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COURT OF APPEAL

CIVIL

FAMILY LAW

Court of Appeal Record No. 39/2026

High Court Record No. 2025/19/HLC

**The President
Faherty J.
Burns J.**

Neutral Citation Number [2026] IECA 152

**IN THE MATTER OF THE CHILD ABDUCTION AND ENFORCEMENT OF
CUSTODY ORDERS ACT 1991**

AND

**IN THE MATTER OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

AND

IN THE MATTER OF G, A MINOR

BETWEEN/

G

APPLICANT/RESPONDENT

AND

G

RESPONDENT/APPELLANT

JUDGMENT of Ms. Justice Faherty delivered on the 29th day of July 2026

Introduction

1. This is the appellant's (hereafter "*the Mother*") appeal against the Order of the High Court (Twomey J. ("*the Judge*")) dated 11 February 2026 which determined that the minor the subject of these proceedings ("*the Child*") be returned to the jurisdiction of the courts of the state of Kansas in the United States of America. In a judgment delivered on 30 January 2026 ([2026] IEHC 45) ("the principal judgment") the Judge found that the Mother had removed the Child from the United States, where the Child was habitually resident, without the respondent's ("*the Father*") consent. The Mother appealed the decision on 24 February 2026. The appeal was heard on 6 May 2026. This Court delivered its decision on the same date allowing the Mother's appeal. This judgment sets out the Court's reasons for doing so.

Background

2. The Mother is an Irish citizen. She travelled to the United States ("*US*") to study in August 2018. She met the Father, a US citizen, there and they commenced a relationship in and around February 2021. They became engaged and married on 2 August 2022 in Kansas. Due to the marriage the Mother secured a conditional Green Card which expired on 19 January 2026. The Mother unexpectedly became pregnant around February 2023. The parties purchased a family home in their joint names in Kansas in August 2023.

3. The Mother claims that the Father's behaviour became "*increasingly controlling*" of her during her pregnancy, ranging from verbal abuse and threats to have her deported and take the Child, to physical intimidation. This is denied by the Father. From September to November 2023 the Mother's brother stayed with the couple: she contends his visit was to provide her with support, but this is disputed by the Father. The Mother also avers that her midwife indicated that the Father should not be present at the birth of the Child due to safety

concerns, but following representations by the Mother on his behalf, the Father was allowed attend the birth, provided the Mother's brother also attended.

4. The Child was born in November 2023 in Kansas and has dual Irish and US citizenship. The relationship between the parents remained strained after the Child's birth. The Mother avers that she fled the family home with the Child on 24 December 2023 to stay with a friend. In his communications with the Mother at this time, the Father expressed having "*disturbing thoughts*" at the time and he sought treatment for his mental health. He voluntarily admitted himself to hospital on 24 December 2023. Thereafter, the Mother returned to the family home with the Child, and the Father, following his discharge from hospital, agreed that he would stay away from the family home.

5. In February 2024 the Mother returned home to Ireland with the Child, with the agreement of the Father. The Father consented to the Child securing an Irish passport during the Summer of 2024. The Child was registered with a GP in Ireland and the Mother obtained child benefit and social welfare allowance. In August 2024, the Father visited the Mother and Child in Ireland. The Father had lost his employment in Kansas by this point. The parties agreed to reconcile and entered into a Custody and Relocation Agreement ("*the Relocation Agreement*" or "*the Agreement*") in September 2024.

6. As deposed to by the Mother at paras. 19-20 of her replying affidavit, the Relocation Agreement was entered into by the parties because of the "*significant concerns*" the Mother harboured concerning the reconciliation. The Agreement was entered into in the context of (i) the parties' reconciliation and their wish to outline terms regarding custody of the Child "*and any future children*", (ii) "*the parties' desire to establish a legally binding Agreement in the event that reconciliation efforts are unsuccessful*" and (iii) their agreement that the Relocation Agreement "*is legally binding forever*".

7. Clause 1 of the Agreement provided that during the period of reconciliation both “‘Parent 1’ [the Father] and ‘Parent 2’ [the Mother] would have custody of the child with equal right and responsibility for the child's care, decision-making and overall well-being”. The specific details of the parenting schedule were set out in “Exhibit 1” to the Relocation Agreement.

8. Clause 2 entitled “Relocation Provision” provided as follows:

“2.1 Relocation Agreement: In the event that reconciliation efforts fail and Parent 2 decides to relocate to Ireland with the Children, Parent 2 should have the right to do so. In this case Parent 1 must agree to pay child support amounts that are up to discussion and relevant to the number of children and Parent 1’s income.

2.2. Notification: If Parent 1’s actions or behaviour present a risk to the safety of the Children or Parent 2, as detailed in Exhibit 2, Parent 2 has the right to seek immediate legal remedies or protective measures and relocate to Ireland with any Children if she chooses to do so. Parent 1 also agrees to comply with any court-ordered or legally mandated measures to ensure the safety and well-being of the Children and Parent 2.

2.3. Travel and Communication: Parent 2 agrees to facilitate regular and reasonable communication between the Child and Parent. Additionally, Parent 2 will make reasonable efforts to arrange and support travel for Parent 1 to visit the Child, ensuring that Parent 1 has the opportunity to maintain a meaningful relationship with the Child.”

“Exhibit 2” as referred to in clause 2.2 is headed “Safety Risk Criteria”. Its purpose was “to define behaviours or situations that may pose a risk to the safety of the Children or Parent 2”. Such behaviours are defined as:

“1. Physical Risks:

a. Physical violence including but not limited to pushing, pinching, grabbing, hitting, hair pulling or threats of harm.

2. Emotional Risks:

a. Any harassment or verbal abuse including but not limited to yelling, storming off or any controlling behaviour.”

9. Clause 3 provided for mediation in the event of a dispute regarding the Agreement and legal recourse in the event of the failure of mediation.

10. Pursuant to clause 4, the parties agreed that the Relocation Agreement could be amended only in writing which must be signed and agreed by the parties. Pursuant to clause 4.2, the Agreement was to be “*governed by and construed in accordance with the laws of Dublin, Ireland and... Kansas, United States of America*”.

11. The Relocation Agreement was prepared and signed without legal advice. The Father’s signature was notarised in Kansas. It is of some significance that both parties were well educated.

12. Following the signing of the Agreement, the parties returned with the Child to the family home in Kansas on 24 September 2024. The Mother commenced employment in November 2024. Prior to commencing the role, she returned to Ireland with the Child for a short stay during October and early November 2024. Upon their return to Kansas, the Child attended a creche to facilitate the Mother’s employment.

