

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2026/0231

IN THE MATTER OF AN APPLICATION BY THE CHILD PROTECTION AUTHORITY FOR AN EMERGENCY CARE ORDER FOR THE MINOR, ZOE GIANNA MC PHERSON, PURSUANT TO SECTIONS 25(1) (A), (B), (E), 49 AND 56 (B) OF THE CHILD (PROTECTION AND ADOPTION) ACT CHAPTER 44A OF THE CONTINUOUS REVISED EDITION OF THE LAWS OF GRENADA, (AS AMENDED)

BETWEEN:

CHILD PROTECTION AUTHORITY

Applicant

and

**ELIZABETH MC PHERSON
SEBASTIAN GÜNTHER**

Respondents

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Nazim Burke together with Mr. Omari Thompson for the Applicant

Mr. Sasha Courtney instructed by Grenlaw Chambers with Mr. Anslem Clouden for the First Respondent

Mr. Brian Brandwein, Legal Attorney for the First Respondent in the United States of America

Ms. Linda Dolland for the Second Respondent

Mrs. Chevaughn Spencer-Joseph, Solicitor General for the Attorney General's Chambers

2026: May 28th

June 1st, 16th, 19th, 24th, 25th, 29th

July 6th.

JUDGMENT

- [1] **ACTIE, J.:** These proceedings were commenced by the Child Protection Authority (hereafter called “CPA”) seeking a Care Order pursuant to sections 25, 49 and 56 of the Child (Protection and Adoption) Act.
- [2] The Minor was abducted by her mother from Germany to the United States and thereafter to Grenada in breach of a court order in Germany giving the father the sole discretion to determine the residence of the Minor. The CPA was informed that there were outstanding Civil arrest warrants against the child’s mother in Germany and the United States of America. The CPA was contacted by International Social Service (hereafter called “the ISS”) Germany requesting assistance.
- [3] The child’s mother is a citizen of the United States of America, and the father is a German citizen. They are the unmarried parents of the 5-year-old Minor child, who was born in the United States of America on the 16th February 2021. Until the mother’s pregnancy, the parents lived together in Germany. Before the birth of the Minor, the mother decided to return to Florida USA where she lived with her mother. The Minor’s father also joined her and lived in the maternal grandmother’s household from May to August 2021. The mother and child remained in the USA and returned to Germany in November 2023 and lived with the child’s father until July 2024 and then moved to her own apartment with the Minor. In 2025, the mother decided to return to USA to take up employment and applied to the Hanover Court, Germany for an order to determine the right of residence for the Minor.
- [4] The Hanover Court surmised that the Minor has a good loving relationship with both parents especially her mother whom she has been with from birth. The court acknowledged that the mother was the main caregiver but that the child had a very close bond and regular contact with the father. The Hanover Court on 22nd June 2025, after weighing all the circumstances, ordered that the parents share joint custody except the right to determine residence was granted solely to the father. The order prohibited the mother from changing the residence of the child even temporarily in such a way that she will take the child abroad and a border restriction prohibiting her from taking the child outside of the border of the Federal Republic of Germany. The order was upheld by the court of appeal on 21st August 2025.
- [5] It is the evidence that the mother, in breach of the order, travelled out of Germany to the USA and then to Grenada. On 12th September 2025, the child’s father filed an ex parte motion in the Southern District

Court, Florida seeking the Minor's return to Germany pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act. The motion seeks an order that the mother remains in the Southern District of Florida pending the resolution of the action, and the relinquishment of the child's passport to the State's Marshall. A warrant of arrest was issued to hold the mother in custody until she purges her contempt and brings the child before the court.

- [6] The evidence establishes that the Minor is a child in need of care and protection within the meaning of Section 25 of the **Child Protection Act**, having regard to the mother's conduct in removing the child from her established environment, relocating her across multiple jurisdictions, disregarding lawful judicial processes, concealing her and exposing her to circumstances of instability and uncertainty likely to cause harm.

