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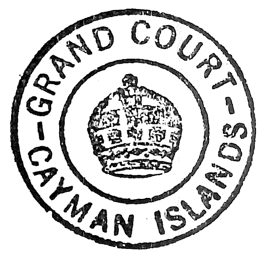

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL SIDE

CAUSE NO: 129/2003

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY (CAYMAN ISLANDS) ORDER 1997

AND

THE HAGUE CONVENTION OF 25TH OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNANTIONAL CHILD ABDUCTION

AND

AN APPLICATION FOR THE RETURN OF THE MINOR CHILDREN, NAMELY

1. EMILY KRISTINE WEEKS D.O.B. 18-02-94
2. JEFFREY TAYLOR WEEKS D.O.B. 20-02-95

BETWEEN:

JEFFREY EDWARDS WEEKS

Plaintiff

AND:

(1) JOYCE CORLEY WILLIAMS
(A.K.A. JOYCE C. WILLIAMS/JOYCE C. WEEKS)
(2) PATRICK BARRETT WILLIAMS

Defendants

BEFORE: THE HON. JUSTICE KELLOCK

APPEARANCES:
Counsel for Plaintiff: S. McCann and L. Freeman of Campbells
Counsel for the Defendants: I. Connell and Z. Merren of Hunter & Hunter
Counsel for the Attorney General: S. Look Loy

HEARD: March 13 and 14, 2003

REASONS FOR JUDGMENT

Kellock J,

This application, made by summons, was heard in Court on March 13 and 14, 2003.

THE APPLICATION

1. The application is made pursuant to the Child Abduction and Custody (Cayman Islands) Order 1997.

2. This Order extends to the Cayman Islands the Child Abduction and Custody Act 1985 (UK Legislation) as modified in the schedule to the instrument.

3. As a result, the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980 ("the Hague Convention") as set out in Appendix A to the schedule to the instrument is declared to have the force of law in the Cayman Islands.

4. The Plaintiff therefore seeks an order from this Court, *inter alia*, directing the return of his two minor children, Emily and Taylor Weeks to the jurisdiction from which they were removed by their mother and the second defendant.

5. That jurisdiction is the State of Georgia, one of the United States of America. The U.S.A is a signatory to the Hague Convention.

THE FACTS

The Plaintiff and the First Defendant (which I will refer to as the "father" and the "mother") were married in Georgia on December 7, 1991. They were both citizens and residents of the U.S.A. Both grew up in Georgia and worked and lived in that State before and after their marriage. The child Emily was born on February 18, 1994. Taylor was born a year later on February 20, 1995. Sadly the marriage broke down and the father and mother were divorced in August 1997. The final judgment and decree in the divorce proceedings was granted by Judge Valerie Elbaz, a Judge of the Gwinnett Superior Court, State of Georgia. Judge Elbaz dissolved the marriage and dealt with all of the ancillary matters including the custody of Emily and Taylor and rights of access.

The custody provision was described by Judge Elbaz as follows:

> "The Plaintiff [Joyce C Weeks] shall be the primary physical custodian ... and the Defendant [Jeffrey E Weeks] shall be the secondary physical custodian. The Plaintiff and Defendant shall share joint legal custody of the minor children."

The Judge went on to order that the father was "entitled to reasonable and liberal visitation with .... the minor children". The order then set forth a specific regime

of access should the parties be unable to agree on the specifies. It is plain that those rights of access included the father's right to have temporary physical care and control of the children during visitation periods.

It appears that not all of the issues before the Judge were agreed to in advance so that, "the Court heard testimony of the parties, received documentary evidence ... and heard arguments of Counsel."

I pause here to note that the evidence before me disclosed that in January 1995 (which would have been just before the birth of Taylor) the father was charged with and convicted in Georgia of an offence described as "public indecency". In her affidavit the mother swears that she found out about this charge and conviction sometime in 1996. She states that she was horrified. However, she obtained this information before the separation leading to the divorce which occurred in November 1996.