13. In December 2024, the Mother was required to attend a training programme in another state for four days. The Child was sick with a vomiting bug during this time. Upon her return the Mother was concerned at the presentation of the child; her car seat had dried vomit on it, and she was emotionally unresponsive. The Child was brought to hospital and found to be dehydrated. Later that night, the Mother noticed bruises on the Child’s arm.

Police attended at the home and found the bruises consistent with the Father's account as having been sustained from another child at daycare.

14. By early 2025 the parties' relationship had broken down and the Mother and the Child moved to rented accommodation on 5 April 2025. The Mother contends that she made it clear to the Father that he was not welcome to attend at her apartment. She claims that on 29 May 2025 he ignored her "*repeated specific requests*" not to come to the apartment and attended without invitation. On 7 April 2025, the Father placed the family home for rent and on 2 June 2025 notified the Mother that it was rented out.

15. In July 2025 the Mother and the Child travelled to Ireland for a two-week holiday. The Father was aware of and consented to this trip. On 1 August 2025, following the Mother's return from Ireland, the Father again attended at the Mother's apartment without invitation and upon being denied entry, stayed outside for several hours.

16. In or about August 2025, the Father took up a full-time role in the military and moved to the state of Missouri. In September 2025, the Mother lost her employment and her lease ended. She avers that consequently, her financial situation in the US became "*increasingly precarious*" which was made more difficult by the fact that the Father had rented out the family home on a twelve-month lease in June 2025.

17. On 24 September 2025, the Mother left the United States and returned to Ireland with the Child unbeknownst to the Father.

18. The Father contends that the removal was a "*unilateral act*" by the Mother, to which he did not consent. He first became aware of the removal through a telephone call on or about 28 September 2025 and he requested the Child's return home. He made contact with An Garda Síochána ("*AGS*") in relation to the removal on or about 28 September 2025. The same day he created a group chat on Instagram which included the Mother and her father and

sent a cascade of messages about the Mother. He then sent the Mother an email on 29 September 2025:

“Good Afternoon. I have some questions I want to clear up. I am upset you did not tell me anything (loosing [sic] your job, leaving the apartment complex, taking [the child] out of daycare, moving to Ireland without plans to return) considering I was just in [Kansas] and thought all was great. I understand why you’re stressed, and why you went home. I hope you understand why im upset.

When did you get laid off?

When did you leave [Kansas]?

Why did you not tell me anything?

Where did all the stuff in the apartment go?”

The email concluded with an inquiry from the Father as to whether there was anything left at the apartment that he needed to pick up.

19. The Mother replied by email 16 minutes later:

“I will answer the questions regarding [the Child] only. I flew home at the weekend as my grandmother is really sick in hospital. It wasn’t something that I had planned. My apartment lease was up and there were layoffs in my company, so the timing seemed right. It happened very suddenly, I didn’t tell you as I knew you would react volatily based on your history. There is nothing to collect from my apartment. I have taken care of everything.”

The import of these exchanges to the decision reached by the Judge on the issue of consent to the Child’s relocation to Ireland loomed large in the appeal and is discussed more fully elsewhere in this judgment.

20. On 24 October 2025, the Father contacted AGS requesting that they conduct a “welfare check” on the Mother advising them that the Mother had left the US a month

previously with the Child. He referenced “*a more detailed explanation*” he had given AGS in September. By 10 November 2025, the Father was in search of accommodation in Texas and now resides there. On 15 November 2025 he made a written request to the Central Authority for the United States pursuant to the terms of the Hague Convention for the purpose of restoration of the Child to her place of habitual residence, being Kansas, USA. The request was conveyed to the Irish Central Authority on 17 November 2025 and the special summons issued on 25 November 2025.

The Hague Convention

21. The Hague Convention on the Civil Aspects of Child Abduction, 25th October 1980 (“*the Convention*”) aims to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence and to secure protection for rights of access. Article 3 of the Convention provides:

“The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person . . . either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
- b) at the time of removal or retention, those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”*

In the present case, it is accepted that the Father was exercising his custody rights at the time of the removal, or would have been, save for the removal of the Child, and that the removal was in breach of the Father’s rights of custody.

22. Article 12 of the Convention provides:

“Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative

authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.”

23. As the proceedings were commenced within weeks of the removal of the Child, this time limit has clearly been met and thus, if the US was the habitual residence of the Child on 24 September 2025, she must be returned to the US subject only to the Court’s discretion under Article 13. Article 13 provides, in relevant part: -

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that-

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of the removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation...”

24. The dispute in the High Court largely concerned first, the identity of the State of habitual residence of the child at the date of the removal of the child on 24 September 2025, and secondly, if the High Court were to find that the Child was habitually resident in the US at the point of removal, whether the Father had provided his consent to the Mother relocating with the Child to Ireland if the parties reconciliation proved unsuccessful or the Father continued to engage in behaviours which presented a risk to the Child and/or the Mother.

The principal judgment

The habitual residence of the Child

25. The High Court concluded that the Child was habitually resident in the US at the date of her removal. The Judge found that there were a number of factors which led him to so conclude: -

- 1) The Relocation Agreement clearly acknowledges that the habitual residence of the Child was intended by the parents to be the US, as a possible future relocation to Ireland is implicitly premised on the then current habitual residence being the US (para. 20).
- 2) The parties' reconciliation was initially successful as the Mother and Child returned to the US in September 2024 and resumed living with the Father in the family home (para. 21).
- 3) The Mother obtained employment in the US, and the Child began attending a creche in November 2024 (para. 22).
- 4) It was significant that although the reconciliation efforts had failed by April 2025, the Mother did not seek to relocate to Ireland but continued to live in rented accommodation (pursuant to a six-month lease) and to work in the US (para. 23). This, the Judge said, was an important factor in favour of finding that the Child's habitual residence was the US.
- 5) During the year from September 2024 to September 2025 the Child was registered with a GP in Kansas, spent time with the Father and paternal grandparents and great-grandparents, and had play dates with other children (para. 24).