Whether the minor should be returned to Germany

- [7] The court is mindful that the pending application filed in the USA Court is made pursuant to the International Child Abduction (HCCH 1980 Child Abduction Convention). The ISS requested the assistance of the CPA in order for the minor to be repatriated to Germany.
- [8] Grenada is not yet a member of HCCH 1980 Child Abduction Convention, neither is there domestic legislation which seeks to protect children from wrongful removal and retention across international boundaries. However, the jurisprudence clearly confirms that this Court has jurisdiction, notwithstanding that Grenada is not a contracting State to the Hague Convention. The authorities are replete that there is no automatic rule requiring summary return. Rather, the authorities emphasize that the Court must undertake a careful welfare assessment to examine the practical realities of the proposed return and compare the capacity of the competing jurisdictions to resolve the issues affecting the child before making such an order.
- [9] The leading authority in the House of Lords decision in **Re J (A Child)**¹ where Baroness Hale gives much guidance on the *Hague Convention on the Civil Aspects of International Child Abduction* and the

¹ [2005] UKHL 40

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children. Both treaties were motivated by the belief that it is in the best interests of children for disputes about their future to be decided in their home countries, and that one parent should not be able to take a child from one country to another, either in the hope of obtaining a tactical advantage in the dispute, or to avoid the effects of an order made in the home country. Instead of deciding the dispute itself, therefore, the country to which the child was taken agreed that with very few exceptions it would either send the child back or enforce the order made in the home country. This necessarily meant that the receiving country might on occasion have to do something which was not in the best interests of the individual child involved. The States which became parties to these treaties accepted this disadvantage to some individual children for the sake of the greater advantage to children in general. Parents would be deterred from moving their children across borders without consent. States which sent other countries' children back could expect that other States would send their own children back in return. The obligations were mutual and reciprocal.

- [10] In relation to non-Hague Convention countries, Baroness Hale clarified the legal principles governing international child abduction and summary return to non-Hague Convention countries. She states that there is no presumption that a child should be returned merely because another country has previously exercised jurisdiction. At paragraph 22, it was stated that there is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it. The child's welfare remains the Court's paramount consideration when considering returning a child to another jurisdiction.
- [11] The court referred the parties to the High Court decision of Reifer J in **Pierides v Cole**². In that case the parties were a Cyprus National and British National respectively. The marriage broke down in 2012, and the parties divorced in 2013. The Court of Cyprus prohibited both parties from taking the children out of the jurisdiction of the Republic of Cyprus. The mother in contravention of the Order of the Court in Cyprus, and without the knowledge and consent the father left the Republic of Cyprus on the 20th December 2016 to Barbados and enrolled them as pupils, all before 12th January 2017, less than three (3) weeks after her departure from Cyprus.

² Suit No. 37 of 2017 (Barbados) (unreported)

- [12] The court in that case recognized that at the time Barbados was not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, and that Barbados had no reciprocal agreement with Cyprus with respect to the enforcement of orders made in either jurisdiction. The court was of the view that in the United Kingdom, the case would have been treated as a Hague Convention case, and characterized as a wrongful retention of the children, kidnapping or even abduction. The mother although trying to mask her location allowed the children daily telephone access to their father, as well as access by video conferencing and Skype before he verified their location and arrived in Barbados.
- [13] Reifer J. held that the circumstances formed part of an ill-conceived plan to disappear with the children in order to gain leverage or a tactical advantage in renegotiating the mother's access arrangements with her former husband. The welfare of the children had become a pawn in furtherance of that objective. The Respondent's conduct was designed to achieve the outcome preferred by the mother, rather than one selflessly determined to be in the children's best interests. In that case, the father had been the primary caregiver since November 2013, pursuant to orders of the Cyprus courts. He had moved into his parents' home, where his parents, his sister, and domestic help assisted with the children's care. In July 2016, he remarried, and his new wife became an important part of the children's care arrangements. The Court gave significant weight to the children's need for a meaningful relationship with both parents. A warrant had been issued for the mother's arrest, and she faced the possibility of incarceration. Having considered all relevant matters and the supporting authorities, the Court directed that the minor children be returned forthwith to Cyprus in the custody, care and control of their father.
- [14] The parties were directed to file submissions in respect of the outcome of the Barbados case which bears a stark reality to the case before this court.

Submissions of the first respondent

- [15] Mr. Sasha Courtney, counsel for the first respondent, submits that the authorities support a cautious, welfare-driven approach, rather than an immediate return based solely on the existence of foreign orders and asks that the Court carefully consider the pending Hague proceedings in Florida before making any order for the Minor's return to Germany.