It appears from the judgment of Judge Elbaz that the contested issues before her in the divorce proceedings included custody and visitation rights. Accordingly the father's conviction for public indecency was known to the mother at the time Judge Elbaz heard the evidence in the divorce case. Indeed the mother's evidence in this case is that the divorce proceeding was "acrimonious" and that "Jeffrey and his attorney took an aggressive and combative approach". Notably

(she said) "I recall Jeffrey applied for sole custody/care of the children. The final order gave Jeffrey and I joint custody".

I am driven to the conclusion that the father's conviction referred to above was not considered relevant by the mother or her legal advisers in the divorce proceedings and when the joint custody order was made.

According to the affidavit of the Second Defendant (who I will call "Williams"), he began dating the mother in about August 1998 and they were married in April 1999. The father's evidence is that his difficulties in exercising his visitation rights began when the mother and Williams began living together. There are indications that this occurred before their marriage but in any event was a problem for the father after April 1999. In her affidavit the mother swears that on June 20, 2000, when the children were returned to her custody after an extended weekend visit with their father, they told her that the father "had hit Taylor with his fist in the head and Taylor had an obvious bruise". As a result she denied the father access and commenced immediate proceedings for the matter to be resolved through the Courts. She swears that she instituted proceedings the next day which led to a suspension of the father's visitation rights by the Court. The mother then states:

> "I then withdrew the Petition upon legal advice that it was better for the case to be dealt with in the neighboring county."

As a result the father's visitation rights were restored. Unfortunately the mother's evidence does not accord with the facts as found by Judge Debra Turner in her judgment of December 26, 2000, which I will return to in due course. It appears that the wife's petition of June 21, 2000 which was filed in Gwinnett County was transferred to the Court in Fulton County which was the appropriate court for the purposes of "venue and jurisdiction". Judge Turner found that: "Prior to the scheduled hearing [of the case], Ms. Williams dismissed her Petition for Relief under the Family Violence Act. However Ms. Williams continued to prohibit Mr. Weeks to exercise any court ordered visitation with the minor children."

Despite the mother's assertion in her affidavit that the father's visitation rights were restored, in fact, she continued to deny him those rights.

The mother then swears that she filed a criminal complaint against the father. This proceeding is also described by Judge Turner. The complaint was heard by a Magistrate on September 22, 2000, the issue being the father's alleged assault on Taylor. The complaint was dismissed "after hearing evidence presented, to include the testimony of the minor child". This evidence was reviewed by Judge Turner and described as follows:

> "The testimony of the child indicates that he calls his stepfather, Patrick B. Williams "daddy" and he testified that Mr. Weeks is not his real daddy. The child testified that Ms. Williams has told him that Mr. Weeks is mean, that Mr. Weeks should not be around him, and that Mr. Weeks will hurt him. The child further testified that his stepfather, Patrick B. Williams,

> told him that Mr. Weeks hit him. Based on the totality of the evidence given during the Warrant Application Hearing, this Court can understand why the magistrate judge refused to issue a warrant for the arrest of Mr. Weeks."

The transcript of this hearing was put before me and it appears that Taylor's evidence was led by the mother's attorney. Taylor said in cross-examination that his mother had told him his father was a mean man and that he was to tell the Judge that his father had hit him.

In describing the alleged assault of June 2000, the mother said that she had taken Taylor to see a doctor and that Taylor had been subjected to a CAT scan. The doctor's report is appended to the mother's affidavit. The doctor (Doctor Lin) saw Taylor on June 21, 2000 (the day after the alleged assault). Dr. Lin recites what he was told about the alleged assault (presumably by the mother) and then his letter states:

> "He [i.e Taylor] has not had problems with nausea or vomiting; however, he did have some scalp swelling which has resolved."

The doctor then describes Taylor's visit to his office and sets out his findings as follows:

> "Palpation of his skull reveals no swelling and no palpable depressions or linear bone abnormalities. His tympanic membranes were clear with no blood. There was no bruising of the scalp or posterior auricular regions."

The doctor ordered a CAT Scan which was normal.

It is indeed surprising that the doctor could not find any sign of a bruise or swelling on June 21, 2000, which according to the mother, had been present the day before.

