Neutral Citation Number: [2012] EWHC 4278 (Fam)

Case No: IL11C00774

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/11/2012

Before

MRS JUSTICE THEIS DBE

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Between:

LA

MF

CY

RN

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Mr Alex Verdan Q. C. & Mr John Church (instructed by A Local Authority) **for the Applicant**
Mr Marcus Scott-Manderson Q. C & Marie-Claire Sparrow (instructed by Pritchard, Joyce & Hinds) **for the 1st Respondent**
Mr Henry Setright Q. C & Mr Justice Slater (instructed by Dawson Cornwell) **for the 3rd Respondent**
Ms Deirdre Fottrell (instructed by Creighton & Partners) **for the 4th to 7th Respondents**

Hearing dates: 19th, 20th, 21st, 22nd and 23rd November 2012

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Judgment

MRS JUSTICE THEIS DBE

This judgment is being handed down in private on 28th November 2012. It consists of 14 pages and has been signed and dated by the judge.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns care proceedings issued by A Local Authority ('the Local Authority') relating to four girls. DN born [a date in] 2001 now 11 years, GN born [a date in] 2006 now 6 years, GRN born [a date in] 2008 now 4 years and CMN born [a date in] 2009 1 year 11 months. The parents of the three younger children are MF (the mother) and RN (the father). Although at the commencement of these proceedings, it was thought the father was also the father of DN, DNA tests have proved otherwise. DN`s mother is said to be the Second Respondent, CY, but it has not been possible to contact her. She is understood to live in the Cameroon. For convenience, I shall refer to the mother and father as such in this judgment, even though they have no biological connection to DN.

2. The central issue in this case is whether this court has jurisdiction in relation to the care proceedings relating to the three younger children GN, GRN and CMN. There is no issue regarding DN. It is accepted by all parties that she was habitually resident in this jurisdiction at the relevant time and this court has jurisdiction. This central issue turns on whether the three younger children were habitually resident in England and Wales when these proceedings were issued and served on the 30 December 2011. The local authority position is that it is more likely than not, at the relevant time, all three children were habitually resident in England. In the event that the court cannot establish where their habitual residence is, they submit jurisdiction rests on their presence here at the relevant time. This position is supported by the Children's Guardian. The mother and father contend the children were habitually resident in France at the relevant time.

3. There are extensive bundles in this case; at least 7 lever arch files. I have heard the oral evidence of the mother, father and allocated social worker.

4. In relation to the preparation of this hearing I have two general observations I wish to make:

    (1) There seems to have been a complete failure to appreciate the importance in cases such as this, where credibility is in issue, of the need for statements (with a declaration of truth) to be signed and in the court bundle. This is particularly so when English is not the first language of the person giving evidence. The first 1 ½ hours of the mother's evidence in this case was spent trying to establish which of her statements were signed, and in what circumstances they had been translated. I, of course, accept the very detailed letter to the court from the mother's solicitor offering an explanation and unreserved apology, but the message needs to go out loud and clear that signed statements must be in the court bundle.

    (2) An increasing number of cases now involve parties and/or children who have spent time in other Member States of the European Union. As a result it is often necessary to request relevant information from that Member State.

> Chapter IV of Council Regulation (EC) No 2201/2003 of 27 November 2003 (BIIR) sets out the European Union legal scheme for Cooperation between Central Authorities in matters of parental responsibility. Articles 53 – 56 set out the requirements for central authorities to assist in the collection and exchange of information (i) on the situation of the child (ii) on any procedures under way (iii) on decisions taken concerning the child and they are therefore the proper avenue for the exchange of information between a local authority situate in England and Wales and equivalent bodies in Member States of the EU to which BIIR applies. The proper procedure for local authorities is to contact the central authority for England and Wales (The International Child Abduction and Contact Unit) and request reciprocal assistance for exchange of such information, through the central authority of the other Member State. Consideration must be given early on in proceedings as to whether such information is needed. If it is, such requests should be made promptly, to ensure there is minimum delay.

Background

5. The relevant background can be summarised as follows.

6. The father is 50 years old. He originates from the Cameroon. The mother is 31 years and she also originates from the Cameroon. The father came to England in 1996 and claimed asylum. All rights of appeal were exhausted in 1998. The father married a French national, SL, on 3 April 1998. The father, in his statement, was not able to recall the date of separation or when they divorced. The information from the UKBA confirms they have not had contact with the father since 1998.