- [16] Counsel states that the German proceedings have already concluded and determined the issue of residence. Appeals against those orders have been exhausted, with the second respondent now having the sole right to determine the Minor's place of residence. Consequently, if the first respondent and the Minor are returned directly to Germany, they are not returning so that the German Court may determine where the Minor should live. What now awaits the mother in Germany are the consequences of those completed proceedings, including the enforcement of existing orders and the outstanding arrest warrants.
- [17] Counsel argues that the very purpose of the Hague Convention is to provide a specialized legal framework through which allegations of international child abduction are determined. Germany and the United States are both contracting States to the Hague Convention. By becoming Contracting States, they have accepted that allegations of wrongful removal should ordinarily be determined through the specialized Hague process.
- [18] Counsel alleges that the second respondent elected to invoke that process, and both respondents are now represented by attorneys in Florida. The second respondent has unequivocally stated, both in her affidavits and through Counsel, that she is willing to: return immediately to Florida with the Minor, to submit to the jurisdiction of the United States District Court, to surrender passports if required, and to comply fully with every order made by that Court. She has even expressed her willingness for arrangements to be made through the United States Embassy to facilitate their safe return to Florida.
- [19] Counsel argues that a specialist court, exercising Hague Convention jurisdiction, is already seized of the precise issue presently confronting this Court. That forum was chosen by the father himself. In those circumstances, the first respondent respectfully submits that this Honourable Court should be slow to determine indirectly the very issue already before the United States Court.
- [20] Counsel is of the view that the **Pierides v Cole** in some regard, mirrors the facts of the case at bar, ultimately culminating with the return of a minor to Cyprus after that minor was unlawfully removed in circumstances where the mother was not the primary caregiver and there was a court order preventing such removal. He states that the decision borrows from Baroness Hale in **Re J (A Child)** and lists the

factors that this court ought to consider namely: the degree of connection of the child with each country, the length of time she has spent in each country, the questions of different legal concepts of welfare, the wishes and feelings of the child and the effect of the decision on the child's primary caregiver as this may impact the welfare of the child. Further, the central theme running throughout **Pierides** is that the Court was not applying the Hague Convention by analogy nor enforcing a foreign order as a matter of course. Rather, Reifer J. repeatedly emphasised that the Court was required to undertake its own independent welfare assessment.

- [21] Counsel avers that at paragraph 48, the learned Judge accepted that the removal of the children in breach of a foreign court order was an important consideration, but not the determining consideration. That principle is reinforced at paragraph 50, where the Court adopted the following statement: "This Court should not condone the flouting of orders of courts of other jurisdictions... in the last resort it is the best interests of the children that fall to be determined and the breach of a court order is only one consideration." At paragraph 99, adopting the reasoning of Baroness Hale in **Re J (A Child)**, the Court stated: "...Summary return should not be the automatic reaction..."
- [22] However, counsel avers that **Pierides v Cole** is readily distinguishable on both its facts and procedural posture as the children's welfare was driven by a number of factual considerations which are absent in the present case.
- [23] First, the children in **Pierides** had lived virtually their entire lives in Cyprus before their removal. They were born in Cyprus in 2010, remained there until December 2016, spoke the local language, attended school there and had established their social, educational and cultural lives within that jurisdiction. It was therefore unsurprising that Reifer J. regarded Cyprus as the country with which they had the closest and most enduring connection.
- [24] Counsel contends that the circumstances in this case at bar are materially different. The Minor was born in the United States, lived there until November 2023, resided in Germany for approximately one and a half years, and has now lived in Grenada for almost a year. Most of the Minor's life has therefore been spent outside Germany. Her primary language is English and, applying the common-sense

approach advocated by Baroness Hale in **Re J (A Child)**, it cannot properly be said that the Minor has spent her formative years in Germany.

[25] Secondly, in **Pierides**, the Cypriot Court had removed the mother as the children's primary caregiver as early as 2013. By the time the Barbadian proceedings commenced, the father had already assumed that role. The present case is entirely different as the mother has remained the Minor's primary caregiver throughout her life. Even during the period spent in Germany, the evidence establishes that the father never assumed day-to-day responsibility for the Minor's care.

[26] Thirdly, Reifer J. attached importance to the fact that the mother retained the ability to continue litigating in Cyprus and appeal if dissatisfied with the outcome. That consideration mirrors the observation of Baroness Hale in **Re J (A Child)**, that it is relevant to ask whether the parent alleged to have wrongfully removed the child will have a meaningful opportunity to be heard in the receiving jurisdiction.

[27] The appeal process in Germany has been exhausted. The issue of Minor's residence has already been finally determined. Consequently, the Minor will not be returning to Germany to litigate where she should reside; she will be returning to the enforcement of orders already made, together with the outstanding arrest warrants referred to in the evidence.