As a result of the mother's withdrawal of her petition under the Georgia Family Violence Act, the father sought an award of attorney's fees. Judge Vida Gude of the Superior Court of Fulton County awarded him US $4,114.00. This order was made "after hearing evidence presented, and after hearing argument of counsel". Judge Gude found that the mother's petition against the father was frivolous and that it had been filed "solely for the purpose of harassing the Respondent and to interfere with his right to exercise visitation with his minor children".

The mother testified before me that this determination was made without evidence. Again her evidence is contradicted by the record.

Having been unable to see his children since June 20, 2000, the father instituted proceedings on September 15, 2000, by way of a petition for contempt against the mother on the basis that the mother was in breach of the access order made at the time of the divorce. Judge Turner found that the summons and petition were properly served on the mother and the mother filed an Answer and Counterclaim to the father's petition. On October 10, 2000, after a telephone

conference with the parties' attorneys the mother was required to allow the father supervised access. Judge Turner found the mother failed to comply with this order.

On October 24, 2000, the father filed a Motion to amend his petition seeking custody of Emily and Taylor. Judge Turner found that the mother was properly served with this motion on or after October 24, 2000. In light of the fact that the mother had left Georgia bound for Grand Cayman on October 12, 2000, I presume that the father's motion to amend his petition was served on the mother's attorneys which was proper service in Georgia and indeed would have been proper service if the proceeding had been commenced in this jurisdiction.

There can be no question, on any view of the record, that the mother and the second defendant removed the children from Georgia and the U.S.A for the purpose of permanently depriving the father of access to the children and of they to him.

Having carefully read all of the material before me and in some cases more than once, and having observed the father, mother and Williams in the witness box I have had no difficulty in concluding that the evidence provided by the mother and Williams cannot be relied upon.

The mother broke down and cried on several occasions when describing the father's alleged assault on Taylor. I cannot speculate as to the cause. Perhaps she has come to believe her version of the alleged assault on the child notwithstanding the fact that she was not a witness to it and there is no credible evidence to substantiate it. I cannot rule out the possibility that her display of emotion was contrived in an attempt to influence me.

As I have said the mother and Williams fled to these Islands with the children where the mother is now employed as a teacher and Williams as the "Worship Pastor" of the General Assembly of the Church of God.

Williams' work permit seems to have been approved on September 17, 2001, for the period August 22, 2001 to August 22, 2003. His application for this permit is dated July 3, 2001. It includes, as dependants, the mother and the two children.

The mother's work permit was issued for the same period, for August 22, 2001 to August 22, 2003 and contains a warning to the effect that the Immigration Board had declined to allow the dependants listed to accompany her. I have not seen a copy of the mother's work permit but presume that she listed her children as dependants. (I should say I asked Mr. Connell for a copy of this application but it was not provided).

I am at a loss to understand how the mother and Williams supported themselves in Grand Cayman from October 2000 to August 22, 2001. In any event they now appear to be living in a duplex owned by the church, his employer. I also note that the employer sought a work permit for Williams for a period of two years from September 1, 2001. No evidence was adduced as to whether or not the church contemplated any extension of Williams' employment beyond September 2003.

Williams' work permit application form also contains the following:

> "18. Have you .... ever been convicted of a criminal offence .... if so, please provide details."

To this question Williams answered 'no' and signed the following declaration:

> "I declare the information contained in this application to be correct to the best of my knowledge and belief and am aware that it is a criminal offence to make a statement or representation that is false in a material particular which I know to be false or do not believe to be true."

In fact Williams has been convicted of several offences in the USA. He addressed this problem in his affidavit in paragraphs 3 and 10.

In paragraph 3 he states as follows:

> "I had a happy childhood, although as a teenager, "I ran with the wrong crowd" and had some early trouble with the police. I was convicted of, if I recall correctly, of two cases of burglary and a firearms offence (gun found in car on way to shoot bottles in a pasture). I was 16 at the time and the convictions are spent."