26. The Judge noted, at para. 29, that what is said by a party contemporaneously often more accurately reflects the factual circumstances, rather than what is said after litigation commences and/or they benefit from legal advice. He attached "*particular importance*" to what was said by the Mother in her email of 29 September 2025 which was "*almost*

contemporaneous with the removal of the child” rather than the reason she stated “in retrospect” for the removal (para. 30). He went on to state:

“31. Thus, in this contemporaneous email the mother makes clear that her decision to return was a sudden decision caused by her grandmother's ill health, as well as the expiry of her lease and some lay-offs in her company. It is to be noted that what is stated in this contemporaneous email contrasts starkly with what the mother states in her first affidavit of 16 December 2025. By this stage, the litigation has commenced and now the mother states that the basis for her removal of the child is the Custody and Relocation Agreement, since she states:

‘On or about the 24th day of September 2025, [I] returned to Ireland with [the child]. The said relocation to Ireland was in accordance with the [Custody and Relocation Agreement] reached between [me] and [the father] in September 2024 in circumstances where the reconciliation between [me] and [the father] was unsuccessful, and [the father] had breached the terms of the agreement repeatedly with these actions.’

In contrast to this averment, it is to be noted that in her contemporaneous email, (in reply to the father's question as to ‘why’ she left Kansas), there is no reference to the Custody and Relocation Agreement as being the reason or basis for same. Rather the first (and apparently primary) reason for her return to Ireland is stated by the mother to be her grandmother's ill health, as she says this led to her ‘sudden’ departure which was not ‘something I had planned’.”

27. He further observed that in her supplemental affidavit of 16 January 2026, the Mother provided a different reason for the removal: that it was a pre-notified plan. Therein she averred:

“6. ...I say that in reliance on the Custody and Relocation Agreement between your Deponent and the Applicant, your Deponent verbally informed the Applicant on the 31st day of July 2025 of my intention to relocate to Ireland with [the child]. The Applicant dismissed your Deponent’s notification to him in this regard. I say that the Applicant failed to seek any amendment of the said agreement between us... Further, the Applicant did not seek to resolve any dispute regarding the agreement by mediation... Your Deponent relied on the Applicant’s consent to any future relocation by your Deponent with [the child] in the circumstances where reconciliation efforts between us had failed which said consent was provided by his acceptance of the agreement...”

28. Noting the Mother’s contention that she had told the Father in July 2025 that she was going to relocate to Ireland and the Father’s denial of any notification of the Mother’s intention to rely on the Agreement, the Judge found it *“striking”* that the Mother had not replied to the Father’s email of 29 September 2025 asking her why she did *“not tell him anything”* about the removal, by reminding him that she had done so in July.

29. In light of what he described as the *“distorting effect”* litigation and legal advice could have on memories, the Judge was of the view that what the Mother had said in her affidavits *“must be treated with caution unlike the contents of her contemporaneous email”*. He found *“the real reason”* for her departure her grandmother’s ill health, the expiry of her lease and her redundancy. He opined that *“until this sudden news of her grandmother’s ill-health, the mother was going to stay in America”*. Accordingly, the Child’s removal was *“completely out of step”* with the Child’s normal everyday existence at that stage.

30. The High Court accordingly concluded that as of 24 September 2025 the Child’s habitual residence was the US. There is no appeal by the Mother from this finding. I should say, however, that on the appeal, the Mother take issues with paras. 27 to 36 of the judgment

insofar as the Judge found the contents of her 29 September 2025 email prevailed over the provisions of the Relocation Agreement.

31. As we shall see, on the appeal, the Mother's case is that it is clear from her email of 29 September 2025 that she was not therein setting out her *justification* for having removed the Child to Ireland. Rather, she asserts that the justification for same, as she deposed to in her affidavit, is found in clause 2 of the Relocation Agreement in circumstances where the parties' reconciliation had failed. For that reason, she says there is no disparity regarding what she said in her email and what she deposed to in her affidavit. It is also said that the events which led to the failure of the reconciliation, not least the harassment suffered by the Mother at the hands of the Father in the period leading up to the removal of the Child in September 2025, were also provided for in the Agreement as matters which could trigger her relocation to Ireland with the Child.

32. In those circumstances, the Mother contends that what the Judge failed to do was to consider the relocation to Ireland with the Child in September 2025 in the context of the matters to which she deposed in her affidavit, including the events of January 2024 which had caused her to flee with the Child to Ireland in February 2024. In essence, the Mother's fundamental submission is that the Judge erred in only interpreting her email exchange without looking at matters "*in the round*", an error which, her counsel says, the Judge carried through when assessing whether the consent provided for in the Agreement was subsisting as of September 2025. The Mother's arguments in these regards are addressed later in the judgment. For the moment, I turn to the Judge's treatment of the consent issue.

The Father's consent

33. Having found that the Child was habitually resident in the US at the time of removal, the Judge next turned to the question of whether the Father had consented to the removal of the Child. Noting that the onus was on the Mother to establish consent to the removal and

citing the *dicta* of Whelan J. in *JV v. QI* [2020] IECA 302 at para. 64 that, in this regard, the court “*will have regard to whether the evidence, viewed in the round, supports an alleged consent being operative and enforceable at the time of the actual removal or whether intervening facts and circumstances are likely on balance to have superseded any such agreement*”, the Judge commenced his analysis by reiterating his previous finding that that the “*contemporaneous*” reaction of the Mother and the Father at the time of the removal was evidence “*of the fact that the mother did not in fact ‘rely upon’ the consent from September 2024 as the basis for her removal of the child*”.

34. He noted that there was “*a considerable lapse of time [12 months] between the giving of the consent and the purported reliance thereon*” which, he opined, was four times longer than the period of time at issue in the Court of Appeal of England and Wales decision of *Re PJ (Abduction: Habitual Residence: Consent)* [2009] EWCA Civ 588. There, it was held that an oral agreement providing for the removal of the children was no longer active at the time of the removal. The Judge found the facts of the *PJ* case “*so similar to those in this case*”.

35. The facts of *PJ* were as follows: The mother, a British national, and the father, a Spanish national, lived in Spain with their five children. In August 2007, with the father's agreement, the mother and the children moved to Wales with the intention of residing there for the school year before returning to Spain. In June 2008 the mother informed the father that she did not wish to return to Spain and wanted a divorce and to stay in Wales with the children. However, she agreed to return to Spain with the children to attempt a marital reconciliation on the father's assurance that should the attempted reconciliation fail she could return to Wales with the children to live there permanently. In October 2008 the mother clandestinely removed the children from Spain and returned with them to Wales despite the Father, who had been informed of the surreptitious removal by the eldest child, having forcefully expressed his opposition to the removal at the Spanish airport.

