

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

~F~ and ~T~ (Care proceedings: Residence)

STEPHENS J

Introduction

[1] This case concerns two girls

- (a) ~F~, who is presently 7, nearly 8 years of age and
- (b) ~T~ who is presently 1 year old.

Other members of the girls' extended family and persons of significance are as follows

- (c) ~B~, 35, their mother.
- (d) ~Z~, 33, ~F's~ father.
- (e) ~R~, 46, ~T's~ father.
- (f) ~M~, 54, their stepfather but whose marriage to ~B~ appears to have irretrievably broken down and divorce proceedings are in contemplation.
- (g) ~C~, their maternal grandmother
- (h) ~Q~, was previously married to ~R~
- (i) ~P~, 9, the daughter of ~R~ and ~Q~
- (j) ~Y~, who is now married to ~Z~ and who is the step mother of ~F~

[2] In addition to anonymising the children and their immediate family I have also anonymised some of the countries involved in these proceedings. ~B~ and all of her extended family are from **country ~W~** which is a central Asian country previously a Republic of the Soviet Union. The population is overwhelmingly of the Muslim faith. It is not a Hague Convention country. ~Z's~ parents are from ~W~ and are Russian Citizens.

[3] Nothing should be published which would identify either of the children or any member of their extended families.

[4] On 16 February 2010 the Trust brought care proceedings under Article 50 of the Children (Northern Ireland) Order 1995 in respect of ~F~ and ~T~. An interim care order was made on 19 February 2010 with an interim care plan that ~F~ and ~T~ were placed together with the same foster parents. The interim care orders have been renewed and the latest order is due to expire today Monday 10 January 2011 at 4 pm. The events precipitating the initiation of those care proceedings involved ~B~ being compulsorily detained on 8 January 2010 in a psychiatric hospital under the Mental Health (Northern Ireland) Order 1986. ~B~ suffered from psychotic thinking/delusions which focused on her belief that ~T~ was injured and was not being treated by hospital staff and that in fact they were harming her. Whilst in hospital, on 17 January 2010 and as a result of a similar and a particularly florid delusion she made a determined attempt to take her own life. She was transferred to the intensive care unit and remained there until 8 February 2010. She was discharged from hospital on 23 February 2010 following which her mental health continued to improve. The combination of the improvement in ~B's~ mental health and the support available either to her or to the children from ~Z~ and/or ~R~ led the Trust to contend that no order should be made in respect of the care proceedings and that the most important issues for determination related to the private law proceedings brought by the respective parents of the children.

[5] ~B~ seeks a residence order in her favour in respect of both of her daughters settling that they should reside with her. ~Z~ seeks a residence order in his favour in respect of his daughter ~F~. ~R~ initially sought a residence order in his favour in respect of ~T~ but now seeks a joint residence order with ~B~. There are other related private law proceedings. For instance ~Z~ seeks leave to take ~F~ to Russia under Article 13 of the Children (Northern Ireland) Order 1995. In effect however the main private law applications relate to the residence of the children.

[6] ~M~ was a notice party to the care proceedings wishing to secure appropriate contact arrangements with ~F~. He has not brought any private law proceedings and in the event decided to play no part at the hearing.

[7] I do not entirely accept the attitude adopted by the Trust in respect of the care proceedings.

[8] Miss Sholdis appears on behalf of the Trust. Mr O'Hara QC and Ms Brown appear on behalf of ~B~. Ms McGreenera QC and Ms McHugh appear on behalf of ~R~. Mr Long QC and Ms McCullagh appear on behalf of ~Z~. Ms Walsh QC and Ms O'Flaherty appear on behalf of the Guardian ad Litem representing the interests of the children. I am indebted to all counsel for their

Careful preparation of the case and their well-marshalled written and oral submissions.

Jurisdiction and Consular notification

[9] ~B~ is a national of Country ~W~ and a Russian citizen. She was brought up and educated in Country ~W~. Her extended family still reside in Country ~W~. She has lived in Russia, Sweden, the United State of America and Northern Ireland. She has visited England, Turkey and Egypt. She was married to, but subsequently was divorced from, ~Z~. Thereafter she married ~M~ who is British. ~M~ had previously been married and subsequently divorced. His first wife was born in Northern Ireland. This provided the motivation for him and ~B~ in November 2009 to move to Northern Ireland with the children with the intention of permanently residing here. ~B~ and the children remain in Northern Ireland and the children remain habitually resident in Northern Ireland.

[10] ~Z~ was born in Country ~W~ and is also a Russian citizen. He lives and works in Moscow.

[11] ~R~ is Swedish and lives and works in Sweden.

[12] ~F~ was born in Country ~W~ and is a Russian citizen.

[13] ~T~ was born in the United States of America. She is an American citizen, a Swedish national, a Russian national and a national of Country ~W~.

[14] All the parties accept, and I find, that ~T~ and ~F~ were and remain habitually resident in Northern Ireland. All the parties had every opportunity in this jurisdiction to present their respective cases with the assistance of senior and junior counsel and solicitors. There was no suggestion that this court did not have available to it relevant evidence except in so far as is later apparent from this judgment. All the parties accept the jurisdiction of this court to hear and determine all the issues in both the public law and the private law proceedings. They also agreed that they would not seek to challenge the outcome of this case in the courts of any other country and that they would not seek to persuade a court in any other country to come to a different conclusion. That is not to bind the courts of any other country but it is simply to record the parties agreement.

[15] The Consuls for Russia, the United States of America, Sweden and Country ~W~ were notified of the public law proceedings in accordance with the Article 37(b) of the Vienna Convention on Consular Relations 1963 which was signed by the United Kingdom in 1964 and ratified in 1972.

[16] I directed that assistance should be sought from Social Services in both Sweden and Russia. I am grateful to Social Services in those countries for the

reports which have been made available to me (3/405 and 4/104). The reports not only contained an analysis of the parenting abilities of ~Z~ and ~R~ but also for instance confirmed that police and criminal record checks had been carried out. The Trust have also liaised with "International Social Services - Children without Borders," to obtain an assessment of the maternal grandparents who reside in country ~W~ and to obtain any other information that may be available there. They were advised that there is no Social Services structure in Country ~W~ and that it would be impossible to obtain this information (1/16).

[17] There have been family law proceedings in respect of ~F~ in Moscow. Upon ~Z~ discovering that ~F~ was in Northern Ireland he commenced further proceedings in Moscow. The parties agreed that I should liaise with the judge with conduct of those further proceedings in Moscow so that information could be exchanged as to the stage the proceedings had reached in Moscow and as to for instance what documents were available in Russia which might be of assistance to this court. I telephoned the judge in Russia and present while I spoke to her were representatives of all the parties involved in this litigation in Northern Ireland. The Guardian ad Litem provided a memorandum of the telephone call and a copy of the memorandum was made available to all the parties. I agreed, having heard argument at a review hearing, to make available to the judge in Russia all documents relevant to ~F~ from the extensive bundle of documents gathered here in Northern Ireland. I am grateful for the assistance provided to this court by the judge in Russia. Under the laws of Russia the decision in this court is not binding on the Russian court. I expressly make it clear that my earlier recording of the parties' agreement not to challenge the decision of this court in Russia is a factual statement of what the parties agreed and is not meant as an attempt in any way to limit the jurisdiction of a court in any other country.

Passports for ~F~ and ~T~, correction of ~T's~ birth certificate and the ability to obtain further passports for them

[18] It was apparent that there were a number of potential outcomes to these proceedings. Accordingly in order to ensure that whatever the outcome it could be implemented it was necessary in advance of the final hearing that both ~F~ and ~T~ had their own passports. This would enable them to travel to another country with or without one or other of their parents. It was not sufficient for the children to be on one or other of their parent's passports.

[19] Directions were given at review hearings to ensure that both children had their own passports. A Russian passport was secured for ~F~ but the situation was more complicated in relation to ~T~.

[20] As will become apparent ~T's~ birth certificate, which is a United States of America certificate, falsely identified ~M~ rather than ~R~ as her father. One of the reasons for giving false information was to secure a British passport for ~T~.

This false information not only denied ~T's~ parentage but also denied her Swedish nationality and entitlement to a Swedish passport. DNA tests confirmed that ~R~ was her father. Directions were given at reviews to secure a correction to the American birth certificate and to obtain for her a Swedish passport in her own name. The birth certificate was changed but she does not as yet have a Swedish passport.

[21] In view of the risk of the children being removed from Northern Ireland prior to the final determination of these proceedings the parties agreed that the Trust would hold the following passports in relation to the children.

(a) In relation to ~F~

(i) A Russian passport in her name

(ii) A country ~W~ passport in ~B's~ name to which ~F~ has been added

(b) In relation to ~T~

(i) A United States of America passport in her name.

[22] ~B~ has agreed in these proceedings that the only passports that should remain in existence in relation to the children are their own personal passports and that if their names have been added to any other passports then their names should be removed from those passports.

