Neutral Citation Number: [2013] EWHC 4017 (Fam)

Case No: FD12P01563

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/12/2013

Before :

MR JUSTICE MOSTYN

- -

Between :

C I — **Applicant**

- and -

V G — **Respondent**

- -
- -

Miss Victoria Miller (instructed by **Stowe Family Law**)
for the **Applicant**
Mr David Williams QC (instructed by **The International Family Law Group LLP**)
for the **Respondent**

Hearing dates: 13 December 2013

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Judgment

This judgment was handed down in private on 13 December 2013. It consists of 48 paragraphs and has been signed and dated by the judge. The judge gives leave for it to be reported in this anonymised form as "Re G (A child)".

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by his or her true name or actual location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mr Justice Mostyn :

1. If the subject matter of this case were a ship or a bond or a contract it would be very interesting indeed involving proceedings in three jurisdictions (England and Wales, Italy and Finland) and questions of interpretation of the governing European Regulation, decisions of the Court of Justice of the European Union, and domestic decisions. But the subject matter of the case is a small five year old boy called G. It is

pitiful (in the true sense of that word) that such acute and complex legal controversy should rage over his future and I hope that even now sense will prevail and his parents will agree reasonable arrangements for him. At the last hearing I was told that the parents had agreed to mediate and I express the hope that they will yet go down that path.

2. The father is Italian and was born on 5 May 1971. He is a Project Manager and lives (so he claims) in Barberino, Italy.

3. The mother is Italian and was born on 16 July 1985. She is a Project Planner and lives temporarily in Finland.

4. The parties met in London and began a relationship and lived in Italy and England. G was born in Italy on 19 September 2008 and the parties married in Italy on 18 December 2008. The parties moved to England in January 2009 but the marriage failed and they separated in June 2010. Divorce proceedings took place in the Canterbury County Court and decree absolute was pronounced on 18 July 2012.

5. On 10 July 2012 the mother issued two applications under the Children Act 1989 seeking, first, a residence order and, second, leave to remove G "temporarily" from the jurisdiction to Qatar for 14 months from July 2012 to September 2013. On 18 July 2012 the mother issued a repeat application for leave to remove G temporarily from the jurisdiction (the reason for this is obscure) and an application for a prohibited steps order preventing the father from removing G from the mother's London home save for his scheduled periods of contact every alternate week-end.

6. In relation to that latter application the mother's solicitor made an ex parte application for relief on the same day, 18 July 2012. The application was granted and an order was made forbidding the father from removing G from his (G's) home in England save for the purposes of contact on alternate weekends. The father has never applied to vary that order, nor has he sought to appeal it. I take the view that the order of 18 July 2012 completely and finally dealt with the mother's latter application for a prohibited steps order, and, in any event, as shall be seen, the agreement later reached by the parties allowing the mother to take G overseas for a finite period entirely overreached or superseded the mischief that the mother sought to address namely the unilateral removal of G from his London home by the father.

7. The father opposed the mother's application for temporary leave to remove and for residence and made a cross-application for a residence order.

8. On 1 August 2012 the matter was again before the court and on that day the court accepted an undocumented application by the father for a residence order. Therefore at that point there were three live applications before the court:

   i) The mother's application to remove G overseas for a finite period;

   ii) The mother's application for residence;

   iii) The father's application for residence.

9. Curiously the order of 1 August 2012 as well as the case management order of 7 August 2012 provided only that applications (i) and (iii) were to be listed for final hearing. The latter order fixed the final hearing date for 18 October 2012. I take the view that the mother's application for residence was also by necessary implication listed for final hearing. It would be absurd to take any other view and in fairness Miss Miller, counsel for the mother, does not seek to argue otherwise.

10. In September 2012 the parents reached an agreement between them regarding arrangements for G. As a result a Consent Order was made on their applications by District Judge Aitken on 18 September 2012. That order was made on the papers and without attendance by the parties or their representatives. It included the following provisions:

> "And upon it further being agreed that it is the Applicant's intention as at this date that upon the Applicant's return to the jurisdiction in September 2013 care arrangements [for G are] to be on alternate week basis between each party.
>
> 1. The Applicant be granted temporary leave to remove G from the legal jurisdiction of England and Wales to Qatar until 30 September 2013.
>
> 2 G is to be returned to the legal jurisdiction of England and Wales by the Applicant no later than 1 October 2013.
>
> 3. There be Shared Residence Order to the Applicant and the Respondent."

