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[13/07/1999; Family Court of Australia at Brisbane; First Instance]
Director General, Department of Families, Youth and Community Care v. Reissner
[1999] FamCA 1238, (1999) 25 Fam LR 330

FAMILY LAW ACT 1975

IN THE FAMILY COURT OF AUSTRALIA, Brisbane

BEFORE: Lindenmayer J.

13 July 1999

No. BR1254 of 1999

IN THE MATTER OF:

The Director-General, Department of Families Youth & Community Care

(Appellant)

-and-

Reissner

(Respondent)

REASONS FOR JUDGMENT

APPEARANCES:

Mr Green of Counsel (instructed by Crown Solicitor) appearing for the

Applicant

Respondent/Father in person.

JUDGMENT: Lindenmayer J:

INTRODUCTION

This is an application brought by the Director General of the Department of Families, Youth and Community Care in the State of Queensland in his capacity as the State Central Authority under the Family Law (Child Abduction Convention) Regulations. I shall hereafter refer to the Director General in that capacity simply as "the Central Authority".

The application seeks orders in respect of access to S., born on 26 May 1993, who is therefore aged 6, in the United States of America by the requesting applicant, Mrs K., who is S.'s maternal grandmother. The respondent to the application is S.'s father, whom I shall hereafter refer to simply as "the father". For convenience, I also propose to refer to the requesting applicant, Mrs K., as "the maternal grandmother".

HISTORICAL BACKGROUND

The historical background to these proceedings is as follows. The father was born in the United States of America on 13 October, 1971 and is therefore now aged 27. A.R. nee K. ("the mother") was born to her mother, the maternal grandmother, in the United States, on 24 April, 1972. She is now deceased.

The father and the mother were married in Las Vegas, Nevada in the United States on 2 June 1990. At that time the father was, or at least very soon after became, a member of the United States Armed Forces. His first posting after the marriage was in Korea for about one year, following which he was posted to Kentucky in the United States. The mother lived with him during both of those postings.

The child the subject of the proceedings, S. (whom I shall hereafter refer to either as "S." or "the child") is the only child of the father and mother and he was born to the mother in Kentucky on 26 May 1993. He is therefore, as I have said, currently aged 6 years.

Within two weeks of S.'s birth, he and the mother stayed with the maternal grandmother and her husband, Mr K., who is not S.'s biological grandfather, in their home in San Diego, California for one or two weeks before joining the father at his new army posting, which was in the United Kingdom of Great Britain and Northern Ireland. They remained at that posting, then, for about two years until May 1995.

During that period, the maternal grandmother kept in touch with the mother, father and S. by regular correspondence, almost weekly telephone calls and the exchange of parcels, photographs and the like. Also during that period, the maternal grandmother, her husband and her then 11 year old, now 16 year old son, I., the uncle of S., visited the United Kingdom during which they spent several days with the mother, father and S.

In May 1995 the mother was diagnosed, in the United Kingdom, as suffering from an advanced malignant melanoma. In consequence of that, the father was immediately posted back to the United States, both for compassionate reasons, so that the mother could be near her family, and so that the mother could receive treatment for her cancer there. The father's posting was to San Diego, California and the mother, father and S. immediately moved into the home of the maternal grandmother and her husband in that city, where they remained for a period of about five months.

At all relevant times, the mother's biological father, Mr M., whom I shall refer to as "the maternal grandfather", has also lived in San Diego within about five miles of the maternal grandmother's residence, as too has his current wife, Mo., S.'s maternal great-grandparents, his great aunt, her two adult children, and the mother's very close friend, Mary A., and her family.

In September 1995 the mother, father, and S. moved out of the maternal grandmother's residence into their own apartment in San Diego, which was located about five to six miles from the maternal grandmother's residence. Thereafter the maternal grandmother continued, although with others, to be involved quite significantly in the care of S., as required, on a regular basis, and also in the care and assistance of her daughter, the mother.

The mother unfortunately died as a result of her illness on 6 May 1997. Before her death, however, the mother and father had instituted legal proceedings for medical negligence in respect of the misdiagnosis or failure to diagnose her illness, and those proceedings were settled in about January 1997 for an "all-up" figure, including attorneys' fees, of $US400,000. It seems that after payment of attorneys' fees and outstanding medical bills, some $US233,220 remained, of which either $US138,765 (according to the father) or $US50,000 (according to the maternal grandmother) was placed in a trust fund for S.

Of the balance, it seems that $10,000 went to the maternal grandmother to reimburse her for expenses she had incurred on behalf of her daughter, and $12,500 was spent on a diamond ring for the mother, which, after her death, the father gave to the maternal grandmother.

There is some issue between the parties about what happened to the rest of the money, but it seems that various bills were paid and a down payment was made on a home in San Diego into which the mother, father, and S. moved in March 1997. Other money was spent on a seven day vacation which the mother and father enjoyed in Hawaii in March 1997, accompanied (at their own expense, I should say) by the mother's friend, Mary A., and S.'s then 14 year old uncle, I. S. stayed with the maternal grandmother and her husband during that seven day period which included Easter.

Following the mother's death on 6 May, 1997, until July 1997 the father and S. remained living in San Diego, except for a period of about three weeks immediately after the mother's funeral which they spent with the father's family who, at that time, lived in Show Low, Arizona. During that period the maternal grandmother saw S. regularly, with the child spending two to three days at a time with her almost every week.

In about July 1997, the United States Army sent the father to Australia for a period of a few weeks. During that period, S. was cared for by the father's parents at their home in Arizona. It seems likely that it was whilst in the course of his stay in Australia during this period that the father met H., about whom I shall say more in a moment.

Upon his return to the United States following that trip to Australia, the father and S. moved back to San Diego. As before, the maternal grandmother began seeing S. regularly, mostly on week-ends, when S. would often spend a night with her and her husband and her son, I., in their home.

In about September 1997, H. (whom I shall hereafter refer to only as "H.") and her son, D., currently aged 9 years, joined the father and S. in the United States and took up residence in the father's home. Thereafter, it appears that H. became the major caregiver for S. when the father was absent from the home. However, the maternal grandmother continued to have regular contact with S., including some week-ends.

In about November 1997, the father, S., H., and D. left San Diego and moved into the home of S.'s paternal grandparents in Show Low, Arizona. Following that move, the father sold the home in San Diego which he and the mother had purchased with a down payment from her damages award. It is unclear how much money the father recouped from that sale.