[23] ~F~ has been added to ~B's~ country ~W~ passport without the knowledge of ~Z~ and I consider that there is a real risk that in future country ~W~ passports could be obtained for ~F~ and ~T~ by ~B~ without the knowledge of either ~Z~ or ~R~.

Legal principles in relation to the private law proceedings between the parents

[24] In determining the applications I seek to apply the course which is in the best interests of ~F~ and ~T~ whose welfare is the court's paramount consideration. I have particular regard to the matters (the welfare checklist) set out in Article 3(3) of the Children (Northern Ireland) Order 1995 and to the "non intervention" principle set out in Article 3(5) of that Order, the effect of which is to require in each case justification of why it is in the child's interests that an order be made. It is of course a part of the welfare checklist to have regard to the obligation, so far as is reasonably practicable and consistent with their welfare, to secure that siblings are accommodated together and have contact with their non resident parent.

[25] The Article 8 rights of all the family members are engaged. Any interference has to be in accordance with the law and necessary in a democratic society, in other

words that it can be justified as a proportionate response to a legitimate aim (protecting health or morals and the rights and freedoms of others) or as the European Court normally puts it when considering the substance of the interference that the reasons for the interference are “relevant and sufficient”.

[26] In relation to the wishes and feelings of ~F~ and ~T~ I gratefully adopt the analysis of Gillen J in *Re E* [2005] NI Fam 12 at paragraph [24] (iii). I add that in determining the question as to what is in the child’s welfare the court is enjoined to consider the welfare checklist in Article 3(3) including ascertaining the wishes and feelings of the child and to give due weight to them “having regard to his age and understanding”. The child’s views and preferences are not determinative. There are other factors in the welfare checklist but as children get older, their views should hold greater weight. Madame Justice Abella in Canada said

“It is not only an option for the court to treat the child’s views as an increasingly determinative factor as his or her maturity increases, it is, by definition, in a child’s best interests to respect and promote his or her autonomy to the extent that his or her maturity dictates.”

Whilst recognising the increasing importance of the child’s views with increasing maturity it should also be recognised that the child’s views should not be elevated above his welfare and best interests. It is not for nothing that welfare is described as paramount.

Legal principles in relation to the public law proceedings

[27] The public law proceedings involve two distinct stages: threshold and welfare.

[28] A court may only make a care or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm and (b) that the harm, or likelihood of harm, is attributable to (in the circumstances of this case) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him. It is only if a court is satisfied as to that threshold that it can go on to consider whether to make an order applying the welfare and non intervention principles set out in Article 3 (3) and (5) of the Children (Northern Ireland) Order 1995. Again the Article 8 rights of all the family members are engaged. One cannot have both a care order (including an interim care order) and an Article 8 order extant at the same time (Article 179(1) & (2) of the Order).

Sequence of events together with an assessment of the evidence

[29] ~R~ was born in Sweden and he is presently 46. He is in good health, has qualifications and secure employment. He owns his own apartment. There are

excellent schools in the area in which he resides. He has a brother who lives nearby who is married with 2 children aged 6 and 2. He has a good relationship with his brother and his brother's family. He was married to ~Q~ and they have a daughter ~P~ who spends approximately 75% of her time with ~R~ and 25% of her time with ~Q~. ~P~ is a half sister of ~T~. She has met ~F~ and they formed an attachment. ~R~ gave evidence and I assess him as an open, honest and frank witness. He was particularly solicitous for the welfare of ~B~, to whom he is deeply emotionally attached. He has visited Northern Ireland six times since finding out that ~B~ was here and that she and the children needed support. He had booked his ticket for his first trip to Northern Ireland within one hour of hearing of ~B's~ mental illness. He brought ~P~ with him and this is an insight into his understanding that ~F~ and ~T~ also needed support and company. ~R~ has had two previous marriages and this may be an indication of some lack of stability in his life. He met ~B~ on the internet. It is clear however that there are stable elements in his life in that he has worked with ~Q~ for the benefit of ~P~ and he has secured and remained in steady and well paid employment.

[30] ~R's~ emotional attachment to ~B~ leads him to prioritise his relationship needs with her over the needs of ~T~ or ~F~. An illustration of this is if the outcome of the case is that ~F~ and ~T~ go to Sweden and are in his care then he is not prepared to take responsibility for any precautions for the benefit of the children to prevent ~B~ removing them from Sweden. He had suggested that he would hold ~T's~ passport (2/298/5) as a precaution against the risk that ~B~ was coming to Sweden on the premise that she was reconciling with him and then moving on somewhere else. ~B~ took exception to this and in the face of this opposition ~R~ agreed that he would not prevent her leaving Sweden with ~T~ to any other country including country ~W~ and that all he would do in relation to ~F~ if there was a risk of her leaving Sweden was to seek to persuade ~B~ to contact ~Z~ before departing. Accordingly he concedes ultimate responsibility to ~B~ and I hold exposing ~T~ and also ~F~ if in his care, to the likelihood of significant harm.

[31] ~B~ was born in Country ~W~. She is presently 35. She has one brother who remains in Country ~W~. Both her parents live there and she comes from a family that places considerable emphasis on family ties and on academic and other achievements. She is of the Muslim faith. By all accounts she had a stable and happy childhood. She excelled at school and thereafter rapidly qualified as a doctor of medicine and then as a surgeon.

[32] ~Z~ was born in Country ~W~. He is presently 33. His father is from country ~W~ and his mother from country ~W~ both are Russian Citizens. He applied for and became a citizen of the Russian Federation in 1995 or 1996. He has two university degrees; one in finance and the other in computer technology. He has had a successful career to date but has recently turned down offers of employment so that he can devote his time to securing ~F's~ future. His father still works in Country ~W~ but is prepared to give up his work so that both of his parents can come to

Moscow to help with the care of ~F~. His parents have an apartment in Moscow which is close to his own apartment.

[33] ~Z~ and ~B~ were married on 27 September 2001. They lived together in Moscow but very rapidly, and by December 2001, difficulties began to emerge in their marriage. Those difficulties were precipitated by ~B~ suffering a miscarriage in December 2001 and as a consequence of the medical treatment she received it was discovered that she had hepatitis C antibodies. She accused ~Z~ of infecting her. She also accused him of giving her a sexually transmitted disease. There was no substance in either allegation and indeed there was no substance in the subsequent allegation that ~M~ had given her a sexually transmitted disease.

[33] From 2002 ~B's~ lifestyle became "very chaotic" (2/102). Dr Kennedy, Consultant Psychiatrist, advises, and I accept, that in relation to ~B~ there is evidence of emotional instability, impulsivity and intimate relationship problems suggestive of borderline personality structure. She has been unable to function satisfactorily in relationships or work or parenting. I find that she is impulsive and egocentric being focused on herself rather than her children, who are required to make many adjustments in their lives including many moves of accommodation, changes of partners and countries. Based on the evidence of Dr Carol Weir, Consultant Clinical Psychologist and my own assessment of ~B~ I also find that ~B~ has failed to develop adequate internal cohesion and coping strategies. That she is subject to the flux of her own enigmatic attitudes and contradictory behaviour. That her sense of psychic coherence is often precarious with a tendency to precipitate self-defeating circles. That whereas she is usually able to function on a satisfactory basis she has experienced, and there is a substantial risk that she will experience, periods of marked emotional cognitive and behavioural dysfunction. That she is unpredictable, impulsive and likely to seek attention and excitement. That her relationships are shallow, fleeting and characterised by manipulation.

[34] Dr Kennedy advises that it is difficult to determine whether ~B~ has been chronically paranoid with exacerbations in paranoid thinking over the last eight years. I consider that there has been a paranoid component either to her personality or as an aspect of her mental health. ~B~ for her own health needs stability. The three essential components of that stability are secure employment or at least an occupation, a secure social network and secure accommodation. I also consider that she needs support in a parenting role. The guardian ad litem describes this support as a protective factor for the children. The support amounts to the physical presence of another sharing the tasks involved in parenting and providing emotional balance and proportion.

[35] ~B~ has had one florid psychotic episode and there is a significant risk of relapse. The psychotic episode was stress related and the risk of relapse is increased by a lack of consistent insight into her mental condition. For instance on 21 October 2010, some eight months after she had been released from hospital, she informed a core group meeting (2/83h and 2/286):-

“that she had not been ill last year when she was detained and the two doctors who detained her under the Mental Health Act had over-reacted to the situation. She further stated that she was made ill by Social Services staff and staff in (the) hospital playing tapes of her children crying.”

All those present at the core group meeting knew her medical history. There was no reason why she should cover up her mental illness at that meeting. She was showing no insight. She was blaming others. This complete lack of insight is particularly concerning given her training as a doctor and her general level of intelligence. I consider that her insight is variable. It has been sufficient for her to continue to take the medication that she is prescribed but it is never full. The lack of insight means that she will be unable to take all the precautions necessary to avoid situations likely to induce a further psychotic incident and this in turn increases the risks of a further incident.