[28] Fourthly, the speed with which the proceedings were commenced in **Pierides** was itself an important consideration. The children were removed on 20th December 2016 and the father's application was filed in Barbados on 11th January 2017, less than three weeks later. In the present case, however, a considerable period has elapsed since the Minor left Germany. During that period, father commenced Hague Convention proceedings before the United States District Court, those proceedings remain active and the mother has retained counsel in Florida. The Minor has continued to establish her life in Grenada which has significantly altered the factual landscape.

Submissions of the second respondent

[29] Ms. Linda Dolland, counsel for the second respondent, submits that **Pierides** which is almost identical, or at the very least highly analogous to the present matter, was decided upon the correct welfare-paramountcy principles which govern this Court's inherent jurisdiction as *parens patriae*. Upon

materially the fact matrix that is now before this Court, the Barbadian Court ordered the summary return of the children to the jurisdiction of their habitual residence. **Pierides** is therefore of direct assistance to the Court, and supports the return of the Minor, Zoe, to Germany, her place of habitual residence.

- [30] Counsel contends that the father invoked the wardship and inherent jurisdiction of the Barbadian Court and sought the children's summary return to Cyprus. Prior to the children's removal from Cyprus, the Cypriot Court had been extensively involved in the children's affairs; there had been several hearings, welfare involvement, reporting, and a Consent Order. The mother resisted return on the basis that she feared she would not be treated fairly in Cyprus, that she had safety concerns, and that an arrest warrant had been issued against her there such that she faced possible incarceration if she returned.
- [31] Reifer J. applied the welfare principle as the first and paramount consideration and adopted the framework of Baroness Hale in **Re J (A Child)**³. Notwithstanding the mother's fears and the outstanding warrant, the Court ordered the summary return of the children to Cyprus.
- [32] In **Pierides**, the mother allowed the children daily telephone access to their father, as well as access by video conferencing by Skype. In the instant case, the first respondent cut off communication with between the Minor and the second respondent. Reifer J. applied the factors enumerated by Baroness Hale in **Re J (A Child)** namely the degree of the child's connection with each country; the length of time spent in each; whether the foreign court applies acceptable concepts of welfare; the child's wishes and feelings, needs and the capacity of the adults to meet them, together with the effect of change; and the effect of the decision upon the primary caregiver.
- [33] Counsel argues that the degree of connection to Germany has previously been detailed (nationality, home, school, grandparents, friends, language, and environment). In contrast, the Minor has spent a few months in Grenada (September to May), and, with the exception of her mother, had no connection or familiarity with anyone here. Notwithstanding the mother's indication to the German Courts of travelling to Florida for work, and to this Court that she travelled for a funeral, she then left Florida after only two months and came to Grenada, after proceedings had been commenced against her in Florida.

³ [2005] UKHL 40

The Minor's links to Florida are the weakest of any jurisdiction in this case. Though born in the United States, she left it as an infant, made her home and schooling in Germany, and was present in Florida only as a brief and unlawful waypoint during her removal. So on points of nationality, language, residence, schooling and culture, Florida is the forum to which she is least connected, and the first respondent's proposal to route her return through it cannot be justified on welfare grounds.

[34] Counsel alleges that Germany plainly applies welfare principles acceptable to this Court as the detailed order of the local Hanover Court of 22nd June 2025 illustrates the clear considerations of that Court in coming to its determination with respect to where the Minor should reside and expressly states that "in cases of conflicting interest, the child's interest takes precedence" and "the required balancing must always be guided first and foremost by the child's welfare". It is a Hague Convention case which is focused only on the question of the Minor's return to Germany, and will apply that Convention to its deliberations. The Minor is five years of age and her expressed preference, while it may be noted, can carry little determinative weight at that age, particularly where for months she has been in the sole environment associated care and control of the abducting parent who admittedly cut contact with the left behind parent. This notwithstanding, the report of the CPA clearly states that the Minor's "relationship with her father is characterized by warmth, physical affection and active shared engagement."

[35] Counsel submits it is the second respondent's evidence that he spent considerable time with the Minor prior to her unlawful removal from Germany, first living together from November 2023 to July 2024, then with frequent visitation until June 2025. Additionally, through the mechanism set out in **Pierides**, that is to say, a return supported by undertakings and a defined contact schedule, which preserves rather than severs the first respondent's relationship with the Minor, the effect of a return to Germany on the mother may be limited.