In December 1997, the father, H., and D., came to Australia for a period of about six weeks, leaving S. in the care of his paternal grandparents in Arizona. During that period the maternal grandmother and the maternal grandfather shared a period of about a week of contact with S. in San Diego. The maternal grandfather picked him up in Arizona at the start of that period and returned him there at the end of it.

During January and early February 1998, the maternal grandmother and her husband made a number of attempts of make contact with the father at his parents' home to discuss and make arrangements for ongoing contact between them and S.. Those attempts were not successful, although they were able to speak to S. on the telephone on each occasion. It is likely that at the times of those calls the father was not home, and in the earlier part of the period may still have been in Australia. He did eventually return one of their calls on 9 February 1998, which was followed up by another call between the father and Mr K. on 10 February 1998 which culminated in some unpleasantness between the two men in respect of which each accuses the other of some verbal abuse. However that may be, it did not result in any agreement or arrangement for ongoing contact between the maternal grandmother and S.

No doubt as a consequence of the breakdown of communication between the parties and their failure to agree upon any arrangements for future contact between the maternal grandmother and S., and also because she had suspicions, based on hearsay, that he might be planning to move to Australia, the maternal grandmother instituted proceedings in the Superior Court of the State of Arizona, in and for the County of Navajo, seeking an order for "visitation" (that is access) to S.

In the meantime, on 6 May 1998, the father and H. were married in Clark County, Nevada, USA.

The proceedings instituted by the maternal grandmother in the Arizona Superior Court came before that Court, constituted by the Hon. Thomas J. Wing, a Judge of that Court, for hearing on 12 May 1998. The maternal grandmother and the father were both present and each was represented by counsel. A certified transcript of the proceedings is before me, having been filed by the Central Authority on 18 May 1999.

It indicates that in the course of the hearing both the maternal grandmother and the father gave oral evidence and was cross-examined by counsel representing the other. The only other witness to testify was Mary A., who was called on behalf of the maternal grandmother. At the conclusion of evidence, counsel for each party made a closing statement, that is to say, submissions, at the conclusion of which the presiding Judge took time to consider before announcing his decision. That decision was subsequently incorporated in a formal judgment and order which was issued on 16 July 1998, a copy of which is attached to the initiating application in these proceedings, as required by the relevant rules and regulations.

The formal finding of the Court was that the maternal grandmother "has presented sufficient evidence justifying visitation", and the orders made upon that finding were these:

"(1) Mrs K. shall have visitation with her grandson commencing this day for a period of 72 hours.

(2) The grandparents in San Diego (i.e. Mrs K. and Mr M.) will share visitation for a period of 38 days between June 1, and August 31, including time needed for travel.

(3) During the school year i.e. between September 1 and May 31, Mrs K. & Mr

M. will have visitation on 5 week-ends including three day week-ends.

(4) Mrs K. & Mr M. will have visitation for a period of nine days during the major holiday breaks during the school year, i.e. Spring and Winter alternating each year so that the Spring break visitation will be in the odd numbered years and Winter break visitation in the even numbered years.

(5) The costs of visitation will be shared as follows:

A. The cost of holiday and week-end visitation will be paid by the grandparents.

B. The cost of other visitation as to commercial transportation costs shared 2/3 by grandparents, 1/3 by father if the father lives within the boundaries of the 48 contiguous ("lower 48") states.

C. If the father moves to Alaska or Hawaii father pays 2/3, grandparents (Mrs K. & Mr M.) pay 1/3.

If the father moves to a location outside of the USA he pays 80% of the costs and grandparents pay 20%.

Each party is to bear their own fees and costs."

Pursuant to paragraph (1) of the those orders, the maternal grandmother had access to S. for three days, that is 72 hours, immediately following the conclusion of the hearing on 12 May 1998. For the purposes of that access she took the child back to her home in San Diego. She has said that during that period, as indeed in all her periods of access to him up to that time, S. was a well behaved, affectionate child and displayed no unusual or bizarre behaviour of the type referred to in the evidence of the father and H. to which I will subsequently refer. At the end of that Court ordered access period on 15 May 1998, S. was returned to the father in Arizona by the maternal grandfather, Mr M.

On 26 May 1998, S.'s birthday, the maternal grandmother telephoned the residence of the paternal grandparents to wish S. a happy birthday. She was then told that S. was not there as the father had moved with him to Australia and would be back only "in about two years." She was also told that there was no way of contacting the father and S. in Australia.

The maternal grandmother did not hear further from the father or S. until late June 1998 or 1 July 1998, I am not sure precisely which, when he telephoned her. He told her he was in Australia, did not have the money to fly S. back to the United States for access scheduled during the period 1 June to 31 August, as per paragraph (2) of the orders of the Arizona Superior Court, and that S. was too young to fly unaccompanied according to the airlines. He extended an invitation to the maternal grandmother to visit the child in Australia. He declined, at that time, to give the maternal grandmother a telephone number or address, other than to say that he was in Newcastle, Australia, but said he would telephone back in two weeks to find out the maternal grandmother's intentions.

The father did not call the maternal grandmother back in two weeks as promised and, having not heard further from him about access to S., the maternal grandmother contacted the United States Department of State and, on 25 September, 1998 she completed an application for assistance under the Hague Convention On The Civil Aspects of International Child Abduction. Pursuant to that request, the Central Authority instituted these proceedings by filing the application which is before me, on 13 May, 1999.

In the meantime, the maternal grandmother next heard from the father on 28 February, 1999 when he again telephoned her. On this occasion he did give her his contact telephone number in Australia and an agreement was reached about weekly telephone contact between the maternal grandmother and S. to be initiated by the parties alternately. However, there have been some difficulties with that, including some apparent misunderstanding between them about whose turn it was to initiate the call and also, on some occasions, when the father's telephone service has apparently been disconnected. Nevertheless, there has been

some intermittent telephone contact between the maternal grandmother and S. since that time. From her perspective, at least, it has been less than entirely satisfactory.

By the application the Central Authority seeks orders of this Court to secure the effective exercise by the maternal grandmother of the rights of access bestowed upon her in relation to S. by the order of the Superior Court of Arizona in the United States of America on 12 May 1998, issued on 16 July 1998. I shall refer later in more detail to the specific orders sought in that respect.