[36] As I have indicated prior to ~F's~ birth there were difficulties in the marriage of her parents. ~B~ wanted a divorce and she returned to Country ~W~. Assistance from the extended family was sought. ~Z~ travelled to Country ~W~ and a reconciliation was agreed. At this stage it was not known that ~B~ was pregnant. ~Z~ returned to Moscow and ~B~ was to follow. She then telephoned to say that she was pregnant and had reconsidered her decision and wanted a divorce. She remained in Country ~W~ until ~F's~ birth. ~Z~ then visited for a period of 7 to 10 days.

[37] ~B~ and ~F~ remained in country ~W~ until August 2003 when they together with ~C~ moved to Moscow where they lived until September 2003 in the same apartment as ~Z~. Thereafter ~B~, ~F~ and ~C~ moved out and there then followed a complicated period between September 2003 and August 2006 with ~B~ and ~F~ living separate from ~Z~ in either Country ~W~ or Moscow. In general terms throughout this period ~B~ had the support of her mother ~C~ in looking after ~F~. Also on occasions ~F~ was left in Country ~W~ with ~C~ whilst ~B~ was in Moscow working. I also find that during this period ~Z's~ parents were excluded by ~B's~ extended family from playing a part in the life of ~F~ and were prevented in their attempts to resolve some of the problems between ~B~ and ~Z~. I also reject the evidence of ~B~ that ~Z~ was emotionally or physically violent towards her. I find that the involvement of the police in Moscow by ~B~ was an attempt at manipulation. I make it clear that in respect of all the conflicts of evidence between ~B~ and ~Z~ I prefer the evidence of ~Z~. His demeanour in the witness box was that of a careful and reliable witness. By contrast ~B~ attempted to evade and ultimately did not address in a frank, open and honest manner what were difficult issues for her. For instance she initially completely failed to address her failure to promote any contact between ~F~ and ~Z~ over an extended period of time and her exclusion of ~Z~ from ~F's~ life. At a late stage in the proceedings she filed a statement dated 10 December 2010 in which she accepted that she had not allowed ~Z~ to be involved in and to be

kept informed about ~F~. However subsequently in evidence she refused to accept that this failure was for an extensive period but rather sought to confine it to as short a duration as possible. Her personality and her health require consideration and provide a considerable degree of explanation for the way in which she presented. Initially the presentation was with pressure of speech whilst giving evidence. Her personality and sympathy for her health does not detract from the conclusion that her evidence was unreliable. I consider her to be a manipulative individual who lacks insight not only into her mental health but also into the damage she has caused to her children and to ~Z~, ~M~ and ~R~.

[38] In proceedings in Moscow on 24 June 2004 ~B~ and ~Z~ were divorced. Issues in relation to ~F~ were adjourned to September 2004 when residence was granted to ~B~.

[39] One year later on 27 September 2005 two issues were before the courts in Moscow. The first was an application by ~Z~ for contact with ~F~ and the second was a counterclaim by ~B~ "to compel the father not to prevent the child from going to Country ~W~ with her mother without *documenting* the consent of the father" (emphasis added) (1/22). ~B~ in evidence before me agreed that the general law in Russia was that unless you had the agreement of the other parent you could not take a child outside the Russian Federation. In essence the second issue was whether the consent needed to be written or whether it could be oral.

[40] In those proceedings in Moscow in September 2005 ~B~ agreed that there should be contact between ~F~ and ~Z~ and the court made a contact order which included provision that from ~F's~ third birthday she should spend one day of the weekend from 10.00 am to 6.00 pm in ~Z's~ place of residence without the presence of the mother or her representative (1/23). The order went on to provide for increasing contact with ~Z~ when ~F~ achieved the ages of 5 and 7. The court also ordered that ~Z~ should not impede ~F~ from travelling two times per year to Country ~W~ accompanied by the mother. There was no requirement that ~B~ had the written consent of ~Z~ but that did not relieve her of her general obligation to obtain his oral consent. The effect of the order was that so long as there are only two trips per year to Country ~W~ ~Z~ could not refuse his oral consent.

[41] ~Z~ appealed that decision in view of his concerns that his contact with ~F~ was being disrupted as ~F~ was being taken to Country ~W~ to relatives where she stayed for long periods and in view of the risk that ~F~ would not return to Russia. As in the lower court ~B~ agreed to maintain contact for ~F~ with ~Z~. On this occasion ~B~ made a claim that ~Z~ should not hinder the departure of ~F~ to Country ~W~ four or five times a year (1/24).

[42] On 22 December 2005 the Appeal Court in Moscow ruled (1/25) that:-

- (i) The parent ~Z~ who resides separately from the child, shall have the right to associate with the child, take part in her upbringing and decisions concerning her education.
- (ii) The number of journeys and the term of the child's stay outside the Russian Federation shall be *reasonable* (emphasis added) and that the child shall leave Russia to Country ~W~ twice a year accompanied by her mother and subject to the father's consent and return back.
- (iii) There should be an obligation on ~B~ to return ~F~ to Russia after the end of the visitation term.
- (iv) There should be an obligation on ~B~ to notify ~Z~ of ~F's~ new residence address and contact phone number if the address is changed during three days.

[43] It can be seen that in September 2005 and December 2005 ~B~ had assured two courts in Moscow that she agreed to contact arrangements for ~F~ with her father. In order to comply with the court orders she had to do exactly what she had agreed to do and that was to facilitate contact. In addition the court had ruled that ~Z~ should take part in ~F's~ upbringing and decisions concerning her education. Furthermore ~B~ had to inform ~Z~ of a maximum of two trips to Country ~W~ before she went with a return date and the address and contact details if she was to be there for more than three days. She was to return ~F~ to Russia. The length of the trips to country ~W~ were to be reasonable.

[44] On 9 August 2006 ~B~ took ~F~ to Country ~W~ without informing ~Z~ or obtaining his oral consent. That was in breach of the order of the courts in Moscow. When she and ~F~ arrived in Country ~W~ ~B~ sent a telegram to ~Z~ informing him that ~F~ was in Country ~W~ and ~F~ would be returning to Moscow in about October 2006 (2/156). The length of the proposed stay in Country ~W~ was unreasonable disrupting contact between ~F~ and ~Z~ and was therefore in breach of the order of the Russian courts. However in addition in October 2006 ~B~ did not return ~F~ to the Russian Federation as she had been ordered to do but rather ~B~ returned and ~F~ was left with her maternal grandparents in Country ~W~. This was a further clear and fundamental breach of the order of the Russian courts.

[45] There were further court proceedings in Moscow and on 8 November 2006 it was held (1/27):-

“In breach of the court judgment, on 9 August 2006, the defendant's mother took the child to the Republic of Country ~W~, without the child's father's consent and without having requested the father to give his consent; the defendant has not given any accurate

information on the child's whereabouts; she has not brought the child on her return to Moscow, and up to present day the plaintiff has not been aware of the child's whereabouts. Therefore, ~B~, by having ignored the court's judgment, violated the provisions of Article 65 of the Family Code of the Russian Federation on the father's rights to participate in the child's upbringing."

In short there was ongoing unlawful retention of ~F~ by ~B~ in Country ~W~.

[46] There then followed what I hold was a quite determined and sustained course of action by ~B~ and her extended family. ~B~ did not return ~F~ to Russia but rather she prevented direct and indirect contact between ~F~ and her father and excluded him and his extended family from all aspects of ~F's~ life. But one illustration of this was a conversation between ~B~ and ~F's~ paternal grandmother in country ~W~. The paternal grandmother chanced to meet ~F~ and ~B~. She was told by ~B~ that she would never see ~F~ again. This approach by ~B~ and her extended family was entirely successful between August 2006 and February 2010. During the whole of that period, despite his persistent and determined efforts, ~Z~ only saw ~F~ twice. The first occasion was in January 2007 and the second in July 2007. On both occasions he was frustrated from making any arrangements in advance but had to travel to Country ~W~ and turn up on the door step. He was not told by ~B~ or ~F~ or any member of their extended family that in February 2007 ~F~ was to visit England and that in July 2007 ~B~ was to marry ~M~. I consider that the reason why ~F~ did not tell him was that she had been told not to by ~B~. ~Z's~ further attempt in January 2008 adopting the technique of just turning up in Country ~W~ failed. This sustained course of action by ~B~ was actively participated in by the whole of ~B's~ extended family in Country ~W~. The effect of it was that ~Z~ was left to assume that ~F~ remained in Country ~W~. He knew nothing of ~F's~ travels to Turkey, Egypt, England, Sweden, the United States of America and Northern Ireland. He knew nothing of the relationships that ~B~ had formed with ~M~ and ~R~ and the difficulties encountered in those relationships. This course of action was in breach of the order of the Russian courts in that it denied ~Z~ the right to associate with ~F~ take part in her upbringing and decisions concerning her education. For her part ~F~ was prevented from having any participation of her father or her father's family in her life.

