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[08/03/1990; High Court (England); First Instance]
V. v. B. (A Minor) (Abduction) [1991] 1 FLR 266, [1991] Fam Law 138

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

8 March 1990

Sir Stephen Brown P

In the Matter of V. v. B.

Mark Everall for the mother

Martyn Levett for the father

SIR STEPHEN BROWN P: The court has before it an application made by a mother under the provisions of the Child Abduction and Custody Act 1985, whereby she seeks the return to the jurisdiction of Australia of her infant son born on 13 December 1987. The Child Abduction and Custody Act 1985 brings into effect in this jurisdiction the Hague Convention on the Civil Aspects of International Child Abduction.

The mother, who was never married to the father but who had cohabited with him, alleges that on 22 January 1990 the father (the defendant to the summons) wrongfully removed the child from her custody in Australia and brought him to the UK, where he remains at present.

The facts which give rise to the application are these: the plaintiff is a young woman, born in New Zealand and a citizen of that country. She is now 21 years of age. The defendant is a man of 35 years of age, who was born in England and has dual British and New Zealand citizenship. It appears that the mother and the father of the child met in New Zealand in 1986 and they lived together in New Zealand, but they never married. Until the end of 1988 they lived in a flat in Auckland, and later with the parents of the mother (the plaintiff in this summons).

On 24 December 1988 they came with their child to England to visit the defendant's parents in Essex. They lived in the house of the defendant's mother and stepfather, and remained there for some 11 months. The mother and the defendant's mother did not get on with one another, and on 15, or perhaps 17 November 1989 they left to go to Australia.

There is a conflict of evidence of the affidavits before this court as to the purpose of their voyage to Australia. The plaintiff says that it was in order to emigrate and to settle there.

The defendant speaks of it as being a 'transit visit', but he does not specify what is meant by 'transit'. The plaintiff says that they went intending to emigrate -- to make a new life in Australia -- and they went to stay with her aunt in New South Wales near to Sydney. Their child was with them, and they lived in the house of the aunt. There is no doubt that they remained there until 22 January 1990. The plaintiff is still living there. Her evidence on affidavit is that they intended to settle and eventually to purchase a house in Australia.

The defendant obtained employment in Australia. The plaintiff says that their relationship deteriorated, and on 22 January 1990 the defendant, at 11 o'clock in the morning, went out saying that he was going shopping, taking the child with him - that was not unusual - but he did not return. She became anxious and went to the police. They advised her that they could do nothing for 24 hours. On 23 January they made inquiries and discovered that the defendant had taken the child to Sydney, and had there boarded a flight to England with the child.

The plaintiff sought advice from solicitors on 5 February. They applied to the Department of the Attorney General of Australia. The Attorney General is the central authority in Australia for the purposes of the operation of the Convention. The Attorney General's Department then transmitted a request for assistance to the central authority in this country, which is the Lord Chancellor's Department. That took place on 8 February. The mother still had no definite knowledge of the whereabouts of her child, and the Lord Chancellor's Department instructed counsel who made an application to Thorpe J for a 'seek and find' order. That was granted ex parte, and on 9 February the originating summons, which is now before this court, was issued.

On 10 February an inquiry agent, instructed on behalf of the plaintiff, went to the home of the defendant's mother and stepfather and sought information about the whereabouts of the child. The defendant's mother denied any knowledge of the whereabouts of the child. The inquiry agent also attended the address of a sister of the defendant. He there saw her husband, and again was met with a denial of any knowledge of the whereabouts of the child. It is plain that those denials were quite false because the defendant father of this little boy was, in fact, staying with his mother. They knew very well where he was.

In the face of these denials, on 12 February, Scott-Baker J made orders requiring the defendant's mother and other members of the defendant's family to attend at court to give what information they had as to the child's whereabouts. The fact that the orders had been granted was made known by solicitors acting in this country for the plaintiff to a relative of the defendant and that produced a result, because solicitors acting on behalf of the defendant then got in touch with the court, and on 16 February the defendant came to court, bringing the child with him.