In paragraphs 39 and 40 of her affidavit filed on 18 May 1999, the maternal grandmother summarises the rationale of her application as follows:

"39 I am requesting that S. be allowed to come to San Diego, California, to visit with his mother's family and friends. I feel that it is important that he maintain this personal contact with his maternal grandparents, step grandparents, great grandparents, aunt, cousins, and numerous family friends. Many of these individuals do not have the monetary resources to travel to the country of Australia and visit S.. I believe that it would be important for S. to remain acquainted with the environment that his mother grew up in as well as to be able to experience the customs, lifestyles, and people of the country of his birth and citizenship. His Uncle I. (aged 16) misses S. greatly and always hoped that he could spend time fishing with S. which is I.'s favourite hobby. Our family would like to be a part of S.'s memories as he grows up.

Mr Reissner suggests that I visit with S. in Australia and that I am welcome to stay in his home. Although, I appreciate the offer, I would not feel comfortable staying in his home."

The father, whilst not opposed to contact between S. and the maternal grandmother, opposes any order which would have the effect of requiring S. to travel unaccompanied to the United States of America, or which would oblige the father to pay or contribute towards the cost of transporting S. between Australia and the United States for the purpose of access by the maternal grandmother. Essentially, he proposes only that there be telephone and mail (including e-mail) contact between S. and his maternal grandmother, and that if the maternal grandmother comes to Australia, she may have contact with S. here, for which purpose she may, if she chooses, stay with him and his family in their home.

OTHER RELEVANT FACTUAL MATTERS

Before turning to the legal issues raised by the application, there are some further relevant factual matters to which I should refer.

The maternal grandmother is employed in San Diego earning a salary of about $US35,000 per annum before tax. She lives with her husband, Mr K., in a home which they apparently own. The father says it is worth about $US500,000, but there is no acceptable evidence of that, nor is there any acceptable evidence as to the income of Mr K., which would probably only be relevant, in any event, if he had expressed his willingness to assist his wife financially in exercising her access to S., and there is no evidence that he has done so.

The evidence does not disclose the maternal grandmother's precise age, but there are some photographs of her and S., and of others, annexed to the affidavit of H.T. filed on 18 May 1999, from which I believe I can reasonably draw the conclusion that she is a youngish grandmother, probably in her mid to late 40s, who still has a 16-year-old son, I., at home. The one photograph of Mr K., together with S., suggests that Mr K. is of similar vintage.

Although still photographs capture only an instant in time, I think it is fair to say that the photographs of S. with the maternal grandmother, with Mr K., and with his Uncle I., appear to depict a child who is happy and relaxed in their company and enjoying the sorts of activities which young children customarily enjoy with close members of their extended family.

The father is employed in Australia. His gross salary appears to be $A3660.42 per month or $43,925 per annum, in addition to which his employer contributes $256.25 per month, or $3075 per annum, on his behalf to a superannuation fund. Thus he has a total salary package of $A47,000. After deduction of income tax he takes home a net salary of $2666.52 per month, which equates to about $615 per week. He is the sole income earner for his family and he says he is the sole provider for himself, his wife, H., his son, S., and her son, D.. There is no mention in his material of any child support being paid for D. by his father.

The father says that his only significant assets are an equity, jointly with H., of about $A35,000 in the home which they share; a secondhand motor vehicle to which he contributed $A9500; and furniture and household effects.

In paragraph 16 of his affidavit filed on 24 March he says that the $35,000 which was paid towards the acquisition of the home he shares with H. came from the $400,000 damages which he and the mother received in the United States prior to her death. I infer that it did not come directly from those proceeds, but indirectly from whatever the father realised from the sale of the home which he and the mother had bought in San Diego. Presumably, any additional funds from the sale of that property have been dissipated through the cost of his relocating his family from the United States to Australia.

The father and H. assert that prior to leaving the United States to reside in Australia, S. was exhibiting severe behavioural problems witnessed by both of them and by others. The father describes the difficulties, and their observation, in paragraphs 21 and 22 of his affidavit in these terms:

"21. I had difficulty disciplining my son S. whilst we were living in the United States of America. Some of the behavioural problems witnessed by myself included:-

Destruction of his toys;

Tearing fly screens from windows;

Bedwetting every night;

Urinating on other children;

Refusal to eat.

I was informed by S.'s pre school teacher and verily believe S. would punch and spit on other children in his pre school both at San Diego, California, and Show Low, Arizona in the United States of America."

The father himself attributes this behaviour of the child to the illness and death of S.'s mother, and to his being "the subject of family conflict and lack of stability." As far as the evidence discloses, the only family conflict to which S. was subjected was that which developed, only in 1998, between the father and the maternal grandmother over the latter's access to S.. There can be little doubt, however, that the child was subjected to a very considerable degree of instability in his life over the period from when his mother was

diagnosed with cancer, in 1995, until he and his father, his stepmother and stepbrother settled in Australia in about May 1998.

Both the father and H. claim that since they settled in Australia there has been a dramatic improvement in S.'s behaviour and that he no longer displays aggression towards other children, nor has he wet the bed during the last six months. H. also says that he now calls her "Mummy" and refers to D. as his "brother", and has stated very firmly that he does not want to go back to the United States even just to visit his grandmother.

It is appropriate, however, to note that there is no independent evidence that any of the behaviour described by the father and H. as being exhibited by S. before they left the United States, either existed then, or has ceased to exist since their arrival in Australia. However, there is just a hint of corroboration of their evidence about S.'s behaviour in the United States to be found in the affidavit of Elizabeth Young, a clinical social worker of California, which was filed by the Central Authority on 2 June 1999.

In the second paragraph on page 2 of the report dated 2 April 1999 annexed to that affidavit, Ms Young reports that the maternal grandmother visited her with S. "last year":

"...in response to Mrs K.'s increasing concerns about S.'s grief and his father's

unwillingness to pursue appropriate counselling for S.."

That, at least, suggests that the maternal grandmother did not regard S. as being entirely normal at that time, although I do note also that Ms Young goes on in that report to state that:

"S. presented as a pleasant active child who spontaneously involved his

grandmother in his play."

I also note that Ms Young also reports that her observations at that time indicated a close attachment between S. and the maternal grandmother and a bond which appeared "close and mutually supportive" between those two and S.'s young Uncle I., who was involved in the session to some degree.

On 16 March 1999, Ms Denise Britton, a well qualified and experienced clinical psychologist practising in this State, conducted interviews with the father, H., S. and D. over a period of about three hours for the purpose of preparing a report for these proceedings at the request of the solicitors for the father. That report is before me as an annexure to Ms Britton's affidavit filed by the father's then solicitors on 28 April.

