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<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	ICOS No: 19/116779
	Delivered: 21/04/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

**IN THE MATTER OF A
(A Child) (Jurisdiction: Brussels IIa: Victim of Modern Slavery)**

**Mr Montgomery BL (instructed by Directorate of Legal Services Solicitors) for the Trust
Mr Magee QC with Jessica McCaffrey (instructed by Gus Campbell Solicitors) for the
Mother
Ms Connolly QC with Ms P McKernan BL (instructed by Gerard Maguire Solicitors) for
the Guardian ad Litem**

KEEGAN J

Nothing may be published which would identify the child or her family. The child is referred to as A and her mother as Ms B.

Introduction

[1] This case concerns a young girl, A, who was born on the 23 September 2005. She is a Romanian national, who was born there and has lived there until coming to Northern Ireland. That was in October 2019, when she travelled to Northern Ireland with a Mr F and her father. She stayed with the F family in Lurgan.

[2] She came to the attention of authorities in Northern Ireland on 7 December 2019 when she was arrested for theft at Tesco's supermarket, Lurgan. She was remanded into juvenile justice, as she had no family residing in Northern Ireland. On 11 December 2019 she was admitted to foster care, having been made the subject of an emergency protection order at Newry Family Proceedings Court on 10 December 2019 and then an interim care order on 19 December 2019. She has remained in foster care since, subject to interim orders.

[3] The issue for consideration is whether the court has jurisdiction under Council Regulation 2201/2003, known as Brussels IIa, to determine these

proceedings. That is based on a consideration of habitual residence when the court was first seized. The parents of this girl are in Romania and have been represented throughout. They seek repatriation. The Romanian authorities have been on notice. The child is represented by a Guardian ad Litem.

Background

[4] There is a context to this child's position, as due to the circumstances in which she arrived in Northern Ireland, the National Referral Mechanism ("NRM") issued conclusive grounds that she is a victim of modern slavery. A risk and security assessment has been provided. This sets out some background of concerns that when A came to Northern Ireland aged 14, there were issues, as she was with an older man by seven years, trafficking was suspected. A apparently disclosed at the police station that she was sent to this country for Mr F and that she may be pregnant. A spoke of a wedding before coming, although not in a legal sense and that she had sexual intercourse with this man. Concerns of exploitation were also raised to the independent guardian that B had cooked, cleaned and cared for a niece and nephew of Mr F while in his house. The child abuse unit also became involved due to communications on A's phone, re inappropriate contact with males, unsupervised.

[5] In the risk and security assessment now received at page 5 it states:

"The Trust is significantly concerned as Ms B (the child's mother) appears to have permitted her underage daughter to enter into a sexual relationship with an adult male and travel to another country with this male and his family. The Trust would also be concerned, should B be returned to Romania, she will be married once more."

[6] On 28 February 2020, the NRM issued a positive reasonable grounds for modern slavery and on 14 September 2020, conclusive grounds. Mr F was arrested for sexual activity with a child. However, criminal charges concerning this are now dismissed. There was a breach of bail and he is understood to be in Romania. As part of that case, it was disclosed that Ms B signed a legal document, dated 4 October 2019, to allow Mr F to take A to Northern Ireland. Ms B has since come to Northern Ireland in January 2020, seeking release of her daughter. She appears to have returned to Romania on the 24th of April 2020.

[7] There are significant concerns regarding Ms B's insight into Trust issues, outlined in the report. In the risk assessment report, the cultural differences of the Roma culture are noted, including that it is common for young girls to be married to older men. Ms B has provided a report from the local authority in Bihor of the 10 January 2020, which deals with the home circumstances and concludes:

“There are in place the necessary conditions for raising, caring and educating the minors.”

[8] The Trust made a referral to Children and Families across Borders on 6 May 2020, requesting a child assessment and an alert to Romanian authorities to complete a comprehensive assessment. A response was provided on 17 July 2020. It states that:

“A notary agreement was signed by the mother. The marriage was not formalised. This report considered appropriate arrangements in Romania. Under law, somebody getting married must be 18, unless authorisation is given after 16.”

[9] A further report was received regarding Ms B and her insight of 21 December 2020. In this it states of the parents, “They reported that they understood the risks A had been exposed to and this situation has been a lesson to them.” It says, “If returned, there would be monitoring by Romanian social services in Bihor.” Further clarity was sought on this on 25 January 2021, but a reply is awaited. The report states that A presents as vulnerable. It also refers to a lack of openness by Ms B a lack of information regarding protections available in Romania. It concludes that there is a significant risk of re-trafficking if returned. This is the background evidence.

Conclusion

[10] The legal issue is jurisdiction. All parties now say that the court does not have jurisdiction under Brussels IIa, at the date of proceedings, at the date the proceedings were commenced, because Romania was the child’s home and she was, effectively, trafficked. That argument does appear correct, given the jurisdictional provisions in the Regulation. By virtue of Article 8, the court is seized by Article 16 when proceedings are issued and that is the date that this assessment is made. Article 17 states that:

“Where a court of a member state is seized of a case over which it has no jurisdiction under the Regulation, it shall declare of its own motion that it has no jurisdiction.”

I am obliged to declare this in this case and no party argues to the contrary. I so do.

[11] The outworking of this now becomes the most important issue. First, it is clear that pursuant to Article 20 of Brussels 11a, this court can continue with protective measures. As such, the interim care order will remain in place until further order. Secondly, it is clear that the Romanian authorities will now be actively involved in this case, by way of liaison and need to be informed of this decision.

[12] The third issue is perhaps the most interesting, namely, the inter-play between the jurisdictional rules and the Trafficking Convention, which clearly applies here, given the outcome of the NRM. In particular, I have been referred to article 16(7) of the Trafficking Convention, which states:

“Child victims shall not be returned to the state if there is an indication, following a risk and security assessment that such return would not be in the best interests of the child.”

The parties will need to consider this now in the context of the risk and security report, which undoubtedly will need to be sent to the Romanian authorities and which is being made available to us.

[13] It may also be useful to look at the inter-play between international instruments, which is raised in a recent Supreme Court case by Lord Stephens, reported at *G v G* [2021] UKSC 9, albeit in different circumstances.

[14] I will therefore make the declaration. I direct that these comments are transcribed and attached to the order. I ask that the Romanian authorities are notified and all relevant papers are sent to them. The case will be mentioned in four weeks' time, when the parties can reflect on what I have said.

[15] In the meantime, the Trust should also bear in mind that they have the benefit of an interim care order for A and it should keep in mind the deadline for EU Settlement Status applications to protect the child's interests.