[47] ~B~ has also changed ~F's~ surname. The surname on ~F's~ birth certificate was the then married name of her mother and father. ~B~ has changed this to her maiden name.

[48] ~B~ attempted to justify her actions in keeping ~F~ in Country ~W~ on the basis of ~F's~ health. I entirely reject any such justification. There is a suggestion that ~F~ suffered from rickets and accordingly had to move to a sunnier climate. If she did suffer from rickets, about which I am not persuaded, then it is quite clear that she

could have been treated in Moscow. This was nothing less than wrongful retention of a child in another jurisdiction and a determined effort over a number of years to exclude the child's father from her life. It would not have come to an end except for the admission of ~B~ to hospital in Northern Ireland in January 2010 and the children being taken into care.

[49] ~B~ had met ~M~ in May 2004 in Moscow. They began a relationship in August 2004 though the path of that relationship has not been easy with ~B~ leaving ~M~ on four occasions, twice before their marriage and twice after (2/8). They met regularly in 2005 and 2006 and he visited her parents in Country ~W~. He was told by ~B~ that ~Z~ was a bad man and even ~F~ at that time was referring to her father as a bad man (2/16/13). He gave ~B~ money to assist her in her legal proceedings in Moscow in 2004 and 2005. He gave her United States \$108,000 which money she used to buy two apartments in Country ~W~ which she still owns. In February 2007, one month after ~Z~ saw ~F~ in Country ~W~, ~M~, ~B~ and ~F~ travelled to England to visit ~M's~ family. ~F~ at this stage was calling ~M~ "daddy" and he treated her as if she was his own child. In June 2007 ~B~ and ~M~ again travelled to England in order to celebrate his mother's 80th birthday. On 19 July 2007 ~B~ and ~M~ were married in London. ~C~ and ~B's~ brother attended the wedding as did ~F~. On 22 July 2007 ~B~, ~C~, ~F~ and ~M~ all travelled to Turkey for a family honeymoon and returned to Country ~W~ in August 2007. On 19 December 2007 ~M~, ~B~ and ~F~ travelled to the United State of America to meet ~B's~ aunts who resided there. ~B~ and ~F~ stayed there for two months returning to England in March 2008. They stayed with ~M~ in England for one month before returning to Country ~W~.

[50] On 6 July 2008 ~M~ and ~B~ travelled for a holiday to Hawaii. Whilst on holiday they had a very serious argument and she accused him of giving her a sexually transmitted disease. There was no substance to that accusation. On 8 August 2008 ~B~ left ~M~ without warning. He attempted to contact her but she did not answer the phone.

[51] ~M~ persisted in his attempts to contact ~B~ by email and telephone but to no avail. He had given up but in January 2009 ~B~ contacted him asking him for some money which he sent to her. ~B~ suggested that she visited ~M~ in London and ~B~ and ~F~ came to London to visit him in June 2009. ~M~ told her that he loved her and that they could have a fresh start in London which was where she always wanted to live. ~B~ did not know what to do.

[52] In August 2008 either just days before or after ~B~ left ~M~ on 8 August 2008 she met ~R~ on the internet. They met physically for the first time in Turkey in September 2008. They went on holiday again together but this time with ~F~ and ~P~ in Egypt in October 2008. In November 2008 ~R~ went to Country ~W~ and met ~B's~ extended family. In December 2008 ~B~ and ~F~ came to Sweden for ten days. It was during this trip that ~B~ became pregnant. It is to be recollected that it was in January 2009 when her relationship with ~R~ was blossoming that ~B~, having had no contact with ~M~ since August 2008, again contacted him asking him for money.

~R~ went to Country ~W~ in February 2009 and in March 2009 ~B~ went to Sweden to live with ~R~. ~F~ was left behind in Country ~W~ with ~C~ (2/175). ~B~ did not intend that ~F~ would join her in Sweden (2/200) but after two months she was told that ~F~ was missing her and on 11 May 2009 ~F~ joined her in Sweden.

[53] In June 2009 ~B's~ relationship with ~R~ was running into difficulties. She travelled to London with ~F~ to stay with ~M~. He assured her that he loved her. He encouraged her to stay in London. ~R~ followed ~B~ to London and persuaded her to return to Sweden which she did on 19 June 2009.

[54] On 21 June 2009 in Sweden there was an unpleasant physical altercation involving ~R~, ~B~ and ~Q~ in front of ~F~ and ~P~ and also involving ~F~. The incident involved upset to dignity and physical violence but no physical injuries and there was no need for any medical treatment. ~R~ and ~Q~ have insight into and remorse in respect of what occurred. ~B~ blames ~Q~ for this incident and ~R~ for not protecting her. I consider that the paranoid aspect of ~B's~ personality played a role in this incident and continues to influence her interpretation of it. The incident prompted a further impulsive move of country and partners by ~B~ bringing ~F~ with her. She and ~F~ left Sweden and travelled to the United States of America where they stayed with ~B's~ aunts.

[55] As she had done previously with ~Z~ and ~M~, there then commenced a period when ~B~ excluded ~R~ from her life and the life of ~F~. ~F~ had formed an attachment to both ~R~ and his daughter ~P~. Those attachments were to be severed without any prospect of being renewed. ~B~ told ~R~ that she did not want to have any contact with him. Despite this ~R~ visited her in the USA in July 2009. She told him that she was going to put ~M's~ name on the child's birth certificate so that she could obtain a British passport (2/176). I accept that that was one of the reasons for putting a false name on ~T's~ passport. Another being that she wished to cover that ~T~ was conceived in an adulterous relationship with ~R~, when ~B~ was married to ~M~. This was not only a potential source of embarrassment to ~B~ but there was also a risk of a more adverse impact on ~T~ and ~B~ in Country ~W~ and with her country ~W~ relatives given the cultural and ethical mores in that country. The decision to place ~M's~ name on ~T's~ birth certificate was therefore primarily to protect ~T~ and ~B~ but it was also a calculated decision to acquire British Citizenship. I also consider that it was part of a wider plan at that stage by ~B~ to exclude ~R~ from his daughter's life regardless of the impact on ~T~ or ~R~.

[56] A period followed when ~R~ was unable to contact ~B~ whilst ~M's~ relationship with her improved. ~M~ travelled to the United States of America and was present at ~T's~ birth. ~R~ was unaware that ~T~ had been born. All his attempts to contact ~B~ failed. He was distraught at the prospect that he would never see ~B~ or know about or see his child. He sent an email to ~B's~ brother in Country ~W~ but to no avail. He also contacted her father but again with no success. Again ~B's~ extended family was prepared to support ~B~ in cutting off all contact between a child and her father. Previously the child was ~F~ and the father ~Z~. Now the

child was ~T~ and her father was ~R~. ~T's~ deep emotional needs for a father and ~R's~ deep emotional needs were completely ignored by ~B~ in pursuit of her renewed relationship with ~M~. They were also ignored by ~B's~ extended family. At this stage ~M~ was being called "Daddy" by ~F~ and he was on ~T's~ birth certificate as her father. I consider that ~B~ then intended to permanently exclude ~R~ from every aspect of ~T's~ life.

[57] ~R~ then sent an email to ~B's~ aunts in the United States of America. By this method ~B's~ aunts learnt that ~T~ was born out of wedlock and they reacted adversely. They were ashamed and angry. One aunt refused to speak to ~B~. She was told by her other aunt to leave and never to come back. ~M~ was told to take her with him (2/169). There was a considerable hurry to leave as they were being thrown out and they did not have any time to get the paperwork sorted out. They left the United States of America on 6 November 2009 and travelled to Northern Ireland.

[58] By 12 December 2009 ~B's~ relationship with ~M~ was in difficulties. She accused him of physically injuring ~T~. She shouted at ~M~ in front of ~F~ and left the house with ~F~ not saying where she was going.

[59] ~B's~ mental health deteriorated and she was detained in hospital between 8 January 2010 and 23 February 2010. The children were taken into care and placed together in the same foster placement where they remained until August 2010 since when they have been placed with ~B~ in a supervised residential home.

[60] Meanwhile in July 2009 ~Z~ married ~Y~. ~Y~ is 25 years of age. She comes from country ~W~ and is also a citizen of the Russian Federation (4/50). She works but with flexible working hours. She played a part in bringing up her young nephew in country ~W~. She gave evidence by video link and I assess her as a reliable and honest witness. She and ~Z~ wish to have children of their own. She is deeply supportive of ~Z's~ desire to parent ~F~. She also would wish to do so.

[61] In a report dated 5 November 2010 the social worker having interviewed ~B~ recorded that she continues to be hostile towards ~Z~. ~B~ made it very clear that she was not willing to let ~Z~ share in the parenting of ~F~. She stated that ~Z~ could visit ~F~ in Sweden but she would not let ~F~ visit him until she is 18 years old. Attempts to try and persuade ~B~ to consider other options were met with total rejection (2/327). In her evidence ~B~ changed her position. She professed to be willing to allow ~Z~ to participate in ~F's~ upbringing and also agreed to staying contact for ~F~ with ~Z~ in Moscow. However I consider that there still is hostility towards ~Z~ and there is a real and substantial risk that this will motivate ~B~ to again prevent all contact between ~Z~ and ~F~ and to exclude ~Z~ from ~F's~ life.