I do not propose to recite all that is recorded in that report, although I shall refer to particular aspects of it in a moment. By way of preliminary observation I note that the only sources of information to Ms Britton were the people she interviewed - that is, the father, his current wife, S. and D. - and that she received no factual input from the maternal grandmother or anyone else in the United States. The limitations which these constraints necessarily place upon her report are acknowledged by her in paragraph 1.3 thereof.

The other preliminary comment I make about Ms Britton's report is that in at least one potentially important respect she appears to have received inaccurate and misleading information from the father. I refer to paragraph 2.6 of the report, wherein she records that the father told her the maternal grandmother "has requested four block periods per year each of four weeks" by way of access to S. in the United States. In fact, what the maternal

grandmother seeks through the Central Authority is two periods each of two weeks access; that is a total of four weeks per year, not 16 weeks as the father's information suggested. I do not know the basis upon which the father informed her of that more substantial proposal.

The thrust of Ms Britton's opinion relative to the determination of these proceedings is contained, I think, in paragraphs 3.1.1, 8.13, 8.14, and 11.2.1 to 11.2.7 inclusive of her report. In those paragraphs she reports as follows:

"3.1.1 S. has been through a period of extreme upheaval which commenced in 1995 with his mother's diagnosis of cancer and became particularly difficult early in 1997 when she became extremely ill. Since her death in May, 1997 he has had to deal not only with her loss, but also with the instability of having a range of caregivers, the introduction of his father's new wife and her child to the family and a move to Australia where he has commenced school. To make him cope now with further change would be abusive;

8.13 S. presented as a very pleasant little boy who has achieved development within normal limits for his chronological age. He established rapport with me readily and impressed as quite articulate and as expressing his own views, although these would understandably have been significantly influenced by his father and step-mother as residential parents.

8.14 Although I have not had the benefit of observing S.'s behaviour or forming an opinion on his level of adjustment around the time of his mother's death, it would seem that he has settled down well but still has grief issues with which he is dealing. It is likely that having been traumatised by the protracted illness and of his mother then having needed to adjust to the changes associated with his father taking a new wife, his having a "new brother" and moving to a new country, he was pushed to the thresh-hold of his adaptability. His negative views in relation to his maternal grandmother and her husband could represent some self-protection on his part, in that having to deal with yet another issue, particularly one involving conflict and perhaps revisiting the pain of his mother's death, is just too much for him at the moment. He is not yet 6 and, in my opinion, has recovered extraordinarily well considering all the abovementioned change.

11.2.1 S. is a child who has achieved development within normal limits for his chronological age. He is securely attached to both his father and his step-mother and has a close relationship with his step-brother;

11.2.2 He is still dealing with issues to do with the death of his mother in the United States but has apparently been helped tremendously with his grieving by both his father and his step-mother;

11.2.3 He maintains positive opinions of his paternal grandparents and his maternal grandfather - all in the United States of America. He has a negative view of his maternal grandmother which appears to have been influenced by his knowledge of her desire for him to travel to the United States to visit with her several times per year;

11.2.4 Assuming the account given to me of his problems with emotional distress and behavioural acting out after his mother's death are accurate, it would seem that he has settled extremely well, despite a change in country of residence and commencement of school. However, I have concerns that this adjustment would still be somewhat fragile and his equilibrium could easily be disturbed again were he to be put under undue stress;

11.2.5 If the assertions of the father are correct that the maternal grandmother and her husband are financially able to travel to Australia and his wife would facilitate their having contact with S. should they do so, even to the extent of having them stay in their home this

would seem a much more viable solution than having S. travel to the United States of America at his age;

11.2.6 Telephone contact would seem to be an important vehicle for re-establishing the relationship between S. and his maternal grandmother and that should, in my opinion, be established on a regular basis as soon as possible, so that the hiatus in that relationship is not allowed to become further entrenched;

11.2.7 In short, it is my opinion that on the balance of probabilities, considering S.'s troubled history, forcing him to travel to America for lengthy blocks of contact with his maternal grandmother without the emotional support of his father or step-mother, would be placing him in an intolerable situation with the likelihood of psychological harm - at least in the short term. This is not to say that provided telephone contact and contact through correspondence is maintained (and, ideally, there is some contact with the maternal grandmother in Australia), that he would not be able to travel to the USA to exercise visitation with her at some time in the future. It is not possible, in my view, to predict when the appropriate time for this might be but I am of the opinion that the issue would need to be a matter for review and would suggest that such a review not occur under two years."

THE LAW

The proceedings are brought pursuant to Regulation 25 of the Family Law (Child Abduction Convention) Regulations, which I shall refer to hereafter simply as "the Regulations", to the relevant terms of which I shall refer in due course. Before doing so it is convenient to state some general principles which I adopt, with respect, from pages 5 to 7 of the excellent written outline presented by Mr Green of counsel, who represented the Central Authority in these proceedings.

(1) This Court has jurisdiction to hear and determine questions arising under applications pursuant to the Regulations - see ss. 31 and 39(5)(d) of the Family Law Act of 1975, and *McCall v McCall, State Central Authority*

***Applicant Attorney General Intervener* (1995) FLC 92 551 at 81507.**

(2) The jurisdiction conferred is for the purposes of giving effect to the

Regulations - see *McCall v McCall* (supra), at the page stated.

(3) The purpose of the Regulations is to enable the performance of the obligations of Australia under the Convention on the Civil Aspects of International Child Abduction - see s. 111B of the Family Law Act 1975, and reg. 22 of the Regulations.

(4) An object of the Hague Convention is to ensure the rights of custody and access under the law of one Contracting State are effectively respected in other Contracting States - see reg.22 of the Regulations, s. 111B of the Family Law Act, Article 1(b) of the Convention, which is itself contained in schedule 2 to the Regulations.

(5) The principle of the best interests of the child as the paramount consideration does not apply in considering applications under the Regulations, at least, when the proceedings are for the return of a child wrongfully removed or retained in breach of rights of custody - see *McCall* previously referred to.

The father, through the written outline of his solicitors which was filed on his behalf and relied on by him for the purpose of these proceedings, really asserts otherwise in respect of

access rights and, in broad terms, the submission for the father was that when it comes to the question of access rights, the best interests of the child remain the paramount consideration.