36. In the High Court Potter J. ordered the mother to return children holding, *inter-alia*, that although the husband had in June 2008 agreed that the mother could remove the children should the attempted reconciliation fail, he had nonetheless clearly objected at the time the children were in fact being removed and so had not given his consent for the removal within Article 13 of the Convention. In the course of his ruling, Potter J. found that it was not in dispute that the act of removal was surreptitious and that the immediate intentions of the mother and the arrangements for removal were concealed from the father “*and designed to present him with a fait accompli*”. He found that the father, upon his arrival at the airport, had plainly made clear his objections to the removal of the children at a time when the mother could still have turned back from the flight upon which they were booked. The mother had sought to rely upon discussions in England with the father to the effect that if following her return to Spain, the reconciliation period of one month was not a success, the mother would be free to return to England with the children. She further asserted that a month before the removal the father was assenting to her return to Wales with the children and had cooperated (unsuccessfully) seeking to book tickets on the Internet for them to return to Wales on 9 September 2008.

37. Whilst the father disputed that account as lies, Potter J. preferred the mother's version as to what happened in Spain at that time. He considered, however, that that was not sufficient to establish the father's consent to the removal in mid-October 2008 being satisfied that the mother knew or suspected that the father would not consent, or at the very least was likely to object, to the removal at a time when the children were happy in their new home and had successfully restarted at Spanish schools.

38. The mother appealed the decision to the Court of Appeal of England and Wales. That Court dismissed her appeal. In his judgment, Ward L.J. considered a number of authorities including in *Re K (Abduction: Consent)* [1997] 2 FLR 212, *Zenel v Heddow* [1993] STL 975

and in *Re L (Abduction: Future Consent)* [2008] 1 FLR 914. From his consideration of those cases, Ward L.J. deduced the following principles, expressed as follows at para. 48 of his judgment:

- “(1) Consent to the removal of the child must be clear and unequivocal.*
- (2) Consent can be given to the removal at some future but unspecified time or upon the happening of some future event.*
- (3) Such advance consent must, however, still be operative and in force at the time of the actual removal.*
- (4) The happening of the future event must be reasonably capable of ascertainment. The condition must not have been expressed in terms which are too vague or uncertain for both parties to know whether the condition will be fulfilled. Fulfilment of the condition must not depend on the subjective determination of one party, for example, “Whatever you may think, I have concluded that the marriage has broken down and so I am free to leave with the child.” The event must be objectively verifiable.*
- (5) Consent, or the lack of it, must be viewed in the context of the realities of family life, or more precisely, in the context of the realities of the disintegration of family life. It is not to be viewed in the context of nor governed by the law of contract.*
- (6) Consequently consent can be withdrawn at any time before actual removal. If it is, the proper course is for any dispute about removal to be resolved by the courts of the country of habitual residence before the child is removed.*
- (7) The burden of proving the consent rests on him or her who asserts it.*
- (8) The enquiry is inevitably fact specific and the facts and circumstances will vary infinitely from case to case.”*

39. Ward L.J. considered the ultimate question is *“a simple one even if a multitude of facts bear upon the answer. It is simply this: had the other parent clearly and unequivocally*

consented to the removal?” With reference to that question, he considered that the answer in the case was “*plain*” stating, at para. 49: -

“Whatever the terms were upon which the mother returned to Spain, she knew or suspected [as the High Court found], that the husband would not consent or at the very least was likely to object to the children being removed from Spain at a time they were happy in the new home and had successfully restarted at Spanish schools. She knew the husband was volatile and therefore likely to change his mind. Thus she embarked upon a clandestine and surreptitious removal with the intention of concealing the arrangements for removal from the father presenting him with a fait accompli. Her anticipation of the father's reaction was justified... He made [his] objections loud and clear as the mother well knew. He had to be restrained by the police. On those facts the answer to the simple question, whether or not this father had consented to the removal of his children from Spain, is plain as a pike staff. He did not consent.”

40. Applying the principles enunciated in *PJ* to the case in hand, the Judge accepted that “*it is clear that a parent can give consent in advance to the removal of his/her child from the State in which the child is habitually resident*”. It was also clear, however, that a consent which was “*too subjective*” may not be capable of being a proper consent. The Judge found that “*there is a considerable degree of subjectivity in determining whether reconciliation efforts have failed*”. It was also clear from *PJ* that the condition (to which the continuing consent is subject) must not be “*too vague or uncertain for both parties to know*” that it has been satisfied. He opined that whilst here the Mother might “*think*” that the reconciliation efforts had failed, *both* parties were required to be of this view. He was of the view that the consent in issue here “*was subject to a condition which was subjective and difficult for both parties to ‘know’ as a fact it had been satisfied*”. This was, he said, in contrast to the

example given by Ward L.J. in the *PJ* case. The Judge found the “*subjectivity*” and “*vagueness*” in the present case which applied to the Father’s consent “*militates against a finding that the consent was active in September 2025*”.

41. Noting the words of Bodley L.J. in *Re. L* (as quoted by Ward L.J. in *PJ*) that a consent which “*was given so long ago that it must clearly have lapsed*” or which was “*withdrawn*” is not a valid consent, it seemed to the Judge that “*the mother believed that the father’s consent, which had been given a full 12 months earlier, had lapsed (presumably because it had been given so long previously)*”. He found support for his view in the Mother’s email correspondence of 29 September 2025 “*in particular the omission from that email of any reference to the consent in the Custody and Relocation Agreement as a reason for the removal*”.

42. In the context of the continuing validity of the Father’s consent, the Judge found that the only significant difference between the case in hand and the *PJ* case was that the agreement in the latter was oral whereas in the present case it was written. That was not, he said, a sufficient difference to conclude that *PJ* was not persuasive authority.

43. Albeit he considered that if in the *PJ* case a period of three months was found to be too long for consent to be operative then a period of 12 months “*was definitely too long for consent, in a similar context, to be operative*”, the Judge nevertheless was prepared to accept that it was “*perhaps arguable that the father’s consent might still have been operative when there was clear evidence that the reconciliation had failed in April 2025 (when the mother moved out of the family home)*”. He considered, however, that when it came to the removal of the Child in September 2025, “*a consent that was given in September 2024 was not an open-ended right...to remove the child at some future stage during the child’s lifetime, whenever the mother’s circumstances had changed...*”. That, he said, would be the effective conclusion of the court were it to find the September 2024 consent valid 12 months later.