7. The father returned to the Cameroon and met the mother. During that 5 month trip he met the Second Respondent, CK, and DN was conceived. He said he returned to England before DN`s birth in Cameroon on 20 October 2001.

8. In February 2006 the father returned to Cameroon and married the mother. On 8 October 2006 GN was born in the Cameroon.

9. On 30 November 2006 the father submitted a Housing Register Form (signed by him on 1 December 2006) claiming he was resident with his daughter only, MN born `[a date in]` 2006. In his statement dated 13 November 2012 he records that she was born on `[a date in]` 1984, her mother lives in the Cameroon and MN *'came to stay with me for a while from Cameroon some 5 years ago and travelled to France in approximately 2010. She accompanied me to the Local Authority when I applied for housing'*. In that application he refers to two other children, K, born on 24 November 2000, who lived with his mother (his ex girlfriend) but he saw every day, and Y born 12 July 2006 who lived with her mother (his ex girlfriend) but he saw her every day. The mother in these proceedings had no knowledge of either Y or K until the disclosure of the housing applications in these proceedings. Her evidence was she had never met them.

10. The mother is recorded as informing the social worker who undertook the core assessment that *'she raised DN from 6 – 7 years old and usually had her during summer holidays and Christmas holidays'.* The mother and GN were issued with an EEA Family Permit to join a spouse; this was valid until 6 June 2008. They joined the father in England in January 2008. On 2 May 2008 the mother submitted an

application for further leave to remain, that was issued on 10 July 2009 and is valid until 10 July 2014. G was granted in line with her mother. Their sponsor was recorded as *'RN (Cameroon/French National)'.*

11. On 21 October 2008 GRN was born in England.

12. A further housing application was made on 31 October 2008. The mother and father signed the application. The form does not name any children and states the father is working, earning between £20 – 30,000.

13. On 21 January 2009 a further application was made for housing by the mother and father, this form named the following children as living with them; MN, K Y, GN and GRN. In his oral evidence the father accepted that K and Y were not living with them. He said it was a *'mistake'.* The father is recorded on this form as still working.

14. The UKBA records show that on the 2 April 2009 an application for a visa was applied for EEA family permit for DN. This was refused. No appeal was lodged.

15. In August 2009 DN came to England. According to the father she came from Cameroon via France and stayed with a friend of his, Mr D, between May and August 2009. The French Consultate in London granted a 'Certificate of entry in the register of France Citizens established outside France and of residence' which recorded DN had lived at 12 SJC SW9 since 14 August 2009.

16. On 28 September 2009 DN was enrolled at SH Primary School.

17. According to the housing records the father was made redundant in about October 2009 and applied for emergency housing in the same month. The basis of the application was that the father and his family were going to be evicted from 31A GM Streatham SW16.

18. On 28 October 2009 the family move to 27 EH, Walworth SE17.

19. 9 November 2009 DN started at RB Primary School.

20. On 10 December 2009 an application for housing to LB of Lambeth is made by the father and mother. This records the following children as living with them: MN, DN, GN and GRN. K and Y are recorded as living with them but the narrative states they are living with their respective mothers.

21. [a date in] 2009 CMN is born in England. She is added to the housing application on 19 January 2010.

22. On 25 January 2010 GN at RB Primary School.

23. On 19 February 2010 a further application for housing is made. MN is named as an adult in the household and the children named are DN, GN, GRN and CMN.

24. In 2010 the parties separate. The evidence is not clear when this took place. There is some suggestion in the medical records it was March 2010 although the parents think it was about June 2010. The evidence is also somewhat vague as to the reasons for the breakdown; such as they *'do not share the same view of life'*. The mother went to stay

with friends and returned to see the children for four days a week. The evidence seems to suggest that she stayed four nights as well, although the parents have given conflicting accounts about this.

25. According to the mother's oral evidence she was unable to get any financial support here, her application was refused. As a result she started making enquiries about the position in France and what support would be available for her. She said her plan was to move with the children to France. She said she started discussing this with the father from late 2010 and into 2011. According to the father's statement she told him she wanted to travel to France for the summer holiday with the intention of remaining there if she was able to secure housing, schooling and funds for her and the children to be able to remain there. The father signed a document on 1 April 2011 that authorised Danielle to travel to all countries of the European Union; it was expressed to be valid until 1 April 2016.