I do not accept that submission. Whilst it is true *McCall*'s case related to

an application for return of a child retained in breach of custody rights, the answers which the Full Court provided to the questions which were asked in the special case there, and their reasoning, in my view make it clear that the comments which they made and their answers apply to all applications which are brought under the regulations. And that, of course, includes applications in respect of access.

Accordingly, I conclude that the principle of the paramountcy of the best interests of the child, which is enshrined in the Family Law Act, is not a principle which applies to these current proceedings. Of course, it does not follow that the best interests or the welfare of the child is not relevant to the determination of the proceedings; indeed, I believe that it is, but it is simply not the case that the child's bests interests are to be regarded by the Court as paramount.

The relevant statutory provisions for the purposes of today's proceedings, appear to be these:

First of all, I think reg. 25 is the Regulation under which the proceedings have been brought. So far as relevant that provides as follows:

> **"A central authority may apply to a court for an order that is necessary or appropriate to organise or secure the effective exercise of rights of access to a child in Australia by a person, an institution, or another body having rights of access to the child being - "**

and then follow certain types of orders - specific orders which the Court may make but, more particularly, (b):

> **"any other order that the central authority considers to be appropriate to give effect to the Convention."**

Regulation 25(4) then provides:

"A court may in respect of:

> **(a) an application made under subregulation (1); or**
>
> > **(b) an answer, or an answer and a cross application, made under subregulation (3);**
>
> **make any order in relation to rights of access to a child that the court considers appropriate to give effect to the Convention."**

In my opinion, the closing words of that particular subregulation, namely, "appropriate to give effect to the Convention," are of significant and considerable importance in the delineation of the Court's jurisdiction in this matter.

Other provisions of the Regulations which it is appropriate to refer to are the definition of rights of access in reg. 2(1) where "rights of access" is defined to include:

> **"...the right to take a child for a limited period of time to a place other than the child's habitual residence."**

> **Regulation 2(1B) also provides:**

> **"Unless the contrary intention appears an expression that is used in these Regulations and in the Convention has the same meaning in these Regulations as in the Convention."**

The relevant provisions of the Convention, it seems to me, are first of all the preamble, which is in these terms:

> **"The State's signatory to the present Convention, Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect and have agreed upon the following provisions."**

> **Article 1(b) then provides:**

> **"The objects of the present Convention are –**

> **(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."**

> **Article 4 provides:**

> **"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 Convention shall cease to apply when the child attains the age of 16 years."**

> **Article 7(f) provides:**

> **"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures –**

> > **(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access."**

I should have mentioned also Article 5(b), which is the definition of rights of access, but the definition is essentially in the same terms as in the Regulations, namely:

> **"It shall include the right to take a child for a limited period of time to a place other than the child's habitual residence. "**

Finally, I think for present purposes I should mention reg. 21, which is in these terms:

> **"An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as the an application for the return of a child. The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject."**

In the case of *Police Commissioner of South Australia v Castell* (1997) FLC 92 752, the Full Court, of which I was a member, held at page 84, 140 as follows:

> **"In our view, the rights of access referred to in the Regulation are rights already established in another Convention country either by operation of law, or as a consequence of a judicial or administrative decision, or by reason of an appropriate agreement having legal effect (cf, for example, ss 63E and 63F(3) of the Family Law Act). Such an interpretation is, in our view, consistent with the provisions of Article 4 of the Convention that the Convention shall apply to any child who is habitually resident in a Contracting State immediately before any breach of custody or access rights."**

Later on in the same judgment we said this:

> **"We thus consider it appropriate in construing reg 25 to regard it as confined to cases which give effect to the relevant purpose of the Convention, namely to ensure that foreign access rights are respected."**

On the facts of this case there is not the slightest doubt that the maternal grandmother has "rights of access" within the meaning both of the Regulations and of the Convention in relation to the child, S., pursuant to the orders of the Superior Court of Arizona to which I have referred. It is not necessary in this case to decide whether the rights protected by the provisions of the Regulations and the Convention must, by definition or by their terms, include the right to take the child to some overseas destination, in order to be able to be dealt with under the Convention, because in this case it is clear that the right of the maternal

grandmother pursuant to the Arizona order includes the right to have access to the child in the United States even if the father and the child are residing outside the United States.

It is also significant that in the proceedings before the Arizona Court consideration was given to the issue of the costs of transportation of the child to cover the very situation that in fact has arisen: namely, that the father and the child have gone to reside outside the United States. So that was clearly within the contemplation of the Court at the time of the making of those orders, and the orders have been framed to cover that eventuality.

The next question, of course, is whether there has been a breach of the access rights of the maternal grandmother pursuant to those orders and, having regard to the facts of this case, I have no doubt that that is the case.

Pursuant to those orders, the maternal grandmother was entitled, along with Mr M., to some 38 days of contact, or access, between June 1 and August 31 1998. She certainly did not enjoy any of that access, and it appears that the father did not telephone her about contact until well into the month of June, probably the end of the month of June, and he made no provision and no arrangements for the maternal grandmother to enjoy access to the child during the period which ended on 31 August. In addition, since that date, between September and May of this year, the maternal grandmother was entitled, pursuant to the Superior Court's order, to access on certain specified week-ends, five in total, and again no effort has been made by the father to facilitate that contact.

In those circumstances, it seems to me beyond argument that there has been a breach of the maternal grandmother's access rights, and that has been a breach which the father, at least, has been in part responsible for.

The other necessary element of the proceedings is that the child was "habitually resident" in a Contracting State at the time of the breach of the access rights. In this case, again, there is no need to consider that in any substance or detail because, on any view, the child was habitually resident either in the United States or in Australia throughout the relevant period. I think the better view is that he was habitually resident in Australia at the time of the breach of the maternal grandmother's access rights, because the father was quite entitled to come to Australia with the child, as he did, at the end of May 1998. It was only when the time for access by the maternal grandmother came around, in the period after 1 June, that a breach of the access rights occurred, and by that time I have no doubt that the father and his family, including S., had settled in Australia, so that at that time the child was habitually resident here.

But in my view, it matters not that the child's place of habitual residence at the time of the breach of the access rights was not in the same Contracting State as that in which the access rights arose. What is necessary, of course, is that there be an international element to the proceedings, and that, in this case, is met by the fact that the rights of access arose in one Contracting State, namely, United States of America, and the breach of those rights occurred in another Contracting State, namely, Australia, and the latter was the habitual residence of the child at the time. Accordingly, all of the elements required to give rise to the operation of the Convention and the Regulations, in that sense, have been met.