11. The first legal question which I have to decide is whether this order is a "final order" or a "provisional order" for the purposes of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, otherwise known as Brussels II revised or B2R.

12. B2R repealed and replaced Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. Under that Regulation issues of parental responsibility were confined to those arising between married people only. Article 3 of that Regulation provided:

> **Parental responsibility**
>
> 1. The Courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in that Member State.
>
> 2. Where the child is not habitually resident in the Member State referred to in paragraph 1, the courts of that State shall

> have jurisdiction in such a matter if the child is habitually resident in one of the Member States and:
>
> > (a) at least one of the spouses has parental responsibility in relation to the child;
> >
> > and
> >
> > (b) the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.
>
> 3. The jurisdiction conferred by paragraphs 1 and 2 shall cease as soon as:
>
> > (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;
> >
> > or
> >
> > (b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;
> >
> > or
> >
> > (c) the proceedings referred to in (a) and (b) have come to an end for another reason.

13. It can be seen that jurisdiction in a matter concerning parental responsibility would come to an end when the judgment became final.

14. Obviously a parental responsibility judgment is likely, almost invariably one would have thought, to make provision for future events and future conduct (in contrast, perhaps, to many commercial judgments). The same can be said of a maintenance judgment. The fact that aspects of the judgment are executory, i.e. contain obligations yet to be performed, does not mean that the judgment is not final. This was the view of Sumner J in *Re A (Foreign Contact Order: Jurisdiction)* [2003] EWHC 2911 (Fam) [2004] 1 FLR 641, with which I fully agree. There the mother, an English national, and the father, a Spanish national, were married and lived in Spain, where their son was born. They divorced in 1999 and on 4 June 2001 a Spanish court gave the mother permission to live with the daughter in England, with fortnightly contact to the father alternating between Spain and England. The father appealed the order and, because the mother was not arranging for the child to go to Spain each month, made a series of applications to enforce the order. On 2 October 2001 the mother applied in the Principal Registry in London for an order to vary the Spanish contact arrangements, but her application was rejected on the grounds that the proceedings in Spain were not final as the father's appeal had not yet been determined. On 7 June 2002 the Spanish court rejected the father's appeal against the order of 4 June 2001. Approximately 1 year later, in May 2003, the father again applied for enforcement of

the original order and sought residence with contact to the mother. The two applications before the English court were the mother's stayed application of 2 October 2001 and a second defined contact application of 8 May 2003.

15. Sumner J held:

> "[55] Having considered the various arguments, I am satisfied that, on a proper construction of Brussels II, subsequent applications to enforce the terms of a final order do not alter its status as a final order. There are a number of reasons for this.
>
> [56] First, if Miss Ramsahoye's construction is correct, the concept of a final judgment is one that is suspended. It is only a final judgment provided that no further applications are made under it within the time frame that she envisages. It could be, she says, up to 5 years.
>
> [57] On her argument, until that time is reached the final order is not final. That gives the concept of a final judgment a degree of uncertainty and unreality which I am satisfied was never intended. It also provides for a form of continuous jurisdiction beyond what would otherwise be a final order when it is plain that jurisdiction ceases after a final judgment.
>
> [58] Secondly, Brussels II contemplates that there may be further proceedings in relation to the children after final judgment. That could arise as here because one parent wishes to change the residence of a child, or, for instance, to enforce a term which may have been obeyed for a time and then broken. That does not alter the status of the final order.
>
> [59] There is no bar on such proceedings. What Brussels II provides is the time during which the Member State which made the first order should retain jurisdiction. It is only until such time as that first order or a subsequent one becomes a final judgment. Thereafter jurisdiction in an appropriate case passes to another Member State who can enforce that final judgment."

16. B2R expanded the jurisdictional scheme to all children, whether or not their parents were married. The relevant parts of the old Article 3 were re-expressed in Article 12 of B2R, which provides:

> **Prorogation of jurisdiction**
>
> 1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

> (a) at least one of the spouses has parental responsibility in relation to the child;
>
> and
>
> (b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

> (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;
>
> (b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;
>
> (c) the proceedings referred to in (a) and (b) have come to an end for another reason.