These offences occurred in 1990 but it appears that in June 1998, Williams was again arrested in Georgia and charged with driving under the influence of alcohol and possession of a marijuana cigarette. The breathalyzer recorded a blood alcohol level of .138. Williams was born August 8, 1971 and so would have been almost 27 at the time, not a "teenager". His is 31 now.

In paragraph 10 of his affidavit Williams states:

> "My employment is under a work permit ... The application enquired whether I had any past convictions and my recollection is that I wrote "none" ..."

I note the use of the words "if I recall correctly" in paragraph 3, and "my recollection is" in paragraph 10, as if he were unsure that the information following those phrases was entirely accurate.

In his evidence before me he said that he was aware of his 1998 convictions before he swore his affidavit on March 11, 2003.

There is no doubt that he deliberately answered "no" to question 18 on the work permit application knowing that the answer was false. He said however he would do anything to protect the children. He also repeated and expanded upon the exculpatory statements in his affidavit concerning the early offences in his oral evidence and took a similar line when describing the 1998 convictions. All of these offences were according to Williams largely the fault of others. I did not find Williams to be a credible witness. I have not referred in these reasons to all of the discrepancies between the evidence provided by the mother and Williams, as it would serve no purpose. I must however identify the content of paragraph 21 of the mother's affidavit which makes a scandalous allegation against the father, an allegation which was wholly without any evidentiary foundation. Such unfounded allegations should not be put forward as evidence in this or any other court.

There are further facts which bear on the outcome of this case concerning the children but I will deal with those in the context of the Hague Treaty issues.

THE HAGUE TREATY

The preamble to the Convention indicates that the Signatory States desire to "protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures for their prompt return to the state of their habitual residence." These statements recognize that child abduction has

harmful effects. It is therefore to be generally discouraged and promptly remedied. (5 (3) Hals 4th Ed para 1214).

As stated by the authors of Beaumont McEleavy 1999 (on the Convention), a work relied upon by Counsel for all parties, the interests of the children are paramount in custody disputes. The authors then say:

> "The novelty of the Convention is that it seeks to transpose this principle to respond to the problem of international child abductions as a whole. It is the interests of children collectively that the Convention seeks to further by returning wrongfully removed and retained children to their home environment. Once there, a substantive hearing can be held to investigate the merits of the actual case."
> (Beaument & McEleavy pp 29 and 30).

Accordingly, the emphasis is on return, and Article 19 of the Convention specifically states that "A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of the custody issue".

In this case by virtue of Judge Turner's judgment of December 2000, the father is entitled to sole custody of the children. That order can be, as the earlier 1997 custody order was, changed but that is an issue for the Georgia Court to decide and not this Court.

I will now set forth the Articles of the Convention which are relevant to the case before me.

"ARTICLE 3

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, an institution or any other body, 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.

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

ARTICLE 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

ARTICLE 12

Where a child has been wrongfully removed or retained 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.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

ARTICLE 13

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, institution or other body which opposes its return establishes that-

(a) the person, institution or other body having the care of the person 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 finds 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.
>
> ARTICLE 18
>
> The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time."

Where there has been a wrongful removal of a child the duty of the Court to order the return of the child to the country of habitual residence is almost absolute. (5(3) Hals 4th Ed para 1219)

In this case, as these proceedings were commenced more than one year after the abduction, the Court may (not must) decline to make an order for removal if it is demonstrated that the child is now settled in its new environment. It is up to the mother in this case to demonstrate that 'settlement'. Again the court may decline to order the return of the children if it is established that the person seeking the order acquiesced or consented to the removal, or there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

That means that the risk of harm or other adverse consequences must amount to an intolerable situation.