The ultimate and really significant question in this case is the power of this Court, in dealing with the proceedings, and the form of the order which it should make.

It is clear from the wording of reg. 25(4) that the Court has a discretion to exercise in the matter. It is not a matter of simply "mirror imaging" or taking appropriate steps to enforce the orders made in the American Court. However, as I have already indicated, a significant

aspect of the Court's discretionary exercise is the requirement of Regulation 25(4) that the order be one which the Court considers appropriate to give effect to the Convention.

As I have already said, the aims of the Convention are, amongst other things, to ensure that access rights created in one Contracting State are respected in another Contracting State to the extent that that is possible. In the United Kingdom there has been an approach adopted by the Courts to the matter of enforcement of access rights which, in my view, is not in accord with the Regulations as they apply in Australia, nor is it a course which should be followed in this country. In that case, *Re G, a Minor, (Hague Convention Access)* (1993) 1 FLR 669, the Court of Appeal considered the operation of the access provisions of the Convention in the United Kingdom.

In the United Kingdom, of course, the provisions of the Convention have been effectively adopted into the law of the United Kingdom directly, rather than, as in Australia, through the enactment of Regulations. In that case, the father and mother of the child had lived in Ontario in Canada. Following certain allegations of violence, the mother left Canada for the United Kingdom, but was ordered to return to Canada following a successful application for return under the Convention on behalf of the father.

Upon her return to Canada, an Ontario Court made a consent order allowing the mother the option of living in either Ontario or England, and made detailed access arrangements for the child to have contact with her father in Ontario. The mother then returned to the United Kingdom with the child, as she was entitled to do. When the father sought to exercise his rights of access, the mother refused. The father then applied under the Convention for access orders.

At first instance, the Court ordered that access take place in the United Kingdom, and found that in considering the access provisions in the Convention, the Court must have regard to the welfare of the child. The father then appealed to the Court of Appeal, asking that the access take place in Canada. The first issue was whether the Convention applied to the case at all. All members of the Court of Appeal agreed that the Convention did apply, but found that Article 21 of the Convention only applied at an administrative level, requiring the Central Authority of the country receiving the application to make appropriate arrangements for the requesting applicant to be legally represented and arrange Legal Aid for the father to make an application under the United Kingdom Domestic Law, namely, the Children Act 1989. Once arrangements had been made by the Central Authority for the father to be represented and Legal Aid provided, Butler-Sloss LJ stated that this effectively exhausted the direct applicability of the Convention. The Court then held that the application by the father should properly be brought under the Children Act, and, as such, was governed by the principle that the welfare of the child was paramount.

As I have said, that approach differs from the approach which is appropriate in Australia, given that the Convention has been adopted here in a different way, and the words of the provisions of the Convention itself, in my view, also support the different approach which I regard as being more appropriate here.

However, some of the statements made by Butler-Sloss LJ in that case are of some relevance and assistance in this case in considering how the Court should exercise the discretion which it clearly has under reg. 25(4). In that case, amongst other things, her Honour said this at p.676:

> **"The existence of an order of the court where the child was then habitually residing is, however, of crucial importance and is a factor to be given the greatest**

> **possible weight consistent with the overriding consideration that the welfare is paramount."**

Her Honour then said that she agreed with a statement by Eastham J in *Re C* (1991) (an unreported case) which was in these terms:

> **"In considering whether or not it is in the best interests of the child for the order to be implemented, the court must pay regard to the decision of the foreign court. It must pay regard to how recently the court has seen fit to make the order, and it must bear in mind that, having regard to the doctrine of comity of nations, unless it is clear the enforcement of the order is contrary to the welfare of the child, which is the paramount consideration, that the court should respect the order of the court in the requesting jurisdiction."**

As I say, it seems to me that those statements of principle by that Court are relevant to the exercise of the discretion in this case, even though in this jurisdiction the Court does not approach the proceedings in the same way by regarding itself as bound by the best interests principle in these proceedings.

As pointed out by Mr Green in his submissions, the Regulations do contain other discretions about making orders, and the nature of that discretion, in a different context, has been the subject of comment by both the High Court and this Court in previous cases. The High Court had occasion to consider the discretion under one of the exceptions referred to in Regulation 16(3), in the case of *De L v the Director General, New South Wales Department of Community Services* (1996) FLC 92-706, and at 83, 456, in the joint judgment of Brennan CJ and Dawson, Toohey, Gaudron, McHugh and Gummow JJ, there appears the following statement:

> **"However, it is to be noted that, if a child objects to being returned to the country of his or her habitual residence … it remains for the judge hearing the application to exercise an independent discretion to determine whether or not an order should be made for the child's return. The Regulations are silent as to the matters to be taken into account in the exercise of the discretion, and the 'discretion is therefore, unconfined except insofar as the subject matter and scope of the purpose of the [Regulations]' enable it to be said that the particular consideration is extraneous."**

Then later at p.83, 457, their Honours said this:

> **"It is impossible to identify any specific and detailed criteria which govern the exercise of the power whereby the Court may impose such conditions on the removal of the child 'as the court considers it to be appropriate to give effect to the Convention'. Many of the criteria which may be applicable in a particular case are illustrated in the above passages from the Canadian. and English decisions. The basic proposition is that, like other discretionary powers given in such terms, the Court has to exercise discretion judicially, having regard to the subject-matter, scope and purpose of the Regulations."**

Kirby J in his judgment in the same case, in considering the element of the width of discretion, said this at p.83,471:

> **"In my view, it is undesirable that this Court should limit the wide powers properly enjoyed by the experienced Judges of the Family Court in discharging their duties, including by the exercise of the discretion which is reposed in them by reg 16(3) of the Regulations. So long as the judge keeps clearly in mind the limited purpose of the jurisdiction conferred, the ordinary way in which the Regulations and the Convention are expressed to operate and the need for a clear and compelling case to sustain an objection which permits an exception to the ordinary duty to order the return of the child, it can left to the judges to deal with individual cases as the evidence requires."**

Although, as I have said, their Honours were speaking there of the discretion to refuse to return a child because of one of the exceptions to Regulation 16(3), their statements in relation to the parameters of the discretion are relevant to the exercise of discretion which is called for in this case.