44. The Judge next considered whether the Father had “*clearly and unequivocally consented the removal*” of his child in September 2025. He found that the evidence supported the contrary view. As in *PJ*, the fact that the Mother had removed the Child surreptitiously supported the conclusion that there was no consent from the Father. He opined: “*After all, if the father had clearly and unequivocally consented to the child’s removal, there would be no need to remove the child surreptitiously*”. He considered that the Mother’s 29 September 2025 email “*indicates clearly that she knew or did not believe that he would consent to the removal, since this must be the reason she expected him to ‘react volatitlely’*”. As such, the consent defence failed since “*the mother clearly assumed, as evidenced by her email and her actions, that the father’s consent no longer applied*”. (para. 50)

45. Finally, noting, as per the principles set out in *PJ*, that the consent must be viewed “*in the context of the realities of the disintegration of family life*” and “*not under the law of contract*”, the Judge considered that the fact that the Relocation Agreement was stated to be “*legally binding forever*” was not determinative in cases such as the present. He stated that when considered “*in the round*” it could not be said that the Father “*clearly and unequivocally*” consented to the removal of the Child from the US in September 2025. (para. 51)

Grave danger/risk to the child

46. In her written submissions in the High Court, the Mother had raised the concept of grave risk as set out in Article 13(b) of the Convention, arguing that to return the Child to the US would place her in an intolerable situation.

47. In addressing this issue, the Judge referred to the finding of Collins J. in *CT v PS* [2021] IECA 132 that the grave risk exception has a narrow scope and there is a heavy burden in establishing such a risk. He found none of the Mother’s claims such as the Father

had neglected the Child while in his care or his harassment of the Mother had upset the Child met the required threshold.

48. In essence, the High Court rejected this argument on four bases:

- 1) The claims made were just allegations and are denied by the Father.
- 2) There was no evidence of any complaints to the authorities in the US, nor of any court proceedings regarding such claims.
- 3) Even if the allegations were true, they fell well short of the type of allegations sufficient to justify the court refusing the return.
- 4) The Irish courts could rely on the courts of the US, as a developed country with a sophisticated legal system, to protect the welfare of the Child.

The Mother does not appeal against these findings.

Visa Status of the Mother

49. The High Court dealt briefly with the issue of the visa status of the Mother. Her green card expired on 19 January 2026, and she therefore has no right to reside in the US. The Court noted that there was no evidence before it that she had applied for a renewal of her green card or that would not obtain such a renewal. The visa issue was therefore not a factor in the case: it could not be the case that a parent could seek, in effect, to veto the return of a child by her own acts/omissions regarding her visa status.

50. As referred to already, by Order of 11 February 2026 (perfected on 18 February 2026) the High Court ordered the return of the child to the state of Kansas in the US no later than 4 March 2026.

51. Following the delivery of the principal judgment, the Mother's solicitors wrote to the Father's solicitors seeking nine undertakings to be given by the Father to give effect to the Order returning the Child; those undertakings ranged from the Father providing an

undertaking to discharge the costs of the Mother obtaining a further green card to an undertaking that he pay \$35,000 by way of six months maintenance and/or financial support.

The *ex tempore* judgment of 11 February 2026

52. Given that the principal judgment had found there was no evidence before the Court of risk to the Child or that local courts in Kansas would not be able to deal with matters regarding childcare costs and maintenance, the High Court did not require some of the Mother's suggested undertakings.

53. In an *ex tempore* judgment of 11 February 2026 ([2026] IEHC 92) the Judge regarded undertakings offered by the Father as acceptable, subject to minor revisions. Accordingly, the Father was required:

- To provide and pay for the rental of a property in Kansas for a period of three months (increased from the one month offered).
- To pay \$1,500 per month, for a period of three months, in respect of the maintenance of the Mother and childcare expenses.
- To not make any referral to childcare services and/or the police and/or Immigration and Customs Enforcement in respect of the Child's unlawful removal.
- To discharge all reasonable costs, of circa €1,500, of flying the Mother and Child from Dublin to Kansas.

54. The High Court ruled that other issues, such as whether the costs of obtaining a visa or who pays for a buggy and highchair, were to be dealt with by the courts in Kansas, if the parties could not reach agreement. A stay of two weeks was placed on the Order to enable the bringing of an appeal.

The Appeal

55. The Mother lodged an appeal on 24 February 2026, challenging the principal judgment, the *ex tempore* judgment and the Order of 11 February 2026 on 17 grounds. The grounds of appeal primarily relate to the defence of consent. Many of the grounds overlap and may be grouped together: -

- Grounds 1-3: The High Court erred in assessing the Mother's email of 29 September 2025 as the real reason for the removal. The Judge should have distinguished between her reasons for the return to Ireland and her legal entitlement to do so. The totality of the evidence supports that she was relying on the consent of the Father to the removal, even if not expressly stated in the email.
- Grounds 4-6, 9-10, 13: The Judge erred in determining that the consent given in Relocation Agreement had lapsed; the consent therein was of unlimited duration. The Father had taken no steps since the failure of the reconciliation efforts between April 2025 to September 2025 to withdraw from, or vary, the Agreement. The *PJ* case can be distinguished as the Agreement in the present case was a formal, written agreement signed by both parties. The Agreement did not require notification by the Mother of her intention to relocate. There was no evidence that the Mother believed that the consent had lapsed. The Mother had returned to Ireland in February 2024 without complaint from the father. Her surreptitious departure in September 2025 was in accordance with the Agreement which did not require notification.
- Grounds 7-8, 11: The High Court erred in determining: that the Relocation Agreement was too subjective and vague; that the parties must both think that the reconciliation efforts had failed; and in not finding that the reconciliation efforts had in fact failed. It further erred in failing to find that the Mother had an open-ended right to remove the Child at some further stage during the Child's lifetime.

- Ground 12: The High Court erred in determining that the Mother's expectation of volatility from the Father was evidence of her awareness of his lack of consent to the removal. There was ample evidence of the Father's volatility in the circumstances of the marriage, and which was unconnected to the question of relocation.
- Ground 14: The High Court erred in determining that the Father did not consent, having regard to the principles outlined at para. 48 of Ward LJ's judgment in *PJ*.
- Grounds 15-16: The High Court failed to consider the case "*in the round*". The Father's clear consent was evident from the actual words used in the Relocation Agreement and from the surrounding circumstances which led to it. Furthermore, the Court failed to have regard to the fact that neither party continues to reside in Kansas; in such circumstances the return would be "*futile*".
- Ground 17: The High Court failed to require the appropriate undertakings and failed to have regard to the Mother's experience of the cost of living in Kansas, her limited financial means, her inability to obtain employment in the short term without the necessary visa permissions, the lack of maintenance payments from the Father in the past and the fact that the Father resides in another state. The Court erred in not requiring proof of compliance with the undertakings prior to travel.