26. On 21 July 2011 DN and GN broke up for the summer holidays from RB Primary School; DN`s end of term report is positive, she is described as a *'popular member of the class'.*

27. 22 July 2011 the mother and children go to France. They leave from St Pancras on Eurostar. On arrival in Le Mans the mother applies for financial support and is accommodated in a hotel between 22 and 29 July 2001 paid for by Horizon. They were moved to another hotel until 19 August 2011 and then moved to three bedroom accommodation at 71 RPL 72000 Le Mans.

28. DN and GN did not return to RB Primary School in September, despite remaining on the school register. They were due back on 8 September 2011. When contacted by the head teacher the father told her they (the children) were in East Ham as their mother was very ill.

29. On 20 September 2011 GN and GRN were enrolled at BH Infants School, Le Mans and on 22 September 2011 DN was registered with JM Public Primary school, Le Mans.

30. The mother received a French Identity card on 23 September 2011 with an address in Le Mans.

31. On 26 September 2011 CMN was enrolled at G Childcare Centre until 31 December 2011.

32. On 4 October 2011 the Educational Welfare officer spoke to the father on the phone about DN and GN`s absence from RB School. He informed her that DN was looking after her mother who was very sick. He refused to give an address or give any details about GN.

33. According to the mother she spoke to the father that day and they agreed that DN would return to England as she had not settled in France. They agreed she would return with all the children to bring DN back. The tickets for their journey were booked on 4 October 2011.

34. On 5 October 2011 the head teacher at RB School made a referral to social services at the LB of Southwark.

35. On 7 October 2011 the mother returned to England with all 4 children. Once here it was agreed that GN would stay with DN as it was not thought fair to leave DN on her own. The mother says she only agreed if GN was happy. In their oral evidence it was unclear whether GN was in fact told that the mother was returning to France.

36. On 9 October 2011 the mother returned to France with GRN and CMN.

37. On 10 October 2011 DN and GN return to RB School.

38. According to the parents GN was not happy and it was subsequently agreed that the mother would return to collect her at half term.

39. On 20 October 2011 the mother, GRN and CMN return to England.

40. On 24 October 2011 the father obtained a tenancy of Flat 12A SJC London SW9. All four children are named as authorised occupants and the tenancy agreement confirming these details is signed by the father.

41. On 28 or 29 October 2011 the father assaults DN. She alleges that he injured her head with his car keys. The mother, father and all four children were at home at the time as they were packing for the move to new accommodation.

42. On 29 October 2011 the mother admits in her police interview to leaving all the children alone for about 30 minutes whilst she went out to buy chips. It appears at some point that day the father booked the ticket for the mother and the three younger children to return to France on 1 November 2011.

43. On 30 or 31 October 2011 the family moved to the new accommodation.

44. On 1 November 2011 the father attended RB Primary School at lunchtime with all four children. The father said it was to return some books. The head teacher spoke to him. He said he had moved and if the children returned to RB Primary School the Local Authority might not allocate a nearer school. She informed him the children should be in school whilst his application for places in the other authority was being processed. DN had her school uniform on so the father was persuaded to let her stay. He was insistent that GN should not stay. DN had a cap on, when a teacher asked her to remove it later that day DN disclosed that the wounds on her head had been caused by her father using a car key. She said he then shaved part of her head and the mother applied alcohol when the wounds bled. The head teacher contacted Social Services.

45. DN was placed in police protection as were the younger three children the following day. The parents were arrested and interviewed under caution by the police. They both had legal representation. The father gave a no comment interview following a prepared statement. In that statement he said he lived on his own with the four children. He said DN`s mother was in the Cameroon and he did not live with the mother of the younger three children; he said "*she moved out of London when I lost my job but she was unable to get benefits so left the children with me".* The father denied harming DN. The mother responded to the interview questions. Her account in interview was that she thought the injuries had been caused by the father as he was cutting DN`s hair.

46. In her statements in these proceedings the mother says she was booked to return to France with the younger three children on 1 November 2011.

47. The children were placed in different foster placements: DN and CMN were placed separately, GN and GRN together.

48. On 3 November 2011 the father was charged with assault and both parents were charged with child cruelty.

49. On 4 November 2011 both parents consented to the children being accommodated under s 20. Both parents have subsequently said they did not realise they were agreeing to the children being accommodated. DN had a medical and the younger children had medicals on 16 November 2011.