The Court's analysis

[36] In all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child and it is in its best interests to do so. Baroness Hale of Richmond

cautioned against importing Hague Convention principles by analogy into cases where the Convention does not apply. At paragraph 30:

“...that there should be a ‘strong presumption’ that it is ‘highly likely’ to be in the best interests of a child subject to unauthorised removal or retention to be returned to his country of habitual residence so that any issues which remain can be decided in the courts there”.

[37] The House of Lords then cautioned that approach. They stated thus:

“That approach is open to a number of objections. It would come so close to applying the Hague convention principles by analogy that it would be indistinguishable from practice. It relies upon the Hague Convention concepts of ‘habitual residence’, ‘unauthorised removal’ and ‘retention’; it then gives no indication of the sort of circumstances in which this “strong presumption” might be rebutted...different approaches have been taken in different countries to the interpretation of the vital concept of habitual residence...”

[38] In deciding what is in the best interest of the child the court is required to take all the circumstances in the round. In this case, this court is placed in a very difficult situation in this balancing exercise which is required to be undertaken to address whether the minor should be returned to Germany or the USA to pursue the ongoing proceedings. The welfare principle is the paramount consideration; all other factors are secondary. The Court should not apportion blame between the parents, regardless of any alleged misconduct.

[39] In **McKee v McKee**⁴, the proposition that in circumstances such as this, where an order of a foreign court exists, it need not be blindly followed. An independent judgment on the question must be formed, even though in doing so, it will permit the Court to give proper weight to the foreign judgment, but what is the proper weight will depend on the circumstances of each case.

[40] Buckley LJ in **Re L (minors)**⁵ stated to the effect that the action of kidnapping is just one of the factors to be taken into account by the Court and not the determining factor; each case must be determined on its particular circumstances and the welfare of the infant must always be the paramount consideration.

⁴ [1951] 1 All ER 942

⁵ [1974] 1 All ER 913

- [41] By all accounts, the mother has been the primary caregiver of the Minor, a five-year-old girl. The Minor speaks fluent English, has lived in Grenada since September 2025, and attends school in an English-speaking environment. The Court interviewed the minor, who clearly expressed love for both parents but was reluctant to say whether she wished to return to Germany or to the United States. The CPA assessment report confirms that both parents show love and affection for the minor and maintain a cordial relationship when conducting joint visitation.
- [42] The mother states that she always wanted the minor and father to have a meaningful relationship which is the reason she returned to Germany. However, she states there were repeated incidents of intimidation, emotional abuse, aggressive conduct and conflict between father and herself. She states that she became increasingly concerned about the minor's emotional wellbeing and welfare while in Germany as the minor would always be upset, withdrawn or emotionally distressed.
- [43] The mother states that she did not leave Germany out of disregard for the Court or the law. She states that her aunt died 24th June 2025. The court notes communication between the parties in relation to the said death of the aunt. The mother states that she was not personally served with any proceedings or documents in the United States relating to the Minor and that she only became aware when the proceedings had allegedly been commenced in Florida after the CPA became involved in Grenada and these proceedings were filed. This is evidenced in the orders made in the US court where the hearings had to be adjourned due to lack of service.
- [44] Further, the mother states she did not immediately cut off communication between the minor and the father after leaving Germany. She states that telephone communication between herself and the father continued for a period of time, but she became increasingly concerned about the emotional impact the calls were having on the Minor. She states that she eventually travelled to Grenada because she has family support here which would create a safe and stable environment for them both..
- [45] The House of Lords in **Re J (A Child)** stated that the length of time that the minor has stayed in each particular country may also be relevant. Baroness Hale observed that whilst a summary return may in

some cases promote welfare, such a return is justified only because it serves the welfare of the individual child and not because any international obligation requires it.

[46] This court is faced with a situation where the minor has now, to some degree, established a life in Grenada. Counsel for the mother belatedly informed the court that both the mother and minor have obtained Grenada citizenship. However, the applicant has asked that she be permitted to return together with the minor to the USA, subject to such conditions as this court considers appropriate, so that any outstanding legal issues can be addressed there in an orderly and supervised manner.

[47] Each case turns on its own circumstances, so that a court that conducts a careful analysis of the facts and balances the relevant factors cannot be faulted. It has been held that a parent who deliberately removes a child from contact with the other parent, where the child's welfare does not make such action necessary or reasonable, will generally be regarded as having acted contrary to the child's welfare. The concealment of the minor's whereabouts is also a relevant consideration and weighs against the mother in the present case.