…

17. I myself considered this provision in my decision of *Re ML and AL (Children) (Contact order: Brussels II Regulation)* (No 2) [2007] 1 FCR 496. There the mother had removed the children from England to Austria and the father sought contact. Under art 12 of B2R the parties prorogued jurisdiction in favour of the English court by virtue of an express agreement contained in a judge's order. That agreement vested in the English court exclusive jurisdiction until the final determination of the father's contact application. The English court had made an order for supervised contact which the Austrian court, purporting to act under art 20 of B2R had suspended, relying on psychiatric evidence critical of the father which was later found by the English court to be insubstantial and incapable of supplying a reason for suspending the contact.

18. In my judgment I stated:

> [18] … I have explained in my previous judgments how, under art 12, the parties here prorogued jurisdiction in favour of this court by virtue of the express agreement contained in the order of Wilson J dated 28 July 2005. That agreement vested in this court exclusive jurisdiction until the final determination of the father's contact application. By virtue of art 12(2)(b), the jurisdiction conferred on me by art 12 will come to an end when I give a final judgment on the father's contact application.

> Final judgment in that context means an order for contact which is not an interim order for contact.
>
> [19] Were I to make a final judgment in relation to the father's contact application, then my jurisdiction will end and, the children being habitually resident in Austria, the Austrian courts would have sole jurisdiction in respect of any future applications. But there would nonetheless be, if I were to make a final order for contact, an order capable of being enforced under art 41 and, more importantly, art 48 would be available for the Austrian courts to make the practical arrangements for organising the exercise of the rights of access if this court has not made the necessary arrangements in its order or judgment. Article 48 expressly provides the obligation on the second court to respect the essential elements of the judgment."

19. Miss Miller has valiantly argued that the terms of this particular order are so hopelessly ambiguous and so redolent in its language of temporary, interim arrangements that it would be unreal to characterise it as having finally disposed of the applications before the court. She relied on the decision of the CJEU in *Povse v Alpago* [2010] 2 FLR 1343. There the unmarried couple lived in Italy, and had joint custody of the child under the Italian Civil Code. Following the couple's separation the father obtained a provisional prohibition on the mother leaving Italy with the child; the mother nonetheless took the child to live in Austria in breach of the order. At the next hearing, the Italian court revoked the prohibition on the mother leaving Italy, provisionally awarded joint custody to both parents, and stated that the child could reside in Austria pending the final judgment. The father's Hague Convention proceedings in Austria were dismissed. However, about a year later, in the context of a report by the social worker indicating that the child's access to the father was now minimal and insufficient, and in the light of what the Italian court regarded as the mother's failure to comply with the access schedule drawn up by the social worker, the Italian court ordered the immediate return of the child to Italy. The Italian court explicitly concluded that it had retained jurisdiction over the child, and issued a certificate under Art 42 of Brussels II Revised. In the meantime, the Austrian court had concluded, without giving the father an opportunity to be heard on this issue, that it had jurisdiction in the case, and had gone on to award provisional custody of the child to the mother, serving the interim order on the father without informing him of his right to refuse acceptance of service and without a translation. The father's application to a different Austrian court for enforcement of the Italian return order was initially dismissed, but the father's appeal was allowed, and the child's return to Italy was ordered. On the mother's subsequent appeal, the Austrian court asked the European Court of Justice for preliminary rulings.

20. The CJEU held:

> "[46] Therefore, in the light of the central role allocated by the Regulation to the court which has jurisdiction and the principle that its jurisdiction should be retained, it must be held that a 'judgment on custody that does not entail the return of the child' is a final judgment, adopted on the basis of full consideration of all the relevant factors, in which the court with

> jurisdiction rules on arrangements for the custody of a child who is no longer subject to other administrative or judicial decisions. The fact that this ruling on the question of custody of the child provides for a review or reconsideration at regular intervals, within a specific period or in certain circumstances, of the issue of custody of the child does not mean that the judgment is not final. "

21. Initially Miss Miller argued that the order in this case of 18 September 2012, giving the mother permission to take G overseas for a finite period and requiring his return was a judgment on custody that does entail the return of the child and therefore the order was not final. But this is to misunderstand what the CJEU was saying. The CJEU was plainly addressing the situation where in the course of proceedings the Italian court had permitted the mother to take the child to Austria for a finite period as an interim measure pending the final judgment. Later, the Italian court required the child to be returned to Italy. Plainly that was not a final judgment not least because the proceedings were obviously not concluded.