50. The local authority commenced a core assessment on 10 November 2011, which was completed on 9 December 2011. According to that assessment the father informed the social worker that he has been the main carer of the children for the last two years. This is confirmed by the mother who reported that she does not live with the children, but visits them frequently. The mother denied DN has been physically or emotionally abused, or that the father was abusive towards her.

51. On 21 December 2011 the parents withdrew their consent to voluntary accommodation. On 22 December 2011 the local authority issued an application for an emergency protection order. An order was not required at the hearing on 23 December 2011, as the parents consented to the continuance of the accommodation until the hearing fixed in January. The parents were not represented. The note of the hearing records the mother saying her English is not good, she requested an interpreter for the next hearing. She said she lived in France, was a student on finance. She came for a few days to help her husband move to the new home. She would like to take her three children back to France.

52. On 28 December 2011 the local authority commenced care proceedings which were issued by the court on 30 December 2011. At a hearing in the Family Proceedings Court on 9 January 2012 the mother and father were represented by the same counsel. They did not oppose the application for an interim care order. The note of the hearing records *'the children have been in England apart from a short time in France'* the mother has *'French citizenship; high mobility for a few months'*. The proceedings were transferred to the PRFD with directions for the filing of evidence. At the CMC on 25 January 2012 HHJ Cox made a raft of evidential directions, leading up to a six day fact finding hearing listed in June 2012.

53. On 16 April 2012 both the mother and father were convicted following a five day trial at The Crown Court. The father of assault and child cruelty and the mother of child cruelty.

54. At the adjourned CMC before HHJ Cox on 2 May 2012 the mother's counsel raises the point that the mother was in France in August 2011 and she seeks the younger three children to be returned to her in France or with her Aunt in France. Further directions are made and the matter is adjourned to 22 May 2012.

55. On 16 May 2012 the mother is sentenced to 9 months suspended for 2 years, 12 months supervisions and 100 hours unpaid work. The father is sentenced to 3 years

imprisonment for each offence to run concurrently. The sentencing remarks of the trial Judge HHJ Saggerson included the following comments about the father and mother: [the father]*"attacked his daughter with a sharp key this was not a momentary loss of control - it happened once inside the house and once on the balcony using a sharp key to skewer his daughters scalp; cruelty was over a period of 11 months but also assaults on previous occasions….additionally making DN do stress punishment e.g. putting her out in the freezing cold, punishment akin to torture to control DN. You failed to exercise care with DN`s hygiene resulting in neglect"*. Turning to the mother he said *"You [the mother] have over a period of many months when you were living with them you neglected DN knowing that she was being physically beaten, hands tied and you did absolutely nothing; you targeted that child, you failed to take any action.."*.

56. On 22 May 2012 further directions were made by HHJ Cox and the matter listed on 31 May 2012 to consider *'the necessity for a fact finding hearing, further assessments, the father's contact, the issue of jurisdiction, the full kinship assessment of Ms Taveau and consequential directions'*.

57. On 31 May 2012 HHJ Cox transferred the matter to the High Court for determination of whether the English Court has jurisdiction to determine threshold and welfare issues in respect of the three younger children.

58. Directions were made by Miss Russell Q. C. (sitting as a DHCJ) on 29 June 2012 which included listing the matter for five days on 19th November 2012. I made further directions on 26 September 2012 and 8 November 2012.

59. During this hearing I heard oral evidence from the mother, the father and the allocated social worker. At the invitation of the court the parties' representatives were able to agree the relevant law; they produced a succinct document recording that agreement.

The parent's oral evidence

60. The mother gave evidence through an interpreter. Although Mr Verdan Q. C., on behalf of the local authority, invited the mother to give her evidence in English and only call on the interpreter when she needed something explaining, she declined that invitation. The invitation was made as it was suggested to her that she was seeking to hide behind the interpreter, as she appeared to have no difficulty in giving her answers in English to the police when she was interviewed in November 2011. Whilst of course acknowledging that English is not her first language, I am satisfied her comprehension of it was, in my judgment, significantly more that she was willing to admit. I have reached that conclusions as it was quite clear from the interviews with the police that she was able to understand the questions being asked and her answers were clear and coherent. There was one occasion in the interview when she said her English was not very good and got muddled with the meaning of skirt and shorts. But apart from that her answers were clear and comprehensive. In her oral evidence she said she asked for an interpreter on a number of occasions, that does not appear on the record of the interview and I was not directed to any other evidence that supported that request repeatedly being made. She had a solicitor there during the interview.