On that day, Johnson J granted injunctions restraining the defendant from removing the minor from the address (which by then had been disclosed), and further restraining him from removing the minor from the jurisdiction of the court. He gave directions concerning the passport of the defendant, and also directions for the filing of affidavit evidence and the listing of the originating summons for hearing. It was then adjourned until today. Affidavits were in due course filed in accordance with those directions by the defendant. He filed a substantial affidavit sworn by himself and further, in support of his case, filed affidavits sworn by his mother and two sisters.

The plaintiff for her part filed an affidavit sworn by a solicitor, which had annexed to it an affidavit sworn by her in Australia on 5 February. Yesterday, further affidavits appeared by fax from Australia. The plaintiff has sworn a further affidavit which arrived by fax, together

with an affidavit sworn by her uncle and an affidavit sworn by a relative. Furthermore, there is now available an affidavit sworn by a social worker, enclosing a report on the accommodation and the circumstances in which the plaintiff is living with her relatives in Australia. A further affidavit has also been filed by a barrister, called to the Bar in New South Wales and at present employed by a firm of solicitors in Lincoln's Inn, as to the provisions of the family law in Australia.

The Convention provides, by art 3, as follows:

'The removal or the retention of a child is to be considered wrongful where, -

(a) it is in breach of rights of custody attributed to a person ..., either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.'

In this case the provisions of s 63(f)(1) of the Family Law Act 1975 provide for joint custody of a child. There is, indeed, no dispute that according to the law of Australia the child should be considered as having been in the joint custody of his parents at the material time. Although some argument has been addressed to me to suggest that the child was not in the actual custody of his mother, that submission seems to be quite untenable in the light of the evidence before me. There is no question but that the child was in the joint custody of both the father and mother, and that the child was removed by the father on 22 January 1990 from the mother's custody.

Article 4 provides that:

'The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights.'

The defendant has raised as an issue the question of 'habitual residence', and has submitted that this child was not habitually resident in Australia at the time of his removal therefrom on 22 January 1990. I shall consider that in due course.

Where the provisions of art 3 apply to a child, then art 12 takes effect. It provides as follows:

'Where a child has been wrongfully removed in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.'

It is, of course, less than 1 year since the date of the alleged wrongful removal, so if this child has been wrongfully removed in the terms of art 3, the court is enjoined to order the return of the child forthwith. However, art 13 provides a possible 'defence'. It provides as follows:

'Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person . . . which opposes its return establishes that -

(a) the person . . . having the care of . . . the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention: or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it funds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.'

Counsel on behalf of the defendant father in this case seeks to rely on the provisions of art 13, and has invited the court to exercise its discretion to refuse or to decline to order the return of the child. He invokes both sub-para (a) and sub-para (b).

The first issue raised by the defendant is the question of 'habitual residence'. I have been helpfully referred to a number of authorities which have dealt with the phrase 'habitual residence'. It is not defined in any statute applicable to these proceedings. In Kapur v Kapur [1984] FLR 920, Bush J considered the meaning of the phrase in relation to certain family proceedings. He held that it had the same meaning as 'ordinary residence'. In R v Barnet London Borough Council [1983] 2 AC 309 - a case which concerned education grants to students and not the question of an application under this particular Act - Lord Scarman also considered the meaning of the phrase 'habitual residence'. At p 340G of the report, in the course of his speech, he equated the phrase 'habitual residence' as having the same meaning as 'ordinary residence'. At p 344D he said:

'All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.'

In the more recent case of Re Bates, decided by Waite J on 23 February 1989, which was a case brought under the provisions of the present Act, the judge considered the meaning of the phrase 'habitual residence' in the context of the facts of the particular case before him. The facts were different from the facts of this case, but there were similarities. The alleged habitual residence was New York, but this was not the sole place where the child had resided, and it was not apparent that it would be the permanent residence of the child for all future purposes. However, the judge adopted Bush J's interpretation of the phrase as being similar to 'ordinary residence'. He decided that the child was habitually resident in New York State at the time of her abduction, although she had not been there for very long and would not, in all probability, remain there indefinitely. However, he decided that there was a sufficient degree of continuity in her residence in New York at the relevant time to bring it within the phrase 'habitual residence'.