22. Miss Miller further relied on the principle of *perpetuatio fori* as expressed by Thorpe LJ in *Mercredi v Chaffe* 272 [2011] 2 FLR 515 where he stated at para 67:

> "On the one hand it can be said that the general rule must be that jurisdiction is established in the State of the habitual residence of the child at the time the court is seised. Once seised that court retains jurisdiction even if the child changes habitual residence during the course of the proceedings. This is the principle of perpetuatio fori. It is a practical rule to prevent one party from aborting proceedings by a tactical move during their course. Thus it can be argued that the issue of Children Act proceedings fixed jurisdiction in London until the termination of the proceedings."

23. Again, it must be emphasised that that dictum was addressing the situation where changes occur during the course of the proceedings, which begs the very question which I have to answer which is whether the proceedings here have run their course.

24. In fairness to Miss Miller by the time she came to make her submissions in reply she accepted that the order of 18 September 2012 was a final order in respect of the applications by the parents respectively for residence orders and the application by the mother for permission to take G overseas for a finite period. However, she continued to maintain that the order still provided for unfinished business inasmuch as the mother's application for a prohibited steps order was un-adjudicated. I have dealt with this aspect above. The order of 18 July 2012 dealt with that application. While the mother was overseas the order would be overreached or superseded and would in effect go into hibernation. When the mother returned with G, as she was obliged to do by 1 October 2013, that order would revive and would remain in effect until varied or discharged.

25. In my judgment the order of 18 September 2012 was a final order concerning matters of parental responsibility within the meaning and understanding of B2R. It cannot be

argued that from that point onwards the English court remained seised of matters of parental responsibility.

26. I now return to the chronology. There is a very significant difference in the parties' accounts as to the events and intentions of each in the period from September 2012 – July 2013. It is the father's case that by October 2012 the parties' relationship had resumed. The father's employer wanted him to return to be based in Italy. The mother decided she would give up work in Qatar and join the father in Italy. To that end she obtained work in Italy and resigned from her job in Qatar. From that point the father says the parties intended to make their home in Italy. The mother strenuously disputes this version of events. She says there was no reconciliation and that her sojourn in Italy was only temporary and that she at all times intended to return to London. In fact in the events which occurred she found new employment in Finland.

27. On 12 July 2013 the mother claims that the father abducted G having removed him from school for weekend contact but thereafter wrongfully retaining him until 22 August 2013. Thus on 26 July 2013 the mother launched an application in the Italian court for a location and recovery order. That application is not inconsistent, necessarily, with the mother's case that at the relevant time the English court retained jurisdiction by virtue of the order of 18 September 2012 because article 20 of B2R allows another regulation court to make provisional, including protective, measures in urgent cases. However, on 12 August 2013 the mother applied to the Italian court for an order seeking permission to relocate G to Finland. This is very difficult to square with her proclaimed case that England retained sole jurisdiction over G; it is also difficult to characterise this application as being provisional or protective.

28. On 17 August 2013 the Juvenile Court of Florence ordered the father to return G to the mother but dismissed her application for relocation to Finland. It specifically stated that its order was an "interim measure until a court of competent jurisdiction decides otherwise".

29. On 24 August 2013 the father applied to the Juvenile Court of Florence for orders seeking assistance in locating G; an order preventing the mother from removing G from Italy; and for the mother's residence to be established in Italy. It would seem that the order provided for service by the police but that no actual service was achieved. On 31 August 2013 the Juvenile Court in Florence held a hearing on the father's application. The carabinieri had attempted to serve the mother at her address but had been unable to locate her.