61. The mother's oral evidence was unreliable and unsatisfactory in a number of respects. For example:

(1) The inconsistent accounts given by her about the factual circumstances of the family. For example, the failure to mention in her interviews with the police or her meetings with the social worker who conducted the core assessment what was set out in her later statements in these proceedings, that she had moved to France with the children and they had lived with her. I do not accept the failure to do so was due to any language difficulties.
(2) When pressed on detail that did not suit her case she would counter with allegations that were simply unsustainable. For example, when asked about what was recorded by the social worker who conducted the core assessment her response was that the social worker had lied about all the information that was in the assessment. Despite being given the opportunity to reconsider this answer, she refused to. Another example was when she was pressed about why she said in her police interview she had treatment in Paris, she sought to try and explain it away by saying Paris and France meant the same thing.
(3) Her account of what took place on the day DN`s head was injured was simply incomprehensible and, frankly, wholly unbelievable. On her account apart from crying a little DN was not at all distressed by the injuries that were being caused to her by the father. She continued to maintain that the father was a good father.

62. It is quite clear that when I consider the mother's evidence and account of events I should treat it with great caution, and only rely on it when there is clear evidence to corroborate it.

63. Regrettably the father's evidence was equally unreliable and unsatisfactory. There were a number of occasions when he simply lied in his evidence. The most notable example was his description of taking the mother and children to St Pancras to get the Eurostar train to go France in July 2011. His first account was that he had driven them all to the station in a Fiat Punto. When he was pressed about how he could fit in two adults and four children (two of whom required a baby seat), he continued to maintain the account and then realised it was simply not credible, only then did he start to retreat. His final account of how the mother and children left to go to France involved them getting a bus on the Walworth Road to St Pancras Station. Even a simple question, such as the journey to St Pancras, produced a web of untruths and half truths. That continued to be a recurring feature of his evidence.

64. I fully recognise that whilst the parents may have lied about some matters, it does not inevitably lead to the conclusion that they have lied about other matters. However, I do regard both of them as such unreliable witnesses that unless there is clear corroborative evidence to support their position, the court will be very cautious before relying on their unsupported account of events.

The Law

65. The parties have very helpfully been able to agree the relevant legal principles. Part IV of the Children Act 1989 does not set out any jurisdictional basis for the institution of public law orders. The European Court has now made it clear in *Re C* (Case C-435/06) [2008] 1 FLR 490 that the jurisdictional basis is derived from Council Regulation 2201/2003 Brussels II Revised (BIIR). Jurisdiction should lie in the first place with the member state of the child's habitual residence (Article 8 BIIR).

66. Determining habitual residence is a question of fact on a case specific basis. The test for habitual residence in BIIR jurisdiction cases is set out at paragraph 56 in *Mercredi v Chaffe* [2011] 1 FLR 1293:

> "…the concept of 'habitual residence', for the purposes of Articles 8 and 10 of the Regulation, must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State - other than that of her habitual residence - to which she has been removed, the factors to be taken into consideration included, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case".

The case of *Re A (Area of Freedom, Security and Justice)* (C-523 of 2007) is also relevant. The European Court of Justice held that:

> "(38) In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.
>
> (39) In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.
>
> (40) As the Advocate General pointed out…the parents' intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.
>
> (41) By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State."

67. The Court further held that if habitual residence could not be established; jurisdiction would have to be determined on the basis of the child's presence under *Article 13* of BIIR, although this has been recognised as an exceptional outcome and rare: *Re A* [2009] 2 FLR 1 at paragraph 43**.**

68. It is also possible to have no habitual residence at all: *Mark v. Mark* [2005] UKHL 42; [2005] 2 FLR 1193 paragraph 37.

Decision

69. Having considered all the evidence I have reached the very clear conclusion that it is more likely than not each of the three younger children remained habitually resident in this jurisdiction at the time these proceedings were commenced, and had not established habitual residence in France. It is accepted they were habitually resident in this jurisdiction prior to 22 July 2011. In my judgment, they remained habitually resident in this jurisdiction even though they spent periods in France after that date. I have reached this conclusion for the following reasons.