In this case the evidence is clear that the parties went to Australia in November 1989 and that they remained there continuously until the father, without telling the mother, left with the child on 22 January 1990. It is clear from the father's affidavit, as well as from the mother's evidence, that he had obtained work whilst he was there. It is also clear that he had not disclosed to the mother any intention to leave, as he did on 22 January. It is also the case that he has not disputed that he left Australia having taken the child with him by a subterfuge, pretending that he was taking him shopping.

The mother says that they had gone to settle there and intended eventually to acquire their own house. The father says that really it was not a permanent step to go to Australia; it was merely a visit, but he does not explain in any satisfactory manner what his purpose was in going there if it was not to go for, at any rate, such a period of time as would result in the continuity of their residence being established.

I find the father's affidavit to be unconvincing in a number of respects. I have not heard oral evidence. The mother is not here and has not, of course, been cross-examined. The father is here and has not been cross-examined. I decided that it would not be appropriate for oral evidence to be given on the hearing of this application in the circumstances. However, it seems to me to be quite apparent that a sufficient degree of continuity of residence has been established by the parties with the infant boy, to justify the application of the phrase 'habitually resident immediately before removal' in this case. I am satisfied, on the evidence, that the child was habitually resident immediately before his removal from New South Wales in Australia within the meaning of art 3 and 4 of the Convention. I should say that the mother's evidence is supported by the affidavits which were filed yesterday from her uncle and the other relative to whom I have referred.

I now turn to art 12, which provides that where the fact of the child's wrongful removal, in the terms of art 3, has been established, then - if the proceedings have been brought within a period of less than 1 year from the date of the wrongful removal - the authority concerned shall order the return of the child forthwith. However, this has to be considered in the context of art 13. Counsel for the father has invoked art 13. So far as subpara (a) is concerned, it seemed at one stage that he was seeking to argue that the mother did not, in fact, actually exercise custody rights at the time of the boy's removal. However, it appears to me that it is not open to him as a matter of law, having regard to the terms of s 63(f) of the relevant statute in Australia. In any event, his own affidavit indicates quite plainly that the mother was exercising custody rights. I refer to para 25 of his affidavit, where he says:

'Shortly after arriving in Australia, I broke my ankle and it was put in plaster which restricted my mobility. Despite such restriction, the applicant was the person who was supposed to look after [the child].'

He then goes on to complain in his affidavit about the way in which she looked after the child. It seems to be quite clear, therefore, that she was exercising custody rights in relation to the child. Counsel then cited the last phrase of subpara (a), which states 'or had consented to the removal of the child', and submitted (I believe without any real confidence) that the mother had consented to the removal of the child, despite her evidence to the contrary, relying on para 26 of the defendant's affidavit which reads:

'During the period of stay at her aunt's [that is the home in Australia] she would say to me: "Why don't you both fuck off out of my life", and it gave her great pleasure watching me struggle with [the child] with a broken ankle.'

In another passage he alleged that the mother had indicated that he should take the child away from her. I find that wholly unconvincing. Quite apart from the mother's evidence, the fact is that she immediately went to the police, having been deceived by the father as to his intention to remove the child, and she has pursued this application. In the face of these facts it seems to me to be quite impossible to contend that the mother had consented to the child's removal.

Counsel placed greater emphasis on art 13(b), which provides (and I read it again):

'There is a grave risk that his return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation.'

The words to note are 'grave risk'. The courts have already made it clear that this is not to be equated with consideration of the 'paramount welfare' of the child. That is a matter for the court which ultimately exercises jurisdiction in relation to the welfare of the child. The current procedure is designed as a summary procedure to enable a child wrongfully taken from his habitual residence in another jurisdiction to be speedily returned there, so that matters in dispute can be resolved within the jurisdiction which is appropriate to the particular child.