30. On 11 September 2013 the mother applied to this court to vary the order of 18 September 2012 to permit her to remove G to Finland for a finite period. The matter came before me the following day, when the father was represented and where he revealed to the mother the steps that he had taken in Italy. I took the view, wrongly I now have concluded, that this court was seised of matters of parental responsibility by virtue of the order of 18 September 2012 and I granted injunctions preventing the father from litigating further in Italy or from removing G from the mother's care and made an order permitting her to take G to Finland in the meantime. I repeated those orders on 25 October 2012 pending this hearing.

31. Meanwhile on 17 October 2013 the Italian court delivered its judgment in respect of the hearing held on 31 August 2013. It declined to adjudicate on the matter without

hearing the mother in circumstances where "the records do not show that she has been formally notified of the application". The matter was adjourned to 18 December 2013. A memorandum from the Italian Central Authority dated 21 October 2013 explains that among other things the court in Florence will decide the issue of lis pendens, a topic to which I now turn.

32. By article 19(2) of B2R it is provided:

> "Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established."

33. When is a court seised? Article 16 provides the answer. This states:

> "A court shall be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent"

34. Miss Miller argues that I should decide that the Italian court is not first seised because the mother was not served with the father's Italian proceedings until after she had issued her application in this court on 11 September 2013. There are a number of problems with this submission. First there is no expert evidence before the court that tells me that in Italy the court there will not be seised until service has been achieved. Miss Miller fairly reminds me that service is not a requirement of seisin here and of course it is trite law that in the absence of expert evidence of foreign law I assume that the foreign law is the same as ours. The second problem is that the Italian court was undoubtedly seised of the mother's application to relocate G to Finland, although questions arise as to whether that application still has any continuing existence, or whether it was in fact, contrary to first impression, an application made under article 20.

35. In *Purrucker v Vallés Pérez* (No 2) [2012] 1 FLR 925 the German mother and Spanish father were living together in Spain when their twin children were born prematurely. The parents' relationship deteriorated and the mother wanted to return to Germany with the children. The girl had complications following the birth and had to remain in hospital for 6 months after the boy had been discharged. The parents signed an agreement before a notary giving them joint custody but allowing the mother to return to Germany, initially with the boy, and the girl was to follow once she was allowed to leave hospital. The mother took the boy to Germany and the father issued proceedings in the Spanish court for provisional measures in respect of both children. The court awarded the father sole custody rights and ordered the mother to return the boy to Spain. The father applied to the German court for enforcement of the Spanish order. The German court sought a preliminary ruling from the Court of Justice of the European Union as to whether provisional measures concerning rights to child custody were to be enforced in the same way as final orders. The CJEU held:

> "[75] Having regard to the case-law mentioned in para [68] of this judgment, and more particularly, *Gantner Electronic*, the crucial issue, therefore, is whether the applicant's claim before the court first seised is directed to obtaining a judgment from that court as the court with jurisdiction as to the substance of the matter within the meaning of Regulation no 2201/2003.
>
> [76] By making a comparison of the applicant's claim before that court and the claim of the applicant before the court second seised, the latter court will be able to assess whether or not there is lis pendens.
>
> [77] If it is manifestly clear from the object of the action brought before the court first seised and from the account of the facts set out therein that that action contains no ground on which the court seised by that action could justifiably claim jurisdiction as to the substance of the matter within the meaning of Regulation no 2201/2003, the court second seised will be able to hold that there is no lis pendens.
>
> [78] On the other hand, if it is evident from the applicant's claims or from the factual background contained in the action brought before the court first seised that, even where the action is directed to obtaining provisional measures, the action has been brought before a court which, prima facie, might have jurisdiction as to the substance of the matter, the court second seised must stay its proceedings in accordance with Art 19(2) of Regulation no 2201/2003 until such time as the jurisdiction of the court first seised is established. According to circumstances and if the conditions of Art 20 of the regulation are satisfied, the court second seised may take such provisional measures as are necessary in the interests of the child." (Emphasis added)

36. This decision follows and mirrors equivalent decisions in the civil sphere: see *Gasser (Erich) GmbH v MISAT Srl* (Case C-116/02) [2003] ECR I-14693, [2005] QB 1, [2004] 3 WLR 1070, [2005] All ER (EC) 517, [2005] 1 All ER (Comm) 538, ECJ, and the cases cited therein.