Re K [1995] 1 FLR 977 is a decision of Wall J in which the following analysis will be found at page 987 and 988:

> "I turn now to the defence under Art 13(b). The authorities are clear that the burden here is on the mother and that the test is a high one. Grave risk is not, of course, to be equated with consideration of the paramount welfare of the child. The obvious reason for this is that I am not deciding where and with whom these children should live. I am deciding whether or not they should return to the USA under the Convention for their future speedily to be decided in that jurisdiction. However, to come within Art 13 (b) there has to be a grave risk of substantial harm to the children. Furthermore, and crucially in this context, the court is entitled to have regard to the practical consequences of its own order and accordingly any risk of harm can properly be reduced or in some cases extinguished by undertakings or by reliance on court procedures in the Convention State.
>
> In *B v B (Child Abduction: Custody Rights)* [1993] Fam 32 at p 40, [1993] 1 FLR 238 at p 245, Sir Stephen Brown P cites a passage from the judgment of the Master of the Rolls in a case called *Re C (A Minor) (Abduction)* [1989] 1FLR 403 in which Lord Donaldson says this (at p 413):
>
>> 'We have also had to consider Art 13, with its reference to "psychological harm'. I would only add that in a situation in which it is necessary to consider operating the machinery of the Convention, some psychological harm to the child is inherent whether the child is or is not returned. This is, I think, recognized by the words "or otherwise place the child in an intolerable situation" which cast considerable light on the severe degree of psychological harm which the Convention has in mind. It will be the concern of the court of the State to which the child is to be returned

> to minimise or eliminate this harm and, in the absence of compelling evidence to the contrary or evidence that it is beyond the powers of those courts in the circumstances of the case, the courts of this country should assume that it will be done. Save in an exceptional case our concern, that is the concern of these courts, should be limited to giving the child the maximum possible protection until the courts of the other country, Australia in this case, can resume their normal role in relation to the child.'

:

> It follows, in my judgment, that even if the mother in this case were able to establish on the facts that the father has been violent to her and to the children in the past it would still be open to the father to argue that the children should none the less be returned because the situation to which they are returning was not one in which there was any danger of physical or psychological harm and because the children were to continue to live with their mother until such time as the matter had been ventilated before the American court. Given the protection afforded to the mother and the children by the American court the risk of physical harm on this argument effectively disappears. Any psychological harm to the children would depend on the psychological effect on them of a return in their mother's care to an establishment in the USA where their parents were not living together and from which their father was absent."

Reference should also be made to *N v N* [1995] 1FLR 107 at 112 where Thorpe J said:

> "As to the risk of physical harm to A alone, there is, of course, a possibility that the father has sexually abused A. The case rests on: (a) the physical abnormality; (b) A's assertion; and, possibly, (c) the

> father's acceptance that he used to get into her bed. But it is equally possible that the abnormality was accidentally or otherwise caused and that the assertion is the product of direct or indirect influence. The issues need to be investigated in the pending proceedings which are at present appropriately constituted in Australia. In the interim, A needs protection. But protection does not require refusal of the application for her return. Such risk of physical harm as may exist is created by unsupervised staying contact to the father, not by return to Australia.
>
> Thirdly, I consider what is the real buttress and the real foundation of the mother's case, namely the risk of psychological harm to all three children. One resolution of this summons would be to conclude that, first, Dr. Lindsey has realistically assessed the psychological effect of accompanied return upon the mother and children. Secondly, both Dr. Lindsey and Dr. Dennehey agree the risk of psychological harm to the children if returned without their mother. Thirdly, the mother refuses to contemplate return under any circumstances, preferring to part from the children than to accompany them. Fourthly, therefore, in the exceptional circumstances the plaintiff must be refused his order.
>
> In my judgment, that is far too facile an analysis. Dr. Dennehey rightly emphasises the psychological effect on the children of refusing to order their return. They know their abduction has been achieved by deceit. How will they relate to their mother and their father hereafter if she achieves her object by such means? The mother is seeking to obliterate the father from her life and the lives of the children, almost as though he were dead. If she succeeds in distancing him by ten thousand or more miles, directly or indirectly discouraging contact, what will be the long-term effect on the children of losing a devoted father in such a way?"

Consequently the burden of establishing the conditions in which the court might refuse to return the children is "a high one".

In the present case even if the burden to be discharged by the mother was not more than the balance of probabilities test, the evidence fails to measure up.

I must also be mindful of the need to accord respect to the courts in Georgia. I have no reason to suppose that the courts in Georgia will fail to exercise their jurisdiction to protect Emily and Taylor if the mother can show cause, which the record shows she has heretofore not done. (See *Re S* [1991] 2 FLR 1 at 22 Purchas L.J.)