[48] As it stands, the parents have joint custody of the minor with the father having the sole right to determine the child's residence. The father has expressed, without prompting any action, his intention to request the withdrawal of both German and the European warrants of arrest. A report from the Hanover court states that the warrants will only be withdrawn if the father returns with the minor to Germany. The Hanover Public Prosecutor's Office in Germany is prepared to apply to the competent court to lift the national and international arrest warrants against the first respondent and to remove the related search measures once it is officially notified that the alleged child abduction has ended and that the minor has returned to Germany. Such notification will be made when the father returns to Germany with the child and reports to a police station. It is also evidence that the father has applied for sole custody for the minor.

[49] The House of Lords at paragraph 40 of **Re J (A Child)** stated:

"The effect of the decision upon the child's primary carer must also be relevant, although again not decisive. A child who is cared for by nannies or sent away to boarding school may move between households, and indeed countries, much more readily than a child who has always

looked to one parent for his everyday needs, for warmth, for food, clean clothing, getting to school, help with homework and the like. The courts are understandably reluctant to allow a primary carer to profit from her own wrong by refusing to return with her child if the child is ordered to return. It will often be entirely reasonable to expect that a mother who took the risk of uprooting the child will return with him once it is ordered that he should go home. But it will sometimes be necessary to consider whether it is indeed reasonable to expect her to return, the sincerity of her declared refusal to do so, and what is to happen to the children if she does not.”

- [50] The Court notes the ongoing proceedings in the United States. In those proceedings, the father filed an ex parte motion under the Hague Convention seeking injunctive relief, a warrant for physical custody of the Minor, a temporary restraining order, and an order requiring the mother and child to remain in the Southern District of Florida pending determination of the matter. The evidence also indicates that the father has since filed an application for sole custody in Germany.
- [51] The Court accepts that, by commencing Hague Convention proceedings in the United States District Court for the Southern District of Florida, the second respondent submitted to that Court’s jurisdiction. Those proceedings remain pending. The German Court has confirmed the father’s right to determine the minor’s place of residence, although custody remains joint. The Court also notes that the present predicament arose from the first respondent’s flagrant breach of court orders, which has placed the Minor in a precarious position and led to her being concealed from her father. The Court accepts that these circumstances have had, and may continue to have, a psychological effect on the Minor.
- [52] The Court accepts the evidence that the first respondent was outside the jurisdiction when the action was filed. The Court notes the order dated 21st November 2025, which directed service by email and at her last known address, as well as efforts to contact her by telephone to advise her of the scheduled hearing in December 2025. The matter was adjourned to facilitate service on the first respondent.
- [53] After proof of service was established, a warrant was issued for civil contempt. The evidence indicates that an application has since been filed to lift the warrant, so that the first respondent may return to the United States to purge her contempt and defend the pending proceedings.
- [54] The evidence also shows that the mother has provided the Minor’s continuous day-to-day care. The authorities make clear that, while the welfare of the child is the paramount consideration, the Court must assess that welfare in light of all the circumstances. Having regard to the Minor’s age, her gender,

her lifelong care by her mother, and the substantial bond between them, the Court is not satisfied that it is presently in the Minor's best interests to be returned to Germany. The Court also takes into account the father's pending application for sole custody in Germany and the outstanding warrants of arrest. If those warrants were executed upon the mother's arrival in Europe, the mother could be removed from the minor's life, causing further emotional distress to the child. Accordingly, the court is of the view that taking everything into consideration, it is in the best interest of the Minor for the mother to take the Minor back to the USA for the continuation of the pending hearing in South Florida and so orders.

[55] For all the above reasons it is ordered and directed as follows:

1. Application by the CPA for the care order is granted as prayed.
2. The first respondent shall surrender all travel documents for herself and the Minor to the CPA, which will assist the first respondent to make immediate arrangements to travel to the USA with the Minor for the continuation of the proceedings in South Florida.
3. The CPA with the assistance of the Hon. Solicitor General's Chambers shall assist in making all the necessary arrangements through the US consulate, if necessary.
4. Leave is granted for the US legal counsel for the parties to accompany their respective client or to make any necessary arrangement to facilitate the first respondent's and Minor's security clearance and safe entry on arrival in the USA.
5. The Minor shall remain in foster care until all the travel arrangements have been concluded.
6. The CPA shall make immediate arrangements for the minor, and the Solicitor General shall contact the respective consulates to obtain advice on the proper procedure for addressing the issues arising from the application filed by the CPA and the travel arrangements.

[56] The court wishes to thank the office of the Solicitor General and counsel for their submissions and assistance in this matter.

Agnes Actie
High Court Judge

By the Court

Registrar