56. By way of relief, the Mother sought an order refusing the return of the Child, or in the alternative an order staying the Order for return, pending the determination of the courts in Kansas of her application for permission to remain in Ireland with the Child. Further in the alternative, in the event that an order for return was made, she sought a number of undertakings from the Father and confirmation of compliance therewith prior to travel, including, *inter alia*:

- (i) Discharging the costs of the Mother regularising her immigration status in the US.

- (ii) Discharging the costs of the rental of an apartment for the Mother and the Child in Kansas, with six months of rent paid in advance of travel.
- (iii) That he would furnish the apartment, including furnishings for the Child such as a highchair and buggy.
- (iv) That he would fund childcare arrangements to allow the Mother to seek employment.
- (v) That he would provide the Mother with a car or access to a car to facilitate her transporting the Child.
- (vi) That he would place \$35,000 into the Mother's account by way of six month's maintenance.

57. On 16 March 2026, the Father filed a Respondent's Notice opposing the entire appeal.

Discussion and Decision

58. Before addressing the grounds of appeal and the parties' respective submissions, it is apposite to refer to the case law on the question of consent for the purposes of Article 13 of the Convention. Reference has already been made to the principles enunciated by Ward L.J. in re *PJ*, which are largely replicated in the decision of this Court in *JV v. QI*, where Whelan J. (writing for the Court) states, at para. 64 (as indeed quoted by the Judge):

"... The court will have regard to whether the evidence, viewed in the round, supports an alleged consent being operative and enforceable at the time of actual removal or whether intervening facts and circumstances are likely on balance to have superseded any such an agreement. The court is entitled to have regard to the immediate facts and circumstances surrounding the removal of the children in the context of the lived realities of the family and to scrutinise the acts and representations of each parent contemporaneous with and immediately subsequent to the removal, bearing in mind that the burden of proving on the balance of

probabilities a valid operative consent rests on the parent who asserts affords a defence to an otherwise wrongful removal. Each case will proceed on its own facts and considerations such as the passage of time or intervening events such as intervening court proceedings or subsequent court orders pertaining to the children, which are either inconsistent with or substantially or materially undermine any purported agreement will all be relevant. The court must be satisfied that the left behind parent gave a consent embodied in the asserted agreement which in substance was freely given, informed, unequivocal and that it was operative and actively relied upon at the date of the removal.”

59. In the course of the appeal hearing, both parties referred to the decision of the Court of Appeal of England and Wales in *Re G (Abduction: Consent/Discretion)* [2021] EWCA 139, a case not opened in the court below. In that case, from his consideration of the relevant case law, including *Re PJ*, *Re K* and *Re L*, Jackson L.J. extrapolated the following principles, expressed at para. 25 of his judgment: -

“(1) The removing parent must prove consent to the civil standard. The inquiry is fact-specific and the ultimate question is: had the remaining parent clearly and unequivocally consented to the removal?

(2) The presence or absence of consent must be viewed in the context of the common sense realities of family life and family breakdown, and not in the context of the law of contract. The court will focus on the reality of the family's situation and consider all the circumstances in making its assessment. A primary focus is likely to be on the words and actions of the remaining parent. The words and actions of the removing parent may also be a significant indicator of whether that parent genuinely believed that consent had been given, and consequently an indicator of whether consent had in fact been given.

(3) Consent must be clear and unequivocal but it does not have to be given in writing or in any particular terms. It may be manifested by words and/or inferred from conduct.

(4) A person may consent with the gravest reservations, but that does not render the consent invalid if the evidence is otherwise sufficient to establish it.

(5) Consent must be real in the sense that it relates to a removal in circumstances that are broadly within the contemplation of both parties.

(6) Consent that would not have been given but for some material deception or misrepresentation on the part of the removing parent will not be valid.

(7) Consent must be given before removal. Advance consent may be given to removal at some future but unspecified time or upon the happening of an event that can be objectively verified by both parties. To be valid, such consent must still be operative at the time of the removal.

(8) Consent can be withdrawn at any time before the actual removal. The question will be whether, in the light of the words and/or conduct of the remaining parent, the previous consent remained operative or not.

(9) The giving or withdrawing of consent by a remaining parent must have been made known by words and/or conduct to the removing parent. A consent or withdrawal of consent of which a removing parent is unaware cannot be effective.”

60. As Jackson L.J. noted, the principles he extracted were well established save principle (9) which had not arisen for consideration in prior cases.

61. Bearing in mind the relevant principles, I turn now to the Mother’s arguments on the appeal.

Undue focus on the Mother’s 29 September 2025 email, and the failure to consider matters “in the round”

62. As we have seen, there was much focus in the court below on the Mother's response to the email sent to her by the Father on 29 September 2025. Grounds 1-3 of the grounds of appeal assert that the High Court erred in assessing the Mother's email of 29 September 2025 as the real reason for the removal and contend that the Judge should have distinguished between her reasons for the return to Ireland and her legal entitlement to do so. It is argued that the totality of the evidence supports the conclusion that the Mother was relying on the consent of the Father (as provided in the Relocation Agreement) for the removal, even if not expressly stated in the email. The purpose of the email, it is said, was to respond to the Father's request for an explanation for her departure which was provided in her email.

63. The Mother also submits that the Judge focused only on her reply without any proper consideration of the Father's email. She says that the Judge failed to take account of the fact that in his email the Father had made no reference to his now contention that she did not have consent to remove the Child to Ireland. Nor did his email refer to or resile from or otherwise challenge the Relocation Agreement. Moreover, he did not assert that the Relocation Agreement was not subsisting at the time of the Child's removal, or that he had withdrawn his consent prior to the removal. She also contends that on 29 September 2025, the Father had not requested a justification for the removal and, therefore, there was no reason for her to justify the removal at that point. However, the situation had changed when the grounding affidavit was sworn, as there was then a clear issue regarding her justification for removing the Child. She argues that she has consistently relied on the Relocation Agreement. The High Court, she says, erred in wrongly conflating what prompted her to leave Kansas in September 2025 with why she was justified in bringing the Child with her. In essence, it is argued that the Judge erred in failing to look at the evidence "*in the round*" (as he was required to do) (grounds 15-16), as opposed to basing his determination on one email.