In the case of *The Director General Department of Families, Youth and Community Care v Thorpe* (1997) FLC 92 785, I had occasion to discuss the issue of discretion within the context of the Regulations, and in the course of so doing, in paragraph 4.2 of my judgment I said this:

> **"There are, of course, many relevant factors to be taken into account by a Court in the exercise of a discretion arising under the Regulations. Perhaps the most important, and that is certainly emphasised by Mr Green, in his submissions, is the underlying purpose and intent of the Convention and therefore the Regulations which have been adopted in this country as the means of giving effect to the Convention in this country."**

And later at paragraph 4.4 I said:

> **"I accept that is a relevant factor to be taken into account and perhaps the most significant in many ways."**

In summary, it seems to me that whilst I have a discretion to exercise under reg. 24(5), I should pay proper regard to the purpose and intention of the Convention, and in fact that is perhaps the most significant matter to be taken into account in the exercise of that discretion. I should also, of course, have regard to practicalities. I should have regard to the welfare of the child, without making it the paramount consideration. And I should have regard to the relative recency and the circumstances of the making of the orders in the Superior Court of Arizona which defined the rights of access of the maternal grandmother, the breach of which has led to these proceedings.

I turn then to the exercise of discretion in this case.

I think before doing so it is probably appropriate to mention the fact that this case is a little unusual in the sense that proceedings could have been taken by the maternal grandmother in two alternative fashions. If she had chosen, rather than bringing proceedings through the Central Authority under the Convention, she could have sought to register in this Court the order of the Superior Court of Arizona, it being a prescribed jurisdiction, within s.70F of the Family Law Act, and she could then have taken proceedings simply to enforce the order here.

That would not have precluded the father from making an application, in effect to vary the order, but in that circumstance his application would have run up against the difficulties which are posed by the decisions in such cases as *McKee v McKee* (1951) AC 352 and, more relevantly, the provisions of s.70J of the Family Law Act.

I mention this only in passing, but it seems to me that those provisions of s.72J, which are applied when the Court is being asked to exercise jurisdiction in a children's matter where there is in existence an overseas order from a prescribed jurisdiction which is duly registered in this Court, bear some relevance to the exercise of the discretion in this case, where the maternal grandmother has chosen to proceed by the alternative route of invoking the Convention, and thus having the benefit of the assistance of the Central Authority in the proceedings.

Turning then to how the discretion should be exercised in this case: in his written outline, paragraphs 86 to 88, Mr Green has referred to a number of relevant matters all of which I do find to be relevant. Without going through them all, I think the significant ones are that the order which, indirectly, the application is asking this Court to uphold, was recently made in a Court of competent jurisdiction to which the father submitted, in terms of jurisdiction, and in which he was represented, and in the course of which there was conflicting evidence given by the two parties, the Court ultimately coming to a conclusion about what was appropriate access by the maternal grandmother to the child. As I say, the recency of that decision, and the fact that it was made in contested proceedings is, I think, a very significant matter bearing upon how I should exercise my discretion in this case.

Other relevant matters, of course, are the fact that the maternal grandmother is just that, the maternal grandmother of the child. She has had a significant part to play over the years in the child's development. The father, in the course of the proceedings in the United States, accepted that she had a good relationship with the child, and it is clear that there are other members of the extended family of the child in the United States, contact with whom on a regular basis could only enhance the child's sense of security and development as he matures.

So I believe it is important for the child's long term welfare to be able to maintain a proper relationship with not only the maternal grandmother but with other aspects of her environment in the United States. And if one adds to that the fact that the child is fundamentally a citizen of the United States, having been born there, and whose family and all his connections, both family and cultural are there, then I think it becomes almost overwhelming for the Court to conclude that it is in the child's best interests, even if they were to be regarded as paramount, to do all that it can to maintain those connections.

In relation to whether the child is old enough to travel to the United States, that is another issue. The child has turned 6, and the evidence satisfies me that, subject to the requirements of the appropriate airline, he could travel unaccompanied to the United States and back, provided that it was on a direct flight.

Ms Britton's views about the likely impact on the child of being required to travel to the United States for the purposes of contact are relevant and significant but, in my view, they are not overwhelming in this case. I have already indicated that Ms Britton has only seen one side of the coin and, indeed, I have also noted the fact that part of the material upon which she based her conclusion was not entirely accurate. I have not the slightest doubt that the child's wishes and thoughts upon the matter, as expressed to her, would have been significantly reflective of the wishes and thoughts of his father and stepmother. That is only natural. But it does not necessarily follow that if he is required to visit his maternal grandmother in the United States in proper circumstances, he will suffer any major relapse - if I can use that expression - in relation to his behavioural problems which it is reported that he was experiencing late last year.

Bearing in mind that reg. 25(4) envisages the making of an order which the Court considers appropriate to give effect of the Convention, and having regard to the provisions, particularly of Articles of 1(b), 7(f) and 21 of the Convention, but also considering the best interests of S. as being a relevant although not the paramount consideration, I conclude that in the proper exercise of my discretion I should accede to the application of the Central Authority, save that for the first occasion of access, which should be during the September school holidays this year, the maternal grandmother should be required to travel out to Australia to collect S. and accompany him back to the United States.

However, on the return journey to Australia she may, if satisfied that the child is capable of travelling unaccompanied, arrange his return to Australia by a direct flight from the United States as an unaccompanied minor upon the condition that she personally delivers him to the relevant airline personnel at the airport of departure from the United States, and that arrangements are made for the father to meet him and accept delivery of him from the relevant airline personnel at the airport upon arrival in Australia.

My reason for requiring the maternal grandmother to travel out to Australia to collect the child on the first occasion of access is that I think that if he were to be obliged to travel unaccompanied on that first occasion, there is a real risk he might subsequently develop a phobia about flying alone, particularly in circumstances where he would be flying away from his father and his home to an environment which is not looked upon particularly favourably by his primary carers, that is the father and H., and is therefore also naturally regarded by him with some degree of apprehension.

Further, he is an emotionally vulnerable child, considering all that he has been through over the last two to three years, who has never flown alone before. Even for a very secure child of 6, that is a fairly daunting prospect. It can only be made more daunting for S. by the certain knowledge that his primary carers do not support such a course and would approach it with considerable anxiety. Children are very sensitive to the emotional responses of those to whom they are closely attached, and upon whom they are emotionally dependant, as I have no doubt S. is to his father in this case.

There is little doubt that he has already picked up on his parents' negativity towards his returning to the United States for access by the maternal grandmother, and their anxiety about that will not be alleviated merely by this Court's determination that it should occur and would, indeed, be exacerbated by the prospect of his having to travel there unaccompanied. I think there are reasonable prospects, however, that their anxiety, and hence S.'s, about that, and their opposition to the maternal grandmother's contact with him, will be alleviated by the knowledge that she will be picking him up in Australia and accompanying him back to the United States.