~B's~ plans

[62] In May 2010 ~B~ contemplated a reunion with ~R~ and evolved the plan of taking the children to live with him in Sweden. On 3 November 2010 she stated that

her first option would be to go to Sweden and failing that she would return to Country ~W~ (2/288). In her statement dated 2 December 2010 she recorded that she wished to go and live in Sweden with ~R~ and to co-parent ~F~, ~T~ and his daughter ~P~ together. She also stated that she had discussed her relationship and the future with ~R~ "on many many occasions." She stated that she was committed to her relationship with him and a family life together. She was wary of ~Q~ but understood that ~R~ and she no longer met at handovers. She believed that ~R~ also understood the need to protect her from ~Q~'s behaviour (2/223).

[63] At the time that ~B~ signed the statement dated 2 December 2010 she had not seen ~R's~ statement dated 1 December 2010. ~R~ stated that he agreed with ~B~ coming to Sweden and sharing care but stated that he did not want her to come to Sweden on the premise that she was reconciling and then moving on somewhere else. I consider that such a fear was entirely justified in view of what had happened to ~Z~, ~M~ and ~R~. ~R~ stated that he would like to have possession of ~T's~ passport.

[64] By the start of the hearing on Monday 6 December 2010 ~B~ had changed her mind. She no longer wished to go to Sweden but rather she wished to remain in the United Kingdom with ~F~ and ~T~. I consider that this was a further example of impulsive behaviour on her behalf. This plan was not thought out in that she did not know whether she could remain in the United Kingdom. She and the children are presently only entitled to be in the United Kingdom as she is married to ~M~ but provided that she resides with him. She no longer resides with him and divorce proceedings are to be initiated (2/4 and 2/830). In addition ~B~ did not know where she was going to live and what employment if any she could obtain. There were no family supports available to her in the United Kingdom. She needs supports/protective factors in her parenting of ~F~ and ~T~. ~B~ contended that a factor in her change of plan were ongoing concerns about physical violence from ~Q~. I reject that as a reason. When formulating the plan to move to Sweden she knew that ~Q~ lived one hour away by car from the place where they were to reside, that ~R~ and ~Q~ no longer physically met, that ~Q~ was remorseful and that protection could be afforded to ~B~, if such was needed, by the Swedish police. I consider that the real reason was that ~T's~ passport was to be kept by ~R~. I also consider that this raises suspicion that ~B~ did intend to travel to Sweden and then travel on to Country ~W~ with the children. She explained that having ~R~ hold ~T's~ passport would put her under his control but that could easily have been answered by putting the passport under the control of a neutral third party such as a Swedish lawyer or Swedish Social Services or a court in Sweden with clear terms upon which the passport was to be held. In evidence ~B~ resolutely refused to countenance such a precaution.

[65] ~B's~ plans changed again on Friday 10 December 2010. ~R~ gave evidence by video link from Sweden on Thursday 9 December 2010. He withdrew his suggestion of holding ~T's~ passport. He made it clear that ~B~ could travel to Country ~W~ with ~T~ as far as he was concerned and he would not seek to stop her. This was regardless of the risk that he would never see ~T~ again. He stated that the only basis for a future relationship was trust regardless of what had occurred in the past. He

expressed his love for ~B~ and sought to persuade her to come to Sweden. He repeated a proposal of marriage. This had an immediate emotional impact on ~B~ and it led her to change her mind accepting his proposal of marriage. She now wishes to go to Sweden with ~F~ and ~T~ in order to marry and live with ~R~. I made it clear to Mr O'Hara that despite ~R's~ compassionate and caring attitude towards ~B~ for a plan to be considered with any prospect of success which involved ~B~ going to Sweden with ~T~ or ~T~ and ~F~, it would need to incorporate precautions to prevent impulsive flight by ~B~ with the children. Further that for a plan involving ~F~ going to Sweden to be considered with any prospect of success a component in relation to ~F~ would be staying contact for her in Russia with her father.

[66] ~B~ filed a further statement dated 10 December 2010 recognising a lack of and a need to provide stability in her and her daughter's lives, that she had not allowed ~Z~ and ~R~ to be involved in and to be kept informed about the lives of their daughters. She agreed to the passports of the children being held by an official person or body such as Sweden's Social Services and to ~F~ travelling to Moscow three times a year for contact with ~Z~.

~Z's~ plans

[67] ~Z~ wishes ~F~ to reside with him in Moscow. He has the support of his wife ~Y~. He also has the support of both of his parents who will live nearby in an apartment in Moscow providing both emotional and physical support. Both of his parents gave evidence by video link. I assess both of them as caring and considerate individuals who gave honest and reliable evidence. They recounted their exclusion from the life of their granddaughter but they recognised without rancour that ~F~ should have a relationship with ~B~ and with her maternal grandparents and extended family. They are committed to this.

[68] ~Z~ considers that Moscow, being between Sweden and country ~W~ geographically, lends itself to the maintenance of contact for ~F~ with both ~B~ and ~T~ in Sweden and ~B's~ extended family in country ~W~.

[69] There is a school close to ~Z's~ apartment which ~F~ can attend. There is plenty of scope for proper arrangements being made for ~F~ to be dropped off to and collected from the school.

[70] I am satisfied that the present accommodation in Moscow is sufficient and that given ~Z~ and ~Y's~ individual and combined earning ability they can if necessary move to a larger apartment.

[71] ~Z~ is not entirely sympathetic towards ~B~ who undoubtedly has suffered from a very frightening illness for which she was compulsorily detained in a psychiatric hospital. There is scope for increasing empathy on his part but this degree of lack of consideration towards ~B~ is explained by the way in which he has been treated. Despite this lack of empathy I did not detect rancour and I accept that ~Z~

recognises and is genuinely committed to maintaining contact between ~F~ and ~B~ and ~T~. He has concerns about such contact and the potential for ~F~ being abducted or her placement being disrupted. In order for contact between ~B~ and ~F~ to take place in Russia ~B~ has to have the ability to travel there without the fear of prosecution. To facilitate this ~Z~ has given an undertaking to this court that he will not voluntarily assist in any prosecution of ~B~ in Russia for breach of court orders or for the wrongful retention of ~F~ in country ~W~. This undertaking is limited so that ~Z~ is released from it if ~B~ again wrongfully retains ~F~ in another country. I schedule to this judgment the exact terms of the undertaking.

[72] ~Z~ also agrees to indirect contact and staying contact between ~F~ and ~B~ and ~T~ in Sweden.

[73] ~Z~ also recognises the need for and plans for contact between ~F~ and ~T~.

~R's~ plans

[74] ~R~ wishes to co parent ~T~ with ~B~. He agrees to ~B~ also co parenting his daughter ~P~ and will work with ~Q~ to facilitate this. He is willing to co parent ~F~ if the court grants a residence order in favour of ~B~ in respect of ~F~.

[75] ~R's~ accommodation in Sweden is adequate and there are schools available for ~F~ and in due course for ~T~.

[76] No issue arose at the hearing in relation to ~R's~ ability physically or emotionally to parent either or both of the children. The court was presented with an agreed outcome in relation to ~T~ that she will be the subject of a joint residence order settling that she should reside with ~B~ and ~R~ in Sweden. There was no dissenting voice in relation to this arrangement including the guardian ad litem on behalf of ~T~. The only issue raised by the guardian on behalf of ~T~ was as to the protective measures that should be in place for the benefit of ~T~.

Country ~W~

[77] I have not heard any evidence as to the law in country ~W~ in relation to the enforceability in that country of the orders of the Russian courts. However I accept as a fact the evidence of ~Z~ that on a practical basis given his personal circumstances and those of ~B~ it was not possible for him to enforce the order of the Russian courts in country ~W~ and that it was not possible to obtain in that country an order capable of enforcement that would have prevented ~B~ from adopting the course which she did adopt. This evidence from ~Z~ was not challenged in cross examination nor was it suggested to him that there were any practical steps that he could have taken in country ~W~. I also hold as a fact that this is and will remain the position so far as is relevant to this case.

[78] I conclude that if ~B~ goes to country ~W~ with one or other or both of the children that she would be able to exclude both ~Z~ and ~R~ from their lives. That she would be free to travel with the children from country ~W~ to whatever country she chose. That she has the ability to form new relationships irrespective of differences in culture and regardless of the geographical distances involved.