70. Firstly, the children were in reality fully integrated into life in England through their housing, schooling and health care systems. Throughout the periods of time they were in France they remained named on housing applications in this jurisdiction. This was supported by the father signing a tenancy agreement on 24 October 2011 which named all four children, including the three youngest, as being occupants of the home. Both DN and GN remained registered at RB Primary school. The father's attempt to distance GN from attending that school was against the weight of the evidence. She had been attending that school since January 2010. If it had really been intended to be a permanent move to France in July 2011 there would have been no reason to continue their enrolment at the school after that date. All the children remained registered with the family GP. The fact that the mother was able to open a bank account in France and apply for, and receive, state benefits doesn't, of itself, connote a change of habitual residence, without considering all the other factors and the wider evidence.

71. Secondly, GN has lived here since 16 January 2008, the majority of her life. GRN and CMN were both born here. None of them have known anywhere else.

72. Thirdly, they had no connection with France. None of the younger children had been there. DN had only been there once for a few months, en route from Cameroon to England in 2009.

73. Fourthly, it is obvious from the weight of evidence the father was the main carer for the children. This is what the father and mother said independently in their police interviews, in their evidence in the Crown Court and to the social worker who conducted the core assessment. It is only during the progress of this case that they have sought to enhance the mother's role in caring for the children following the parents' separation in mid 2010.

74. Fifthly, the weight of the evidence does not support the mother's contention that she left England on 22 July 2011 with the intention of permanently relocating to France. The following factors drive the court to that conclusion:

    (i) When the mother and children left on 22 July 2011 they had nowhere to live in France and no school places. She left with limited luggage and despite the father's initial assertion in his evidence that he had driven the family to St Pancras, when pressed on the detail he had clearly made that up. The mother had in fact made her way to the station by bus, on her own with 4 young children and one suitcase.

    (ii) When questioned at the start of the autumn term by the headmistress from RB Primary School about DN and GN`s non- attendance the father said the mother had been very sick and was in East Ham. He did not say they

were not returning or that they have moved to live in France. In his first statement in these proceedings he said he did not confirm arrangements for DN with RB School because he was unsure and did not know she would settle. In his statement he said *'At that point, I was unsure what the position was…'*. This logically applies to all the children, in particular GN as she too continued to be registered at the school. In his oral evidence the father accepted that the children remained registered there because *'if they did not settle they could come back to school'.* When contacted by the Education Welfare Officer in early October the father said that the mother was ill being cared for by DN, he refused to give any details about GN or any address. Whilst the mother may not have had the same contact with the children's schools in England as the father, her evidence did not envisage any difficulties in DN and GN returning to school here in October; and they did so on 10 October 2011.

(iii) Save for the contents of one suitcase, all the children's belongings remained here.

(iv) Following their arrest neither parent said in their police interviews that the mother and children (whether all or some) were living in France. The mother said that she went to Paris for some treatment and to visit her aunt. She said the children lived with their father and had recently moved house. In his prepared statement (done with the benefit of legal advice) the father unequivocally stated *'I live on my own with my children'.*

(v) It was not mentioned in the detailed core assessment. The father was interviewed on 21 November; he maintained the children lived with him and made no mention the children had moved to France, or that such a move was planned or contemplated. The mother informed the social worker that she did not live with the children. She said her immediate plan was to travel to France to pursue her studies and career.

(vi) In her first statement in these proceedings the mother said she went for a holiday, but with the intention of remaining permanently if she was able to find accommodation and schooling.

(vii) In the father's first statement he said *'The 1st Respondent told me she wanted to travel to France for the summer holiday with the intention of remaining there if she was able to secure housing, schooling and funds for her and the children to remain there';* in his third draft unsigned statement he said he was *'unsure of the future plans of the children'*. He repeated this in his oral evidence that he *'not sure of the plans for the children until they had settled'.*

(viii) The authorities in France were not told the two older children remained enrolled in English schools and that they all remained listed as occupiers on the applications for housing here.

(ix) The fact the mother was intending to return back to France on 1 November 2011 with the three younger children and had a tickets purchased on 29 October 2011 does not support the parent's case of a permanent move. At its highest it continues the 'to-ing and fro-ing' that had taken place over the

previous few weeks. The evidence strongly points to the parents keeping all their options open.

(x) The reliance placed by the mother on the report from Association L'Horizon has to be looked at in the wider context of the evidence. Whilst it reports the assistance the mother had received, it is a document that is prepared without the benefit of the wider evidential context that the court has. In particular, the inconsistent accounts given by the parents about the mother's move to France. The reality was that all the structures (in terms of housing, schooling, medical and financial support) that had been in place here for the children remained intact throughout their time in France.