However, counsel has submitted that the affidavit evidence of his client, together with that of his mother and two sisters, shows that the child was 'at grave risk'. The father's mother and the defendant himself speak of the time when the child was living in England during the 11 months that they were there up until the end of November 1989. A great many complaints are made by them. Having perused them with care, I find them to be highly prejudicial and highly coloured in character. They involve unpleasant suggestions of a racial nature. There are to be inferred from the terms of both the father's affidavit and his mother's affidavit. For instance, in para 27 he says:

'As previously stated, the applicant is a dark Maori. She would call [the child] a 'honky' and a 'baldy'. [The child] in turn would refer to her as 'monkey face'. In my opinion, all these words are detrimental to [the child's] upbringing and he will suffer severe psychological harm if the applicant is to care for him.'

(Paragraph 28):

'The family in my opinion have strange cultural views. They get into a room in the dark and start shouting about God.'

It is to be observed that, according to the evidence of the plaintiff herself, she is not a Maori -- she comes from Samoan stock -- and her father is the pastor of a church in New Zealand. The evidence contained in these two affidavits has to be approached, furthermore, in the context that both the father and his mother, and his sister's husband, were falsely denying knowledge of the whereabouts of the child when he was first being sought.

I cannot, of course, finally resolve conflicts between the accounts given by the plaintiff on the one hand, and the father and his relatives on the other, as to the way in which the child was cared for, but there is some corroboration of the mother's evidence in the shape of the independent evidence which has come from the welfare officer in Australia. Mr William Roy Clements, of the Department of Family and Community Services in St Mary's, New South Wales, says in his affidavit (sworn on 6 March 1990):

'I am a district officer who has been employed by the above department for a period of 8 years. During that time my major work has been the assessment of child at risk matters, adoptions, substitute care.' He has annexed to his affidavit a three-page report on the home of the plaintiff's aunt which he made. That report gives the circumstances in which the plaintiff was living, and it includes a brief assessment of the plaintiff herself. He describes her as:

'. . . a quiet person who, to a degree, could be called reserved. At no time throughout the interview did she express anger or animosity towards [the father] and his actions. Indeed she merely expressed the fact that she was missing her child. It was also interesting to note that no expression of anger came from her uncle either'.

His assessment of the house was that it was neat and tidy in appearance, constructed of fibre material, has an established garden, although some of the garden (50%) is bare, the rest being grass. It appeared well maintained apart from that. He described the house and the people who lived in it, and stated that it was somewhat overcrowded but not in any way which would be so gross as to constitute any form of danger or risk to the child.

That independent evidence is evidence which the court must take into account. It is evidence relating to the social background of the child provided by a competent authority in the child's habitual residence, in the terms of art 13. It is, in my judgment, strongly supportive of the mother's case and is inconsistent with the allegations made by the father and his relatives in their affidavit evidence, which is intended (so it seems to me) to depreciate the status and character of the plaintiff.

The position, therefore, is that I am not satisfied that it has been established that the child is at 'grave risk' if he returns to the jurisdiction of the Australian courts. I do not consider that the child would be exposed to physical or psychological harm, or that he would otherwise be placed in an intolerable situation.

It is relevant to bear in mind a point made by Butler-Sloss LJ in the course of her judgment in Re C (A Minor) (Abduction) [1989] 1 FLR 403. This was a case where a mother had been found to have wrongly brought a child from his habitual residence in Australia, contrary to an order of the court there. Dealing with the question of 'risk', the Lord Justice made these comments at p 661 (just above letter 'G'):

'If this mother will not accompany the child, despite the knowledge that his rightful place is in New South Wales, then, on the facts before this court, I am not satisfied that art 13(b) applies and, in my judgment, the child should return to his father.' That is to say, that if there was harm, either psychological or physical, it could, nevertheless, be avoided by the mother (in that case) actually accompanying the child back to the jurisdiction where the law made specific and adequate provision for the safeguarding of the child.

In this case, I have evidence from a New South Wales barrister, Mr Truex, which states that normal injunctive relief is available in the courts of Australia, as in this country, and that there are orders which may be obtained from the Australian courts which will protect parties in a disputed situation, just as in this country. I am quite satisfied, therefore, that there is no 'grave risk' to this child if he returns to Australia. Furthermore, there is no reason why his father cannot accompany him there. The whole purpose of the procedure under the Convention is to enable a child to be returned to the appropriate jurisdiction where all matters in dispute concerning his welfare can be properly considered.