[79] If ~B~ returns to country ~W~ with the children then concerns have been raised as to the physical and emotional safety of ~B~ and ~T~ given the circumstances of ~T's~ birth (1/98 and 2/5). ~M~ who has worked extensively in this part of the world states that some people in country ~W~ would have very strong views about a child born outside of marriage. He also states that some cultures would stone a woman to death for adultery and that a child born in these circumstances could suffer harm. ~B~ dismisses these concerns but some support is given to the strength of feelings that can be generated by ~B's~ actions in providing false information as to ~T's~ father on her birth certificate and the reaction of ~B's~ aunts in the United States of America to knowledge of the circumstances of ~T's~ conception and birth. The Trust has attempted to investigate these concerns but have been unable to do so there being no social services agency in country ~W~. It is not known how many of ~B's~ extended family know of ~T's~ existence and how ~T~ could integrate into the wider extended family in country ~W~. (2/83o). I am not prepared on the evidence available to me to come to a concluded view in relation to the existence of or the degree of the risk of harm physical or emotional to ~B~ and ~T~ except to conclude that these concerns are not fanciful and at the least there is a real risk of emotional harm to ~T~ in country ~W~ given the circumstances of her birth.

Sweden

[80] ~T~ as a Swedish citizen has an absolute right to enter and remain in Sweden unconditionally.

[81] As ~B~ is engaged to and intends to marry as well as cohabit in Sweden with a Swedish national there is provision for her to receive a residence permit. This is not an entitlement and a pre requisite is that the relationship is deemed serious. As ~B~ and ~R~ have known each other, have previously co habited, have a child together and are engaged to marry they would appear to satisfy that requirement. In order to be granted a residence permit a person must generally apply from the country in which they are permanently resident. However as ~B~ has a child with a Swedish resident she could apply for a residence permit without having to leave Sweden if the Migration Board determines that there are insufficient reasons to require her to travel to another country to apply. ~T~ is very young and is heavily dependent on her mother with whom she needs to continue to form an attachment and accordingly there may well be a strong case for ~B's~ application for a residence permit to be assessed whilst she remains in Sweden.

[82] Swedish border control depends on whether the individual is travelling within countries that are party to the Schengen agreement of which there are a considerable

number. All persons present within the Schengen area, regardless as to whether they are a citizen of a Schengen country, citizen of another EU-country or a citizen of a country outside the EU, are allowed to pass the internal borders without being subjected to personal controls. However, the police and border control of a Schengen member state *may* demand that a valid identification be presented. The effect is that ~B~ once in Sweden could move with the children to another country in the Schengen area without being stopped. The precaution of ~B~ not being in possession of a passport for the children is not effective to prevent her from taking the children out of Sweden.

~F~

[83] ~F~ was born in 2003 in Country ~W~ and is presently 7 years old. She is of the Muslim faith.

[84] I have set out in the sequence of events the countries to which ~F~ has moved and the relationships she has formed with ~M~ and ~R~. Upon moving to Northern Ireland in November 2009 she dealt with a number of changes of accommodation and the breakdown of her mother's relationship with ~M~. Those events preceded her mother's admission to a psychiatric hospital in January 2010.

[85] Upon that admission ~F~ was taken into care and placed in a foster placement. She then attended a primary school in Northern Ireland. Contact was maintained with her mother and re-established with her father. She remained in her foster placement until August 2010 when she moved to the care of her mother in supervised residential accommodation run by the Trust. She remains in that accommodation. Despite previously calling ~M~ "Daddy" and thereby acknowledging him as her psychological father she has not seen him since December 2009 and resolutely refuses to have any contact with him.

[86] There has been a considerable degree of instability in ~F's~ life and she has had to adjust to:-

- (a) Moves between Country ~W~, Russia, Sweden, the United States of America and Northern Ireland.
- (b) The absence of her father in her life between 9 August 2006 and January 2010 except for two short meetings in January and July 2007.
- (c) Her mother's new relationships and the difficulties in those relationships. Those relationships and difficulties were with ~M~ who is English and ~R~ who is Swedish. She formed a close attachment to ~M~ but now believes that he was responsible for hurting ~T~. That belief is wrong and was induced in her by ~B's~ delusional thinking during her

psychotic episode. However ~B~ has done nothing subsequently to reassure ~F~ that ~M~ did not harm ~T~. ~F~ does not wish to have any contact with ~M~ as a result of these incorrect beliefs induced in her by ~B~.

- (d) The absence of her paternal grandparents in her life.
- (e) Her mother's ill health a consequence of which was that she was taken into foster care.
- (f) The lack of any clear plan for her education.
- (g) Her mother's "very chaotic lifestyle" from 2002 (2/102).

[87] At the start of 2010 ~F~ was very confused but she responded well to the affection shown to her in her foster placement and the simple settled routines including school at which she flourishes. In short she has responded well to stability and consistency (2/19). She is very resilient and older than her age (2/53). She is an open sociable child who makes friends easily. She adjusts well and is a very confident child. She speaks three languages, the language of country ~W~, Russian and English. She presents as happy and relaxed but she has a need for long term security and consistency.

[88] ~F~ is heavily under the influence of her mother. I will set out my assessment of ~F's~ wishes and feelings later in this judgment but I record here two specific matters. The first is that on 16 August 2010 ~F~ told the guardian ad litem that if she was in country ~W~ with her mother then she would not be allowed by her mother to see her father (2/248/6.10). I consider that is an accurate assessment of what would occur. The second is that on 10 March 2010 ~F~ told the guardian that there were "going to be big big problems". When she was asked what she meant she replied "there will be big problems if ~T's~ father comes and takes her to Sweden and if my daddy comes and takes me to Russia, big problems" (2/247/6.5). ~B~ is egocentric and I consider that there is a real risk of attempts by ~B~ to frustrate court orders by emotional pressure on ~F~ regardless of the damage that this will cause ~F~.

[89] ~F~ has a strong attachment to her mother ~B~ and also loves her father ~Z~ with whom she has a good relationship (2/57).

[909] ~F~ has affection for ~T~ giving her tender hugs, tickling her, making happy faces and smiling to her. ~F~ and ~T~ have been together since ~T~ was born.

~T~

[91] ~T~ was born in 2009 in the United States of America. She is of the Muslim faith. She is healthy meeting all her developmental milestones. She is happy, content and alert.

[92] ~T's~ attachment process to her mother was hindered by her separation from her mother between January 2010 and August 2010. Since then she has become attached with good eye contact and she seeks out her mother for comfort and care. Her mother stimulates her.

[93] ~T's~ attachment process to her father was prevented between her birth and January 2010. Since then ~R~ has visited regularly.

[94] ~T~ has known ~F~ since her birth and she interacts well with her sister. There is the potential for a life long relationship between ~T~ and ~F~.

Threshold Criteria in relation to the public law proceedings

[95] ~B's~ relationship with ~Z~ lasted a matter of months. She has left ~M~ on four occasions. She has left ~R~ on two occasions. Upon leaving ~Z~, ~M~ and ~R~ she was intent on excluding them entirely from her life and from the lives of their children cutting off all communication with them.

[96] I summarise the substantial risks as follows

- (a) That ~B's~ relationship with ~R~ will break down.
- (b) That ~B~ will take the children to country ~W~
- (c) That ~B~ will enter into a new relationship with a different partner involving relocation by her and the children to a different country with a different culture and a different language.
- (d) That ~B~ will have a further psychotic incident.
- (e) That ~B~ will either physically by geographical separation and/or by lack of information or emotionally by influencing the children entirely exclude their father's from their lives.
- (f) That ~B~ will not comply with orders made by this court.
- (g) That ~B~ will attempt to parent the children without support or protective factors.

[97] By virtue of those risks individually and in combination I conclude that both ~F~ and ~T~ are likely to suffer significant harm and that likelihood of harm is attributable to the care likely to be given to them by ~B~ if the order were not made, not being what it would be reasonable to expect a parent to give to them. The significant long term harm to both of the children is similar including to their education with repetitive disruptions, to them physically by undue and irrational concerns as to their health, to them emotionally by either rejecting ~B~ when they gain a greater appreciation of what has occurred in their lives and as to ~B's~ conduct in preventing them from having a relationship with their fathers or alternatively by being compelled to take on an increasing caring role in respect of their mother thereby depriving them of a fulfilling childhood.

Welfare considerations in relation to the public law proceedings

[98] In relation to ~F~ in view of the conclusion to which I have come in the private law proceedings and provided ~B~ works honestly and openly to implement that outcome, demonstrating that she will implement it then I do not consider that there will be any need for a final public law order. I should explain that I have concerns as to ~B~ frustrating the implementation of the private law orders that I propose to make in relation to ~F~ and that until she has demonstrated that she will implement those orders I will continue an interim care order. The private law order will be consecutive to the interim care order. Rather than frustrating the implementation of the orders both of the children and in particular ~F~ will need ~B's~ reassurance and validation. If in the event there is an attempt to frustrate the implementation of those orders then I will have to give further consideration to a public law supervision or care order. Accordingly I will adjourn further consideration of any final public law order in relation to ~F~ pending further information as to the implementation of the proposed private law orders. I renew the interim care order. I also direct the guardian and the Trust to provide reports to the court as to whether ~B~ does give assistance to ~F~ in relation to her placement under the proposed private law orders. I also direct that both the Trust and the Guardian ad litem provide reports to the court as to how ~Z~ and ~R~ react to the judgment and the steps that they take to implement the proposed private law orders. Finally I direct that those reports are made available to the courts in Moscow and Sweden to inform future decisions in relation to contact.