In the case at bar it is agreed among Counsel that:

1. This Court has the jurisdiction to make the order sought;
2. The children Emily and Taylor were wrongfully removed by their mother from Georgia;
3. At the time of their removal the Plaintiff was exercising his rights of custody;
4. The Plaintiff is a proper applicant in these proceedings;
5. The children were removed from Georgia without consent or acquiescence of the Plaintiff;
6. The provisions of Article 18 of the Convention override the provisions of Article 12.

It seems to me that Article 18 also overrides the provisions of Article 13 but I have found on the evidence that an order returning Emily and Taylor to Georgia will not expose them to the circumstances described in Article 13 (b).

That leaves for consideration whether or not it has been demonstrated that Emily and Taylor have become settled in Grand Cayman, whether either or both object to returning to Georgia and have attained an age and degree of maturity so that their views should be taken into account.

THE SETTLEMENT ISSUE

I have to say that it seems to me somewhat artificial to consider that children of the ages of Emily and Taylor can be 'settled' here to such a degree that a court should decline to make the order it otherwise would make in conformity with the purposes of the Convention and it's other provisions. Young children are moved from place to place and even from country to country as their parents' careers demand. Children of the ages of Emily and Taylor readily adapt to different homes, schools and friends. Children of that age do not establish roots in the way that adults do. The concept of settlement in Article 12 is not defined by the Convention itself and I have not found any particularly helpful definition in the authorities cited to me or others I have been able to find. It is said that the word settled should be interpreted in the light of it's ordinary meaning. (5(3) Hals 4th Ed para 1219)

In Re *N* (1991) 1 FLR 413 Bracewell J said at page 417:

> "There is some force, I find in the argument that legal presumptions reflect the norm, and the presumption under the Convention is that children should be returned unless the mother can establish the degree of settlement which is more than mere adjustment to surroundings. I find that the word should be given its ordinary natural meaning, and that the word 'settled' in this context has two constituents. First it involves a physical element of relating to, being established in, a community and an environment. Secondly, I find that it has an emotional constituent denoting security and stability."

Bracewell J went on to say that "settled" implied something other than "transient", so that the "settlement" is permanent in some sense, recognizing that it is difficult to say that anything in life can be considered permanent. I do not think much emphasis should be placed in this case on the fact that the children have been in Grand Cayman since October 2000. That fact is almost entirely due to the mother's decision to sever all ties to her homeland even to the extent that her own parents did not know where she was. As it turned out the father located her and the children in Grand Cayman almost by accident.

It has been said that the reasons for the delay in bringing return proceedings are relevant to the settlement issue as an abducting parent should not be able to rely on his or her success in concealing the child's whereabouts in order to evade the return *Re H* [2000] 3 FLR 404. (Cited at 5(3) Hals 4th Ed Para 1219 note 8).

I believe that the Court is vested with a discretion, and an overriding discretion by Article 18 of the Convention so as to allow the Court to discount if not ignore altogether circumstances (for example the child's 'settlement') which stem directly from a wrongful abduction and the acts of the abductor.

Therefore I do not consider that Emily and Taylor are sufficiently settled in Grand Cayman so as to make it appropriate for me to refuse the order sought. This is particularly so because the mother's immigration status is so precarious. (She is a dependant of Williams and as such her ability to work in Grand Cayman is dependant upon Williams' presence here). Both work permits expire in 5 months assuming of course that Williams is not deported before August 23, 2003, for making a false declaration in the permit application.

Williams' employer (the church) has several pastors. As the worship pastor, Williams seems to be in charge of the music for services. He is not the preacher. He does not appear to have visitation responsibilities and he does not deliver the sermons. No evidence was adduced on the defendant's behalf as to whether or not the employment of either defendant was likely to be extended beyond August of this year. In addition the evidence is that neither the mother nor the father would be in Grand Cayman at all if they had not come here to prevent the father from having contact with his children. In these circumstances I am not inclined to

refuse the order sought even if the children are settled in Grand Cayman which I do not think is the case in any event.