75. Sixthly, the parent's case that the father consented to the permanent relocation to France is not established. The reliance on the 'Authorisation to Travel' document does no more than confirm that the father provided authority for DN to travel in the European Union. The form does not mention the mother's name. Its date does not support the parents, as they were very vague as to when the father consented. In her interview with the police the mother said that the father did not know about the plan.

76. Seventhly, whilst the evidence does appear to establish that all four children were in France from 22 July to 7 October 2011 and GRN and CMN from 9 October to 20 October 2011 the mother agreed the three younger children had not been to France before. They obtained temporary accommodation in Le Mans. This was a town they had never visited before and only had a very tenuous connection, through Mme Mb, who had never met the children before.

77. Eighthly, whilst the children did have French nationality they had never lived there.

78. Ninthly, throughout their time in France both DN and GN remained registered in school in England. They returned to that school on 10 October 2011. Whilst it was said by the parents they agreed on 12 October 2011 that GN was going to return to France after the half term holiday; that was not communicated to RB Primary School. Whilst the evidence does establish that the children were all enrolled for school with insurance (GN and GRN) and childcare centre (CMN) in France that cannot be looked at in isolation of what school places had been retained in England. In particular, the school places here were not retained by default; when asked about DN and GN`s whereabouts the father did not say they were not returning to the RB Primary School. On the contrary, by his answers he implied they were going to return.

79. Tenthly, the children had lived with the father since the parent's separation. Whilst the mother did return and see the children the parents have given inconsistent accounts as to frequency, and whether she stayed overnight. For example, the father, in his oral evidence at the criminal trial, said that the mother did not stay overnight. In France the mother had obtained some temporary accommodation, but it was not permanent. On the 24th October the father signed a tenancy agreement with the local authority in which he stated all four children were occupants of the property in London. The tenancy agreement was clear in its terms.

80. Eleventhly, the father has lived in England for the last 17 years, has no family in France and has rarely visited there. The mother had never been there before. She came here from Cameroon in January 2008 and England was her home prior to 22 July

2011. Neither party had any relatives in France save for the mother's aunt, Mme Tu, who lived in Tours and whom the children had not met.

81. Twelthly, the father continued to claim state benefits here, as if the children remained living here or were expected to return in the near future. He conceded he claimed and had been paid child benefit for all the children from 22 July 2011 to date. He agreed he had been paid child tax credit until June 2012. Continuing to receive these benefits was wholly inconsistent with an agreed plan between the parents for a permanent move to France.

82. For the reasons outlined above I am entirely satisfied it is more likely than not that the younger three children were habitually resident in England and Wales throughout 2011. The periods of time the mother and all/some of the children spent in France during 2011 did not change that position. As a result this court does have jurisdiction to determine the applications before it. In the light of this conclusion it is not necessary for the court to consider any issue of prorogation.

Threshold

83. There is no issue that the threshold is met in relation to DN. It is quite clear the evidence establishes she did suffer significant harm. Both the mother and father have been convicted of serious offences relating to harm they have each caused to Danielle. They do not seek to go behind those convictions, but in their oral evidence there was no real acknowledgement by them of what they had actually done. The father still denies harming DN in any way. The mother's evidence was in some respects chilling, particularly in her complete failure to empathise in any way with what happened to DN, particularly when her head was injured by the father. She sought to maintain that the father was a good father. It is difficult to know if this was due to her own failure to empathise, or was a consequence of the dynamics of her relationship with the father.

84. There is an issue about the risk of significant harm to the younger three children. Neither parent accepts this. A central plank of the local authority's case is that the younger children are at risk of significant harm from both parents as a result of the history of care and harm that was caused to DN. This risk is enhanced by the parents' failure to accept the convictions in relation to DN. I agree. Having had the opportunity to observe the parents give their evidence I am satisfied there is a risk of significant harm being caused to the younger three children. This is not only due to the convictions relating to serious harm caused to DN , but also the failure by either of the parents to accept any responsibility or display any regret for what happened to DN.

85. I make the findings sought at paragraphs 4.1 – 4.14 of the Schedule of Allegations in the papers. The result of those findings is that it is more likely than not the threshold criteria are established in relation to all the children.