64. In short, it is submitted that the Judge erred insofar as he concluded that the relocation to Ireland with the Child was unrelated to the consent provided in the Relocation Agreement. It is said that this error is significant in that the Judge subsequently applied his finding to his determination that the Father's consent was not operative in September 2025.

65. On the other hand, the Father submits that the Judge "*correctly attached particular importance*" to what the Mother said in her email of September 2025 and brands the Mother's submission that the High Court failed to distinguish between the legal basis for the removal and the reasons for it, as a "*distinction without a difference*". She did not mention the failure in reconciliation efforts or her entitlement to return in the email only doing so after proceedings had commenced and she had obtained legal advice. The Father also notes that the Mother's account of why she left has varied and has changed again since the High Court decision as in her submissions to this Court, she now seems to accept that the removal of the child was surreptitious. He thus submits that the "*constantly changing narrative*" advanced by the Mother is unconvincing and falls short of clear evidence of operative consent.

66. Notwithstanding the Father's arguments, in all the circumstances of this case, I am satisfied that there was undue focus by the Judge on the Mother's 29 September 2025 email to the exclusion of a proper consideration of what the parties had expressly provided for at Clause 2 of the Relocation Agreement.

67. In my view, the Judge did not view matters "*in the round*", as he was required to do. In particular, he failed to pay due regard to the relevant timelines or the real nuances of the Relocation Agreement and what preceded it in the period November 2023 to January 2024, and which had led the Mother to flee to Ireland in February 2024. Furthermore, in the context of his analysis of whether the Father's consent was extant and subsisting as of 24 September 2025-the date of the removal of the Child- again, the Judge failed to assess "*in the round*"

what had transpired between the signing of the Relocation Agreement and the Mother's relocation to Ireland on 24 September 2025.

68. The relevant analysis, to my mind, required a considered review of what preceded the signing of the Relocation Agreement and the events that occurred thereafter. Undoubtedly, there were difficulties in the parties' marriage from the outset, including around the time of the Child's birth in November 2023. In the period between November 2023 and February 2024, there were significant behavioural issues on the part of the Father which led to the Mother returning to Ireland with the Child in February 2024. The difficulties with the Father's behaviour around the time the Child's birth necessitated the presence of the Mother's brother at the birth. This is evidenced from email correspondence between the birth clinic midwife and the Mother where the clinic requested that the Father not be in the birth centre during the Mother's labour and the birth. Ultimately, the concerns of the midwife were addressed by the Mother having her brother present (with the Father also attending).

69. The Mother had to flee the family home on 24 December 2023 with the Child and go and stay with a friend due to the Father's behaviour. The difficulties the Mother encountered at this time and which led her to leave the family home are corroborated by the contents of email correspondence from the Father to his mother-in-law on 26 December 2023 wherein he apologised to her and her husband about "*the irrational behaviour that has built up this year*" and where he took full responsibility for his actions which had led to the Mother leaving the family home with the Child.

70. The difficulties which arose as a result of the Father's behaviour are further corroborated in email correspondence dated 2 December 2025 from his mother to the Mother's mother where she expressed her concern about her son's behaviour. That behaviour necessitated her attendance at the parties' family home on more than one occasion in 2023. As she explains, she helped the Mother and the Child "*flee*" their residence more than once

due to safety concerns. She outlined the events of Christmas 2023 which led to the Mother and the Child having to spend Christmas with friends. Whilst the Mother and Father reconciled post-Christmas 2023, with the Mother and the Child returning to the family home, two weeks later the Father's mother had received a telephone call from the Mother requesting accommodation after a heated argument between the parties as to who was going to claim the Child for tax purposes. On that occasion, the Father's mother had taken the Mother and the Child to her home and had changed the locks and codes to secure the house. Thereafter, the Father had “*bombarded*” the Mother with text messages from outside his mother's house as a result of which the Mother and the Child had to move to the Father’s grandmother's residence.

71. All of this, to my mind, is important in the context of the Mother and the Child leaving for Ireland in February 2024, which, in essence, was the foundation or backdrop to the Relocation Agreement which was entered into in September 2024. The Agreement followed upon the Father having travelled to Ireland to seek to reconcile with the Mother and which led the Mother and the Child returning to Kansas and the family home following the execution of the Agreement. (I have already alluded to the Mother having deposed to her concerns surrounding the reconciliation.) The Judge does not appear to have addressed the contents of the Father's mother’s email or indeed other email correspondence which referenced the Father’s behaviour pre- and post the parties’ reconciliation. I consider that significant weight should have been attached to such correspondence given that the Relocation Agreement referenced both the scenario of a failed reconciliation and the Father's actions and behaviours as triggers for the Mother’s relocation to Ireland with the Child.

72. A core aspect of the Mother’s case on the appeal is that her reliance on the Father’s consent requires to be understood in the context of what occurred between the parties in the period April 2025 to early August 2025. Notwithstanding the reconciliation that took place in

September 2024 consequent on the Relocation Agreement, as the Mother deposes to at paras. 22-32 of her affidavit, there continued to be difficulties in the parties' relationship such that, once financially able to do so, she moved out of the family home on 5 April 2025 and secured alternative rented accommodation for herself and the Child, following which on 7 April 2025 the Father placed the family home on the market for rent and went on to rent out the family home in June 2025.

73. This, in turn, is linked to what occurred between the parties over the course of 31 July 2025 and 1 August 2025 following the Mother's return to the US from a short holiday in Ireland in July 2025. It will be recalled that she and the Child returned to the rented accommodation she had secured in April 2025 after leaving the family home following the breakdown of the reconciliation.

74. In her affidavit, the Mother attests to receiving multiple calls and texts from the Father on 1 August 2025. She avers as follows:

"37. On or about the 1st day of August 2025 after our return from Ireland, the Applicant again presented at my apartment without invitation. The Applicant repeatedly rang the doorbell and sent several text messages to your Deponent requesting entry to the apartment. I say that he lay on the porch of my apartment reading a book and refused to leave. The Applicant continued with this behaviour over several hours before eventually deciding to sleep in his car outside my apartment. The Applicant's actions in this regard caused significant fear and distress to both your Deponent and [the Child]. I beg to refer to a true copy of the text messages exchanged between us on that night, and the call log of the telephone showing the Applicant's repeated efforts to contact me by telephone..."

