend a school in The Republic of Ireland, and have always attended the same school, is a significant factor to consider when determining habitual residence in the context of **Brussels IIR.**

(ix) In the minds of the children, they now have two homes, one with their Mother and one with their Father. They have two places of residence, but residence in itself does not dictate habitual residence – see **Re LC** above.

(x) In terms of the children's 'state of mind', at the commencement of these proceedings and indeed to date, the children regard their Mother as their main carer, despite their Father having shared care of the children and their school placement being in The Republic of Ireland.

(xi) The parties respective contact with Social Services in both jurisdictions prior to the commencement of these proceedings must also be considered.

B. Prorogation of Jurisdiction

53. The general scheme of **Brussels IIR** is to ensure that jurisdiction rests with the courts of the child's habitual residence.

54. **Article 12(3)** of **Brussels IIR** makes provision for the courts of a Member State to have jurisdiction over issues relating to parental responsibility over a child where the child has a 'substantial connection' with that Member State. Two examples are given of what might constitute a substantial connection (i) the habitual residence of a person with parental responsibility over the child, and (ii) the child's nationality. In order for the court to have jurisdiction under this proviso it is necessary also to demonstrate that the jurisdiction of the court has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time when the court is seised and that the jurisdiction is in the best interests of the child. Acceptance of jurisdiction must be unequivocal. See **Hershman MacFarlane: Children Law and Practice Volume 1 Section B** at **Paragraph [20H] – [20I].**

55. Under **Article 16 of Regulation 2201/2003** a court shall be deemed to be seised at the time when the document instituting the proceedings, in this case the Form C1 application dated 23rd June 2014, is lodged with the court provided that the Applicant has not subsequently failed to take the steps he/she was required to take to have service effected on the Respondent.

56. All three children were born in this jurisdiction, are nationals of and have *'a substantial connection'* with the United Kingdom. In addition, one of the holders of parental responsibility lives in Northern Ireland. The criteria in **Brussels IIR, Article 12 (3)** have been fulfilled.

57. On 28th July 2014 the Respondent through his legal representatives agreed that this Court had jurisdiction to determine the issues in this case. He has engaged fully in the proceedings and has attended at every court appearance. He became a Personal Litigant in October 2014 and has continued to present his evidence to this Court, has cross-examined the Applicant under Oath in the course of these proceedings and has asked this Court to make a determination in his favour. He has clearly accepted that this Court has jurisdiction to determine the issues in this case.

58. Once a party has accepted jurisdiction under **Article 12** it is not open to him to withdraw his acceptance until the conclusion of the case – see **Re I (A Child) (Contact Application: Jurisdiction) [2009] UKSC 10.**

59. The jurisdiction under this provision will cease once the proceedings complete and on the date these proceedings become final, or if the proceedings come to an end for another reason, such as the withdrawal of the application.

Decision on jurisdiction

60. On 28th July 2014 the Court, in recognition of the agreement reached by the parties that this court had jurisdiction to determine the issues, confirmed and accepted jurisdiction. This was in accordance with the provision in **Article 12 (3)**. The agreement does not have to be in writing, nevertheless it was confirmed in letters to the Court from the Respondent's Solicitors before they stopped representing him.

61. The agreement is not only unequivocal because it was stated in open court by a member of the Bar Council of NI on behalf of the Respondent, and the Applicant having acknowledged jurisdiction by commencing the proceedings; and not only because it was confirmed in writing – it is unequivocal because rather than asking for a stay of the proceedings, the Respondent has embraced the agreement and has engaged fully in the proceedings. He has attended at all necessary court appearances; he has submitted numerous submissions and evidence and letters. He has given evidence under oath.

62. On 16th December 2014 I affirmed that the Court had jurisdiction to determine the issues in this case by virtue of **Article 12(3)** of **Regulation 2201/2003.** This is known as prorogation of jurisdiction.

63. If this Court was of the view that it did not have jurisdiction it would have been obliged under **Article 15 of the Regulation** to transfer the case to a family court in a Member State believed to have jurisdiction. I have not done that because I am satisfied that in light of the agreement reached on jurisdiction which was presented to the Court on 28th July 2014 and **Article 12(3)** that this Court has jurisdiction.

64. I am also satisfied that it was in the best interests of the children for this Court to have accepted jurisdiction under Article 12(3) on 28th July 2014 in light of the progress made with the case by that stage, to include the involvement of Social Services, and that this Court was and is best placed to make a welfare- based decision.

65. Once given, it is not open to the Respondent to withdraw his acceptance until the conclusion of the case. If it were otherwise, inexcusable delay would occur in family proceedings which would be contrary to the best interests of the subject child. When the Hearing is finished and I have made my determination, the Respondent is then

at liberty, should he choose to do so, to ask the Court to re-consider jurisdiction, taking into account the children's habitual residence.

Conclusion

66. For all these reasons I decided and hereby confirm my reasons in writing that this Court has jurisdiction to determine the issues in this case.

Parental Resolution and Mediation: Order 1 Rule 1A and Rule 19 of The Rules of the Court of Judicature (NI) 1980

67. The children in this case have had to endure and manage the emotional upset caused by the breakdown of their parent's marriage and subsequent separation. They have had to suffer further upset and uncertainly because their parents consensual approach to making post-separation parenting decisions has broken down. They have had to cope with the transition of living in two homes rather than one. They have expressed their anxiety regarding these court proceedings to the Court Children's Officer. It is not in the children's best interests for the Court to delay in making a final determination in respect of the pending issue. A date has been fixed for the final determination by the Court in the absence of agreement between the parties.

68. Even at this late stage of the proceedings it would be in the children's best interests if their parents could set aside their own issues arising from the breakdown of their relationship and put the children's needs first. I would implore both parties to make every effort, for the sake of their children, to resolve their shared parenting issues themselves. They managed to reach agreement in 2010. It is not impossible for them to do so again in 2015. Perpetuating litigation on issues relating to the children's welfare is contrary to their best interests.