[99] In relation to ~T~ in view of the provisional conclusion to which I have come in the private law proceedings and provided suitable precautions are put in place to protect ~T~ I do not consider that there will be a need for a public law order. I will set out in an appendix to this judgment the precautions to which ~B~ should agree. I say provisional conclusion in relation to the private law proceedings because absent agreement as to the precautions I will give consideration to a different outcome to the private law proceedings or to the making of a public law order. Accordingly I will adjourn further consideration of any final public law order in relation to ~T~ pending agreement to those precautions and practical steps towards their implementation and in the meantime renew the interim care order. The proposed private law orders will be consecutive to the interim care order provided there is agreement as to the

precautions, absent which I will give further consideration to either a public law order or some other private law order.

[100] There was a concern expressed in this case by ~B~ that she would lose both of her children. I explained then and I emphasise again now that there is no need for such an eventuality. There are many positives to the outcome of this litigation. As will be seen as far as ~B~ is concerned she has the opportunity of a relationship with ~R~ in Sweden and also the opportunity of a life long relationship with both of her children but in different ways.

Welfare Checklist in relation to the private law proceedings

[101] I will set out my consideration of and my conclusions in relation to the particular matters (the welfare checklist) contained in Article 3(3) of the Children (Northern Ireland) Order 1995. I do not intend to repeat all the factual findings that I have made when giving consideration to the individual matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995 but rather I summarise my reasons and incorporate those findings to which I have not specifically referred. I will set out my consideration and conclusion first in relation to ~F~ and then in relation to ~T~. In setting out my conclusions in this sequence and form it does not mean that I have not considered each of the children individually and also how their interests interact with each other.

Application of the welfare checklist in relation to the private law proceedings in relation to ~F~

[102] *The ascertainable wishes and feelings of ~F~ considered in the light of her age and understanding.* On 16 August 2010 ~F~ informed the Guardian ad Litem that she wanted to live with her mother and go back to Country ~W~ (2/248/6.10). On 11 October 2010 ~F~ she said she wanted to live in Country ~W~ (2/249/6.16). On 24 November 2010 she said she would like to stay with her mother (2/249/6.19) and that she missed her family in Country ~W~.

[103] ~F~ has strong feelings for her mother. She also presents as at ease in her father's company despite the upset to their relationship. She has developed a close relationship with him (2/54). Her maternal grandmother has been a significant figure throughout her life and she has strong feelings for her. She has strong feelings for her half sister ~T~ and also has formed a bond with ~P~. She has feelings for ~R~.

[104] I accept the evidence of the social workers (2/53) that ~F~ is very much under the influence of her mother who tells her what she should say and to whom. When she is with her mother she says she wants to go to Country ~W~ but when she is on her own she says that she does not. ~F~ also said that she was told by her mother that if anyone asked to say she wanted to stay in London.

[105] ~F~ also stated to the social workers in the absence of her mother that she would really like to live sometimes with her mother and sometimes with her father. I consider that represents her true wishes but that taking her feelings for her mother and for her half sister into account she would prefer to spend more time with her mother than with her father.

[106] ~F~ would also like to have a house/home. This desire evidences an emerging understanding of the chaos that has been a feature of her mother's care. I do not consider that she has an understanding of the risks for the future or indeed any real understanding of what has occurred in the past. I place considerable weight on ~F's~ *feelings* but I approach with considerable caution her *wishes*.

[107] ~F's~ *physical, emotional and educational needs*. ~F's~ physical needs are those that one would expect for a 7 year old but in particular she has a physical need which is also an emotional need for "a place called home, where she can grow up with a sense of identity in a safe and happy environment" (2/54).

[108] ~F's~ emotional needs include the need to know that she is loved and cared for by both of her parents and that she can have a full relationship with her half sister and members of both of her extended maternal and paternal families.

[109] ~F~ is intelligent and has clear potential to progress to tertiary education. In order to achieve her full educational potential she is now at an age when she needs consistency. She needs to enter and to progress through an educational system preferably in one country.

[110] *The likely affect on ~F~ of any change in her circumstances*. ~F~ will be able to cope with a move to Sweden. There are language difficulties but she has an ability to learn foreign languages. She has an ability to make friends. However I consider that there is a high risk of relationship difficulties between ~B~ and ~R~, a high risk of contact breaking down again with her father and also a high risk of ~B~ moving again to another country with ~F~. As I have explained these and other risks individually and cumulatively amount to the likelihood of significant long term emotional, physical and educational harm.

[111] There is also a clear obvious risk of emotional damage to ~F~ if she goes to Moscow. She will be separated for substantial periods from her mother and ~T~. She will also be separated from ~P~ and ~R~. ~Z~ is a caring individual with much support available to him in Moscow. ~F~ has proved to be resilient to date and I consider that she would be able to cope with this change of placement provided that it is her last. I consider that the emotional upset to ~F~ by a placement with her father will be short lived even if ~B~ does not, as she should, endorse the placement and honestly and frankly works with ~Z~ in the best interests of ~F~.

[112] *~F's~ age, sex, background and any characteristics of her which the court considers relevant.* I have set out her age, sex and background. She is resilient and able to make friends. She loves both of her parents.

[113] *Any harm which ~F~ has suffered or is at risk of suffering.* I have set out the harm which she has suffered and is likely to suffer in a placement with ~B~. Apart from short term harm during the change of placement she is not at risk of suffering harm in a placement with ~Z~.

[114] *How capable of meeting ~F's~ needs is each of her parents, and any other person in relation to whom the court considers the question to be relevant.* ~B's~ ability to provide for ~F's~ physical, emotional and educational needs is heavily qualified. ~B~ is at present able to do so with the support of Social Services in Northern Ireland though the level of support has been reducing. Historically she has done so with considerable family support in particular from ~C~. She would be able to do so in the future if there was support for her and stability in her life. That stability includes secure accommodation, an occupation and a social network. If there is a lack of stability there is a high risk of a further psychotic episode. The question as to whether ~B~ is able to provide for ~F's~ physical needs turns on whether she will remain committed to her plan to live in Sweden with ~R~ where she will have an occupation, accommodation and a social network. Whether ~B~ stays in Sweden will depend to a considerable extent on whether her relationship with ~R~ is an enduring relationship. ~B's~ relationship with ~Z~ lasted for 8 months. Her relationship with ~M~ when they lived together lasted a matter of months, as did her previous relationship with ~R~. Her personality is such that considerable pressure is going to be placed on her new relationship with ~R~. I consider that there is a high risk of it failing even in the short term. I consider that any further plan devised by ~B~ if her relationship with ~R~ ends will be impulsive and impractical with a high risk of further relationship difficulties and a further psychotic episode.

[115] I consider that there is a high risk that ~B~ will again cut ~F~ off from her father and her extended paternal family. There has been no influence on ~B~ from her own extended family to maintain contact between ~F~ and ~Z~ and indeed they have actively worked with ~B~ to frustrate contact. Even if precautions can be put in place in Sweden to prevent, or at the very least to substantially minimise the risk of ~B~ leaving that country with ~F~ and thereby frustrating contact that will not prevent ~B~ from using the tactic of turning ~F~ against her father. She has attempted to do this in the past with ~F~ calling her father a bad man. There is plenty of scope even if ~B~ remains in Sweden for her to influence ~F~ and to devise reasons why contact should not take place and to frustrate it. During the course of the hearing ~B~ asserted that ~F~ was tiring of contact with her father. That was an incorrect assertion and I consider that it should be seen as the start of ground work for the proposition that she promotes contact for ~F~ with ~Z~ but that ~F~ does not want contact to occur. ~B~ has expressed strong hostility towards ~Z~ as recently as early November 2010 and has also stated that she did not want him to share in the parenting of ~F~ (2/327). I accept ~Z's~ evidence that prior to the court proceedings

in Moscow ~B~ provided contact but as soon as the proceedings concluded she reverted to impeding contact. I do not accept her assertion that she is now committed to contact between ~F~ and ~Z~. She told the courts in Moscow this in September and November 2005. That assertion was then incorrect and in my assessment it remains incorrect today.

[116] ~F's~ physical, emotional and educational needs can be met by ~Z~ who in turn has the support of his wife and his parents. ~Z~ has a clear understanding of the need for contact between ~F~ and ~B~ and between ~F~ and ~T~. He has given commitments to such contact. I accept his evidence that he will ensure that such contact takes place though there is a need for safeguards. I also accept that he has a clear understanding of the need for stability in ~F's~ life.