Lastly, Mr. Connell urged me to refuse to return the children to the USA on the grounds that the children objected and their objections were entitled to weight.

He urged me to read the Social Inquiry Report carefully and that I have done. In addition I heard the authors of the report testify. I find the report to have been carefully and skillfully prepared and its contents are fairly and objectively presented.

Earlier in these reasons I mentioned the proceedings in Georgia in which Taylor said that his mother and Williams had persuaded him to say (and perhaps to believe) that his father was mean and would hurt him. There is also the evidence that Taylor believed Williams to be his real father although he did not know why that was the case. It is abundantly clear that although the children were not keen on the supervised visits with their father and grandparents in Grand Cayman (which have occurred of course very recently) that attitude changed dramatically within a short period of time once the visits began.

I have no doubt that the mother and Williams did their best to alienate the children from their father before they left Georgia and to encourage the children to regard Williams as their real father. Neither defendant would admit that

charge but it is significant that there was no evidence of any attempt on their part to discourage the children either from regarding Williams as their father or regarding their father as a threat to them. I will not comment on the significance of this in terms of deciding on custody or access as that is for the Court in Georgia. I will limit my comment to the conclusion that these children show signs of indoctrination.

When this case was opened I was given to understand that I would hear from the children, probably in chambers. That did not occur. I have therefore not heard from them directly either as witnesses or in an interview in chambers. I am therefore not in a position to assess directly whether or not their opinions should have weight even if both clearly objected to returning to Georgia. The Social Inquiry Report does not establish that objection let alone establish a substantial reason for it.

As Butler-Sloss LJ said in *Re M* [1994] 1 FLR 390, at page 395:

> "The court has to be vigilant to ascertain and assess the reasons for the child not wishing to return to the parent living in the State of habitual residence. If the only objection is his preference to be with the abducting parent who is unwilling to return, this will be a highly relevant factor in the exercise of discretion. Otherwise an abducting parent would be likely to encourage the older child to remain and frustrate the purpose of the Act. The court has to assess the ability of the child to understand the situation and whether he has valid reasons for not returning."

See also *Re S* [1993] 2 All ER 683 where a child objected to being returned to Paris because she did not want to be educated in the French language.

I will return briefly to the judgment of Thorpe J in *N v N,* at page 114 where it was said:

> "If the order compelled her [the mother] to return to cohabitation, her bitter preference to forgo her children might be credible and decisive. But the order only compels her to return to reality, to the consequences of her flight, and to the responsibility of dealing with separation and its consequences either by mediation or by litigation in what is clearly the convenient forum."

I must say that the time has come for this mother to return to reality.

<u>CONCLUSION</u>

In all of the circumstances no ground for refusing the order sought has been established. Accordingly the orders sought in the summons should be made together with the costs order contemplated by the last paragraph of Article 26 which seems to contemplate that the costs are to be calculated on the indemnity basis.

UNDERTAKINGS

In his affidavit, the father acknowledged that in light of the length of time since the children's removal the transition from the mother's custody to his may be somewhat difficult. He therefore offered to give a number of undertakings. I will therefore make the order subject to the father's undertakings set forth in paragraphs 26 (i) (iii) (iv) and (v), (vi) and (vii) of his affidavit.

In addition I will make a further order so that there will be an immediate transfer of the control of the children to the parental grandparents and I will order that the defendants be restrained from interfering with that transfer in any way. That order and its ancillary provisions will be signed immediately. The ancillary provisions will be as follows:

- Emily and Taylor Weeks be delivered up to the parental grandparents forthwith.

- That the defendants (and everyone acting with knowledge of the order) shall not interfere with the delivery of the children and beginning now the defendants shall not approach within 100 yards of either child unless granted supervised access by the grandparents Lundy and Jeanette Weeks or the Social Services Department.

- That the defendant forthwith deliver the children's personal belongings to Social Services Department.

- That the wardship order will be terminated upon the children arriving in the USA.

- That the children's travel documents be delivered to the grandparents.

The remaining provisions of the formal order will be settled by me if not agreed to.

Dated March 17, 2003

Judge of the Grand Court