In the circumstances, I shall make an order that the child shall be returned forthwith to Australia, in accordance with the provisions of art 12 of the Convention. As to the arrangements which may be made, that is a matter which, no doubt, counsel and those instructing counsel will wish to consider. The order of the court is that the child be returned forthwith. Until the child is able to return, the injunctions granted by Johnson J will remain in force. On his leaving the country, then of course the injunction preventing his removal from this jurisdiction will be discharged.

(The court adjourned for a short time)

MR EVERALL: My Lord, I wonder if I could mention one final matter. It arises in respect of the stance which the defendant is now taking, or appears to be taking. Last evening it appeared that there was little doubt that the defendant would himself be accompanying [the child] back to Australia. It emerges this morning that there is some degree of doubt, if not

almost bordering on a degree of certainty, that the defendant will not be accompanying [the child], and it centres partly around the defendant saying that he does not have the money to do so.

SIR STEPHEN BROWN P: Yes.

MR EVERALL: My Lord, it is in that respect that I make an application under art 26 for an order that the defendant pay the necessary expenses incurred by or on behalf of the applicant, including the travelling expenses of the return of [the child]. I would invite your Lordship to be specific, in the sense of ordering that the defendant pay the air fare of [the child] and any adult accompanying him, to include the accommodation costs of [the child] and any adult while outside Australia.

SIR STEPHEN PROWN P: While in transit.

MR EVERALL: Indeed, my Lord. I make the application under art 26. As your Lordship can see there: 'The Central Authorities and other public services . . . shall not impose any charges in relation to applications'.

SIR STEPHEN BROWN P: Yes. I had turned on to Sch 2. 'Each Central Authority shall bear its own costs'. Yes.

MR EVERALL: '. . . shall bear its own costs in applying this convention. The Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of expenses incurred . . .'

SIR STEPHEN BROWN P: In the return of the child. Yes.

MR EVERALL: Then:

'However, a Contracting State may, by making a reservation . . . declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings . . .'

SIR STEPHEN BROWN P: Well, you are not relying on that?

MR EVERALL: My Lord, no. I am not. Then the effective part of the article is in the final paragraph:

'Upon ordering the return of the child . . . the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.'

Clearly, there is a discretion on the court to make such an order.

SIR STEPHEN BROWN P: But what you are asking now is for the costs of returning the child, because I have indicated no order for costs, save legal aid taxation, in relation to the proceedings?

MR EVERALL: My Lord, indeed. That was an application, as it were, to protect the legal aid fund, but this is an application . . .

SIR STEPHEN BROWN P: This is specifically the costs of returning the child.

MR EVERALL: My Lord, yes. And the costs I would ask for would be the flight of the child . . .

SIR STEPHEN BROWN P: Well, all that I need say is 'the costs of returning the child', surely?

MR EVERALL: My Lord, indeed. Yes.

SIR STEPHEN BROWN P: I mean, costs, where they are disputed, have to be taxed.

MR EVERALL: My Lord, the necessary expenses incurred . . .

SIR STEPHEN BROWN P: Yes. The travel expenses and costs incurred in returning the child.

MR EVERALL: My Lord, yes. And I would submit - and I do not think it is argued to the contrary - that the protection afforded to a legally aided defendant . . .

SIR STEPHEN BROWN P: Oh, it does not cover that.

MR EVERALL: Does not apply to that particular part of the article.

SIR STEPHEN BROWN P: No. Whether you can actually obtain them is another matter.

MR EVERALL: My Lord, yes. The difficulty in this case, of course, is that we have a plaintiff in Australia who we know is unemployed and, we are told, does not have any funds of her own. If the cost falls upon her, then she will have to borrow from her family or friends.

SIR STEPHEN BROWN P: No. I was not thinking about that.

MR EVERALL: I would submit, in any event, that the scheme of the Act is both that people should be dissuaded from abducting children, and to prevent them from saying, if they should bring a child half-way round the world and then find that an order is made against them: 'Well, that's it. I am not paying to take the child back'.