In relation to the travel costs, I consider it appropriate to order that the father and the maternal grandmother share equally her costs of travel to Australia and return to the United States on this occasion but that, in accordance with paragraph 5(d) of the orders of the Arizona Superior Court, the father pay 80 per cent and the maternal grandmother 20 per cent of the costs of S.'s travel. On all occasions of contact subsequent to the first, I consider that S. should be capable of travelling both ways as an unaccompanied minor provided that he travels on a direct flight from an airport in Australia, to which he is delivered by the father or H., to an airport in the United States, where he is collected personally by the maternal grandmother, and vice versa on the return journey.

If the father chooses, of course, either he or H. or some other adult person of his choosing could accompany S. on the outward journey, but that would be entirely at his cost. As to the cost of S.'s travel on all occasions, I see no basis for departing from the order of the Arizona Court that the father pay 80 per cent and the maternal grandmother 20 per cent of those costs.

Accordingly, and subject to any further discussion about the finer details, the orders I propose are these:

> **(1) That Mrs K., the maternal grandmother, presently of San Diego, California in the country of the United States of America, have access to and possession of the child, S., born on 26 May, 1993 in the United States of America, for the following periods:**
>
> > **(a) for two weeks in the Queensland State School holidays in September, 1999;**
> >
> > > **(b) for two weeks in each of the April and September Queensland State School holidays in the year 2000 and in each second year after that;**
> > >
> > > **(c) for two weeks each in the June and December State School holiday periods commencing in the year 2001 and every second year after that;**
> > >
> > > **(2) (a) that for the purposes of the access referred to in Order 1(a) hereof, the maternal grandmother shall collect the child from the residence of the father in Australia, or such other place in Australia as she and he may agree, at the start of the access period, accompany the child on the flight to the United States of America, where she shall be at liberty to enjoy the balance of the period of access, and at the end of the access period, personally place the child as an unaccompanied minor upon a direct flight from an airport in the United States of her choosing, to the airport in Australia which, at the relevant time, is the Australian. destination nearest to Brisbane, of such a direct flight, having first made arrangements for the father to collect the child upon his arrival at that airport;**
> > >
> > > **(b) that for the purposes of the access referred to in order 1(a) hereof, the father shall deliver the child to the maternal grandmother at the start of the access period as set out in paragraph (a) of this order, together with his passport, and shall collect the child from the Australian. airport which is the destination of his direct flight from the United States of America on the return flight as set out in**

paragraph (a) of this order, and he shall do all other things necessary to be done by him to facilitate the enjoyment by the maternal grandmother of that access in the United States of America;

(c) that for the purposes of the access referred to in order 1(a) hereof, the father and the maternal grandmother shall share equally the cost of the maternal grandmother's travel to and from Australia, and they shall share the cost of the child's travel from Australia to the United States and return in the proportions 80 per cent by the father and 20 per cent by the maternal grandmother, but if either party shall pay in the first instance more than his or her proper share of either cost the other shall reimburse the first for that other's proper share thereof within 14 days of receipt of a written demand by the first so to do.

(3) For the purposes of carrying into effect paragraphs 1(b) and (c) of these orders:

(a) that the father make all due and necessary inquiries as to the cost of air travel necessary to carry into effect those paragraphs and notify the maternal grandmother in writing at [address deleted] San Diego, California, in the United States of America, or at such other address as advised by her from time to time, of the cost of travel and the proposed date and time of the child's departure from Australia and of his date, time and place of arrival in the United States, at least one month prior to an access visit;

(b) that upon receipt by the father from the maternal grandmother, at least 10 days before the proposed date of the child's departure, of an amount equal to 20 per cent of the notified cost of travel referred to in paragraph 3(a) above, the father do all things necessary to arrange travel and safe passage of the child to the United States of America including, without limiting the generality of the foregoing, delivering the said child to an international airport in Australia, and ensuring he safely boards a direct flight to the United States of America, producing the child's passport and any other documentation necessary to allow the child to leave the Commonwealth of Australia including payment of departure tax, and safely re-enter on the return flight; pay all costs and expenses associated with safely conveying the child to and from the Australian international airport; and providing, for transport to the airplane, a suitcase or other receptacle containing adequate clothing for the access visit; and that he confirm all proposed travel arrangements in writing to the maternal grandmother at least 48 hours prior to the child's scheduled departure from Australia;

(c) that for the purposes of calculating the costs of access pursuant to paragraph 3(a) above, all statutory charges and costs associated with the child leaving and entering both the Commonwealth of Australia and the United States of America are to be included;

(d) that the maternal grandmother, in addition to paying to the father 20 per cent of the child's travel costs as hereinbefore defined, shall do all

things necessary to be done by her to ensure the child's safe arrival in and departure from the United States of America, including arranging to meet him personally upon his arrival there and to personally ensure he safely boards the scheduled return flight.

(4) That the father arrange for the child to make or receive one telephone call each week with the maternal grandmother at a telephone number notified by her from time to time, with the first call to be initiated by the father, the next by the maternal grandmother, and alternating between them thereafter;

(5) That the father cause to be sent to the maternal grandmother every six months commencing on 30 July, 1999 at least one current photograph of the child by prepaid post at her address at [address deleted] San Diego, California, United States of America, 92131 or such other address as notified in writing by her from time to time;

(6) That the maternal grandmother be at liberty to communicate with the child by letter through the post, or e-mail where it is available to S., and the father is to notify the maternal grandmother of S.'s present e-mail address, if any, on or before 30 July 1999, and also notify her of any subsequent changes to his postal and e-mail addresses within 28 days of the change;

(7) That the orders set out in paragraphs 1 to 6 above cease to have effect and be discharged by force of this order upon the child, S., attaining the age of 16 years age, being 26 May, 2009.

(8) That each party have liberty to apply.

(9) That any other applications be dismissed.

RECORDED BUT NOT TRANSCRIBED

I will alter paragraph 1 to read that Mrs K ("the maternal grandmother") presently of San Diego in the United States of America have access to the possession of the child, S., born on that date, at all such reasonable times and in such circumstances as she and the father, may agree and in any event, unless agreed to the contrary, in the United State of America for the following periods. So I have just put in a general provision there so that the parties, in effect, may agree otherwise.

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