[117] If ~F~ remains in Sweden and if the relationship between ~B~ and ~R~ continues then he also will be available to provide for her physical, emotional and educational needs. ~R~ is a caring compassionate individual. His final position was that he would trust ~B~ and that he did not wish to impose any precautions on her or the children. I do not consider that he will be able to control a developing situation adverse to the interests of ~F~. ~R~ prioritises his relationship with ~B~ over the need to recognise and guard against risks to ~F~ in the future.

[118] In conclusion ~Z~ is best placed to meet the physical, emotional and educational needs of ~F~.

[119] *The range of powers available to the court under the Children (Northern Ireland) Order 1995.* ~F's~ placement with ~Z~ is going to be extremely important to her and direct and indirect contact between ~F~ and ~B~ should not threaten that placement. I consider that there should be a settling in period in Moscow before there is direct contact in Sweden. That period will assist ~F~ to gain a sense that she is loved and has a sense of belonging in Moscow. It will also enable an assessment to be made by the courts in Moscow as to whether ~B~ is accepting and supportive of ~F~ in her placement in Moscow. If there is any undermining of that placement by ~B~ then I consider that ~F's~ placement is more important than direct contact in Sweden. The exact duration of the settling in period is not presently possible to predict and awaits further assessment. To assist in that assessment I am making available to the courts in Moscow reports as to whether and if so what are the positive steps that ~B~ takes now to facilitate ~F's~ change of placement and as to how ~Z~ and ~R~ set about implementing this judgment. The contact order that I make is limited to indirect contact and direct but supervised contact in Moscow.

Provisional conclusion in relation to the private law proceedings in respect of ~F~

[120] I consider that the balance comes down firmly in favour of a residence order settling that ~F~ should reside with ~Z~ in Moscow. Provided that ~B~ demonstrates that she will implement the orders and consecutive to the interim care order I will make the following private law orders:

- (a) a residence order settling that ~F~ should reside with ~Z~
- (b) Leave for ~Z~ to take ~F~ to Moscow
- (c) a contact order in favour of ~B~
- (d) a prohibited steps order preventing ~F~ from leaving Russia without the written consent of ~Z~ or the leave of the Russian courts
- (e) an order that the surname to be used in relation to ~F~ is the surname on her birth certificate and not ~B's~ surname

Application of the welfare checklist in relation to the private law proceedings in relation to ~T~

[121] *The ascertainable wishes and feelings of ~T~ considered in the light of her age and understanding.* ~T~ is 1 year old. She is too young to articulate any wishes and to have understanding except at the simplest of levels. However she has strong feelings for her mother, her father and ~F~.

[122] *~T's~ physical, emotional and educational needs.* ~T~ needs physical and emotional stability together with love and stimulation from both of her parents. In the longer term she needs a stable education in one country.

[123] *The likely affect on ~T~ of any change in her circumstances.* ~T~ is able to make a move from Northern Ireland to Sweden. There will be no adverse consequences involved in that move but there is a high risk of adverse consequences if the relationship between ~B~ and ~R~ deteriorates.

[124] *~T's~ age, sex, background and any characteristics of hers which the court considers relevant.* I have set out her age, sex, background and her characteristics.

[125] *Any harm which ~T~ suffered or is at risk of suffering.* ~T~ suffered harm between January 2010 and August 2010 when she was in a foster placement. There is a likelihood that she will suffer significant harm if there are no protective factors in place in relation to ~B's~ conduct. Precautions to ensure stability for her and for one of her primary carers, her mother, in Sweden, need to be put in place and I have set out the precautions in a schedule to this judgment.

[126] *How capable of meeting ~T's~ needs is each of her parents, and any other person in relation to whom the court considers the question to be relevant.* I have already analysed ~B~ and ~R's~ abilities to care for ~F~. Care by ~B~ on her own brings the likelihood of significant harm. ~R~ can parent on his own but he cedes ultimate authority to ~B~ and is likely to do so in the future.

Provisional conclusion in relation to the private law proceedings in respect of ~T~

[127] Both of ~T's~ parents presently state that they intend to jointly care for and bring up ~T~ in Sweden. It is clearly in ~T's~ interests that she should be brought up by both of her parents in Sweden provided that there are sufficient precautions in place to provide stability for her. If sufficient precautions are in place then consecutive to the interim care order I will the following private law orders:

- (a) a joint residence order settling that ~T~ should reside with ~B~ and ~R~
- (b) leave to ~R~ to move ~T~ from Northern Ireland to Sweden.
- (c) a contact order facilitating direct and indirect contact between ~T~ and ~F~.
- (d) a prohibited steps order preventing ~T~ from leaving Sweden without the written consent of Swedish Social Services or the leave of the court.

Further directions

[128] This judgment and the orders of this court should be translated into Russian and Swedish. Once translated they should be made available to the judge with conduct of the proceedings in Moscow and also to Russian Social Services. They should also be made available to social services in Sweden.

Schedule of precautions

1. Passports.

(a) I agree to give into the custody of Swedish Social Services so that they can hold all ~T's~ passports and all passports on which ~T~ is named

(b) I agree to give 7 working days written notice to Swedish Social Services and to ~R~ if I wish a passport to be returned to me for any purpose and that I will give written details of the reason or reasons for the return of the passport and if for travel, whom it is proposed will be travelling with ~T~, the dates and times of the flights, photocopies of non refundable return tickets, the contact details and the place to which ~T~ is travelling, including address, telephone number together with confirmation from the person at that address that ~T~ is to stay there, that upon arrival the passport will be given to Social Services in that country and that upon ~T's~ return the passport will be returned to Swedish Social Services within 24 hours.

(c) I agree that Swedish Social Services should not release the passport if ~R~ wishes to commence legal proceedings to challenge the plan to take ~T~ out of the country.

(d) I agree not to apply for any further passports without giving 7 working days written notification to Swedish Social Services and to ~R~ and to also give into the custody of Swedish Social Services within 24 hours of receipt any further passports on which ~T~ is named.

(e) If Swedish Social Services, for whatever reason, decline to accept the role assigned to them at paragraphs (a) - (d) above, then I agree instead to that role being performed by an independent lawyer in Sweden agreed between me and Mr Sillen.

2. Support in relation to mental health.

(a) I agree to register and attend a General Medical Practitioner in Sweden within 7 days of my arrival in that country.

(b) I agree to provide that General Medical Practitioner with a history in relation to my health and to provide him with my medical notes and records from Northern Ireland.

(c) I agree to request that General Medical Practitioner to refer me to a consultant psychiatrist so that I have a point of contact within the mental health services in Sweden and can gain information as to the supports that are available to me in Sweden.

3. Relationship with ~Q~.

(a) I agree that information should be provided to Swedish Social Services and to the local police in Sweden as to the relationship difficulties with ~Q~

4. Support in relation to any future relationship difficulties between myself and ~R~.

(a) I agree that if there are difficulties in my relationship with ~R~ that I will join with him in obtaining counselling and/or enter into mediation.

5. Support from Social Services in Northern Ireland, Sweden and Russia.

(a) I agree to work openly and honestly with social services in Northern Ireland, Sweden and Russia

(b) I agree that social services in Northern Ireland, Sweden and Russia should liaise in order to give consideration to when and the terms if any upon which contact should occur in Sweden with ~F~ and in relation to any other issue.

6. Compliance with court orders.

(a) I agree to comply with all court orders.

7. Application to the Swedish Migration for a residence permit

(a) I agree to immediately make and to progress with dispatch an application to the Swedish Migration board for a tourist visa for myself and that I will not take ~T~ to Sweden until I am authorised by the Swedish Migration board to enter Sweden.

(b) I agree to make available to the representatives for ~R~, the Trust, the guardian ad litem and the court all documents in relation to my application to the Swedish Migration board (at a) above.

(c) I further agree to progress at the earliest opportunity an application for a residence permit in Sweden with the Swedish Migration Board or relevant authority.

Schedule containing ~Z's~ undertaking

I, ~Z~, hereby undertake not to institute nor voluntarily support any proceedings for the punishment or committal of the mother, ~B~, in respect of any criminal or civil wrong which she may have committed by reason of the child, ~F's~ removal from Russia in August 2006, retention thereafter in country ~W~ and failure to return the child to Russia, her subsequent travel with the child to Sweden, Turkey, Egypt, United States of America or the United Kingdom which was without the father's knowledge. I further undertake not to institute nor voluntarily support any proceedings for the punishment or committal of the mother in respect of any criminal or civil wrong which the mother may have committed by reason of her failure to facilitate contact between the child ~F~ and ~Z~. I undertake to use my best endeavours to ensure that such proceedings do not happen.

This undertaking is given only on the understanding that ~B~ will not in the future remove ~F~, retain ~F~ or fail to return ~F~ in breach of any court order and that she will not breach any order as to contact in respect of ~F~ and provided that this undertaking shall cease to bind me in the event that ~B~ breaches any rule of law or any order of any court then in force preventing or prohibiting her from removing ~F~ from any country in the case of a court order] specified in such order, subsequent to the date of this undertaking.