SIR STEPHEN BROWN P: Your application is for the costs of returning the child.

MR EVERALL: My Lord, yes, which I would submit, if the defendant chooses not to accompany the child back to Australia, then clearly (for a 2-year-old) a decision will have to be made if somebody here is going . . .

SIR STEPHEN BROWN P: If the order is 'the costs of returning the child' - if that order is made - clearly he would discharge his obligation by taking the child back.

MR EVERALL: My Lord, yes. If he did not do so, then it would be necessary either for the mother to . . .

SIR STEPHEN BROWN P: Then somebody else has got to pay.

MR EVERALL: My Lord, yes. And the mother might have to come here, and those costs should be paid by the defendant, namely the costs of the mother from Australia to here and then back, together with the child.

SIR STEPHEN BROWN P: Yes.

MR LEVETT: My Lord, you have heard that the defendant is a person who is unemployed at present. I can inform your Lordship that he has no savings, and he is on supplementary benefit. My Lord knows from the affidavit that he injured his ankle, breaking it, and is unable to work in the foreseeable future.

SIR STEPHEN BROWN P: Well, enforcement is another matter.

MR LEVETT: My Lord, it is. But may I, respectfully, point this out, that (as indeed your Lordship has been told by my learned friend) there is clearly a discretion in your Lordship's judgment as to whether the costs should be paid by the use of the word 'may' and the words 'where appropriate' in the concluding paragraph of that article.

SIR STEPHEN BROWN P: Yes.

MR LEVETT: My Lord may feel that it is not appropriate in this case for two reasons: firstly, because this defendant has no money and therefore, as my Lord has pointed out, enforcement is another matter, and, secondly, any award made by your Lordship would necessarily be monies recovered by the plaintiff who is acting under a legal aid certificate and, as my Lord knows, any monies that they recover will necessarily fall to be determined as a charge that the Law Society would have in discharging any costs.

SIR STEPHEN BROWN P: But the costs of actually returning the child do not fall within the costs of representation.

MR LEVETT: My Lord, it does not matter whether it is costs of representation, as indeed in an action involving personal injuries. The Law Society is able to make a claim on the award given for the discharge of their costs.

SIR STEPHEN BROWN P: This has nothing to do with the Law Society - although it is not the Law Society any more - or the legal aid authority. It has nothing to do with them. To pay the costs of returning the child has got absolutely nothing to do with the legal aid fund.

MR LEVETT: Well, my Lord, it does to this extent, because if your Lordship makes the order then it is monies received in the hands of the plaintiff.

SIR STEPHEN BROWN P: No. It is not. Why is it?

MR LEVETT: Well, my Lord, it would be treated as such.

SIR STEPHEN BROWN P: It is money paid to the airline presumably.

MR LEVETT: But, again, my Lord, it is in exactly the same way as if a third party agrees to discharge the debt of the debtor, then that is money recovered by the debtor, whether that be enforced directly or indirectly, and therefore, at the end of the day, it may be that the effect of your Lordship's order is such that the plaintiff does not recover anything simply because it is money recovered, and therefore it would be something which the Law Society would have in mind, if they thought appropriate.

SIR STEPHEN BROWN P: I do not think this is money recovered. I think that art 26 makes clear provision that the court may, when issuing an order dealing with the return of the child, order that the party responsible for the wrongful abduction shall, inter alia, pay the costs of returning the child. That is not a part of the legal proceedings which have been necessary to obtain the order of the court for the return.

I shall here order that the defendant shall pay the costs of returning the child, within the ambit of art 26. I do not order him to pay any further costs. I have made it clear as to the costs of the application that there will be no order, save legal aid taxation for each party. But I think it should be made perfectly clear that where a child is wrongfully abducted, and an order is made for the return of the child, that the party abducting that child shall be liable to pay the costs of returning the child. I make that order, but as to the question of enforcing it, that will have to be considered by those who will take action hereafter.

I am very grateful to counsel for their help. If you would be good enough to make sure that the associate has the order, as you have indicated.

MR EVERALL: Certainly, my Lord.

SIR STEPHEN BROWN P: Thank you.