37. It seems obvious to me that the Italian court here might have jurisdiction as to the substance of the matter and further that it might be properly seised for the purposes of article 16. In such circumstances, notwithstanding that I might personally think that the father would struggle to establish jurisdiction in Italy, it must be for the Italian court to determine by reference to its own national rules whether it is seised of the issues of parental responsibility put before it by the parents and if so to determine the question of jurisdiction. Fortunately there is a hearing in only five days time when those very issues may be decided. I cannot say here that it is manifestly clear from the object of the action brought before the Italian court first seised and from the account of the facts set out that that action contains no ground on which Italian court seised by that action could justifiably claim jurisdiction as to the substance of the matter

38. Therefore pursuant to my duty under article 19(2) I stay these proceedings until the Italian court has determined whether it is first seised and if so whether it has jurisdiction. The existing anti-suit injunction will be discharged.

39. I would mention that on 7 November 2013 the father commenced proceedings in Finland under the 1980 Hague Convention on the International Aspects of Child Abduction, claiming that G was wrongfully taken there from Italy. Obviously in order for that application to succeed it will have to be shown that G was at the relevant time habitually resident in Italy and this is the very basis of jurisdiction that will have to be proved in the Italian court. Obviously I am expecting (but not ordering) that no steps will be taken in Helsinki by the court there until the Italian court has determined that very question.

40. Finally, I would draw attention to the problems that have arisen from the ambiguous drafting of the order of 18 September 2012. In a case with international features it is very important that the order should make it clear on its face whether it is a final order or whether it is an interim or provisional order and that the proceedings have not run their course.

LATER

41. Following the delivery of this judgment I made orders pursuant to Article 20 of B2R in the following terms:

> "1. The Mother has permission to remove the child, G, from the jurisdiction of England and Wales to Finland until 18 December 2013;
>
> 2. The mother shall take G to Italy by or on 18 December 2013 unless prior to 18 December 2013 she obtains an order from the Italian Court permitting her not to take him for the hearing on 18 December 2013;
>
> 3. The mother shall not remove G to another country save for the purposes of returning him to Finland on 14 December 2013 and taking him to Italy on 18 December 2013 save in compliance with any further order of the Italian, Finnish or English Courts"

42. I also refused the mother permission to appeal considering that she had shown no reasonable prospects of success of an appeal.

43. On Saturday 14 December 2013 Ms Miller sent an email which I did not see until Monday 16 December 2013. In that email she stated:

> "In the circumstances I had no opportunity to consider with care your judgment until today. I am now concerned that my primary submission has not been addressed in your lordships (sic) judgment.

> In paragraph 19 you have summarised my submission in terms of ambiguity but my principle (sic) submission was that an order for temporary leave to remove cannot be termed final and that is the point that I intend to ask the Court of Appeal to consider. It seems to me that authority requires me to invite your lordship to address that submission before filing an Appellants (sic) Notice. However, given the imminence of the hearing in Florence I feel that I must protect my client's position by filing an Appellants (sic) Notice to be on the safe side."

44. This is a plain attempt to ask the court to reconsider its judgment. This is a phenomenon which is becoming increasingly common and which in my opinion should be halted in its tracks. Applications for reconsideration or explication should only be made where it is considered that there has been plain error or great ambiguity or a change of circumstances.

45. Plainly my judgment dealt with Ms Miller's principal submission. It pointed out that the mother had applied for temporary (i.e. finite) leave to remove and that the relief sought had been fully granted. It is impossible to see, given the relief actually sought, how the order did anything other than finally and conclusively dispose of the application. Further, I pointed out in my judgment that in argument Ms Miller accepted that the order in question was a final order in relation to the application for the relief in question.

46. Ms Miller's email continued:

> "Since the order is not perfected may I question your lordships (sic) proposal at paragraph 7 and 8 of the order directing my client and G to attend the hearing in Italy. It seems to me that must be a matter for the Italian court. I apologise for not having made this submission on Friday but again I had little time to consider the scope of the order."

47. Again, this is an attempt to have the court revisit a decision regularly made in the absence of demonstration of plain error or great ambiguity or a change of circumstances. The order expressly provides for the Italian court to be able to alter my decision that G should be taken to Italy for the hearing on 18 December.

48. I therefore do not alter my order.