38. I say that the aforementioned incidents are by way of example only of the Applicant's unacceptable behaviour that caused distress and harm to your deponent

and to [the Child]. The Applicant has adopted a pattern of incessant harassment of your Deponent and deploys his tactics using whatever means are available to him including via direct contact, telephone calls, text messages, social media and via third parties.”

75. Here, the Relocation Agreement expressly provided that the Mother could relocate to Ireland with the Child if the parties’ reconciliation failed. Contrary to the argument which counsel for the Father sought to advance on the appeal, the provisions of clause 2 were not vague or uncertain (premised as they were on an identifiable event-the breakdown of the parties’ reconciliation) such that the Agreement could not be considered not valid.

76. The salient question is whether it could be objectively verified at the time of the relocation in September 2025 that the reconciliation had failed. In my view, the breakdown of the reconciliation was objectively verifiable (by both parties) by reason of the fact both were living separately as of September 2025 - the Mother residing with the Child in rented accommodation having left the Father and the family home in April 2025. Thereafter, she had refused to let him enter her apartment and informed him that where he lived was a matter for him. In July 2025, she went on holiday with the Child to Ireland without the Father.

Moreover, the Father's own actions in the period April to August 2025 bear witness to the breakdown of the reconciliation. He put the family home up for rent on 7 April 2025 and it was rented out by 2 June 2025 and thus not available to any member of the family. The Father agreed to join the military in August 2025, based in Missouri. He agreed with the Mother that he would see the Child one weekend per month. By the time the grounding affidavit was sworn, he was planning to go and reside in Dallas, Texas.

77. For the reasons set out above, I cannot agree with the view expressed by the Judge at para. 46 of his judgment *“that in the present case there is a considerable degree of subjectivity in determining whether reconciliation efforts have failed”*. By dint of their

respective actions in the period April to August 2025, both the Mother and the Father knew as a fact that the condition precedent for the relocation to Ireland by the Mother with the Child (the breakdown of the reconciliation), to which the continuing consent of the Father was subject, had been satisfied.

78. In her submissions, counsel for the Father points to the fact that even if there was a breakdown of the reconciliation in April 2025, the Mother did not *then* act on the Agreement. It is contended that even if the Court viewed the reconciliation attempts as being sufficiently objective, the Agreement would only have constituted consent for the Mother to remove the child at the latest in April 2025, when she moved out of the family home. Hence, any consent given must clearly have lapsed by September 2025. Counsel also points to the fact that the Mother had asked for the Father's consent to take the Child to Ireland on holiday in July 2025, and that on 29 September 2025 the Mother accounted to the Father for the relocation by reference to matters other than the Relocation Agreement and told him she had not planned the trip. Nor did she say in her email that she was going to reside permanently in Ireland.

79. I have already opined that, in light of their respective the actions in the period April to August 2025, both parties had to have known by the time of the relocation to Ireland by the Mother with the Child, that the conditions for that relocation had been met. As for the fact that the Mother had sought the Father's consent for the July 2025 holiday, again, I do not consider that that can be regarded as dispositive of whether the Mother was entitled to act on the provisions of the Agreement in circumstances where the triggering event or condition (the breakdown of the reconciliation) continued to be operative as of September 2025.

80. Whilst I note the Father's counsel's observation that the Mother did not say in her email response on 29 September 2025 that she was going to reside permanently in Ireland, I also note from the Father's 29 September 2025 email that he was of the view that the Mother

had left the US without planning to return. Furthermore, he did not advance the case in the High Court that the Mother's relocation in September 2025 was temporary. Also of note is the fact that in his 29 September 2025 email he does not raise an objection to the Mother having taken the Child to Ireland. Nor does he say at that point that he had not consented to her removing the Child, or that he had otherwise withdrawn the consent he gave in September 2024 when he signed the Relocation Agreement. Rather, what he does is pose a number of questions to the Mother and offer to help her clear out her apartment.

81. Of note also are the instructions the Father gave to his solicitor for the affidavit grounding his application, where it is asserted that the Child was removed by the Mother from the family home. This was not in fact the case as the Father had rented out the family home in June 2025 and had gone and joined the military in Missouri. Furthermore, he was aware that the Mother was living in rented accommodation since April 2025. It is also of note that the affidavit grounding the Father's application for the return of the Child singularly fails to make any reference to the Relocation Agreement, or to the other significant developments in the period April to August 2025 to which I have already alluded.

82. Whilst acknowledging that there may be credibility issues relating to the Father arising from the instructions he gave for the grounding affidavit, his counsel nevertheless submits that the salient issues in this case fall outside the issue of the Father's credibility. She emphasises that the burden is on the Mother (which I accept) to establish that the defence of consent has been made out and, again, emphasises the fact that after the breakdown of the reconciliation in April 2025 the Mother had stayed in Kansas, and that in July 2025 she sought the Father's consent to take the Child to Ireland on holiday. On that basis, she says, the Father could have no reason to believe that the Mother was going to act on the Relocation Agreement. Counsel's position, therefore, is that it is unreasonable for the Mother to contend that she could leave for Ireland at any time in reliance on the Agreement, and that it was

reasonable for the Father not to have addressed the Relocation Agreement in his email correspondence of 29 September 2025 since he did not consider there was anything to address in that regard and to have believed that, in the circumstances just outlined, matters would have proceeded as before.

83. For the reasons I have set out, I do not find merit in these arguments, in the absence of the Father being able to point to some intervening event which had rendered his consent inoperative as of September 2025.

84. In this latter regard, counsel for the Father did argue that the fact that the Mother had sought the Father's consent for her travel to Ireland on holiday with the Child in July 2025 amounted to a change of circumstances such that the Relocation Agreement must be considered to have lapsed, and that her action in this regard meant that the parties were settling into a new phase of their life not contemplated by the Relocation Agreement.

85. Whilst, perhaps, at first blush, this argument appears superficially attractive, it does not, however, negate the fact that the breakdown of the reconciliation, on which the Mother's entitlement to relocate was premised, remained objectively verifiable as of September 2025 by dint of the fact that the parties were most certainly living apart at that time, the Mother having left the family home in April 2025 and the Father having removed himself from Kansas to live his life elsewhere.

86. Indisputably, in my view, further to the provisions of the Relocation Agreement, and by reason of the matters I have set out above, most particularly the failure of the parties' reconciliation, the Mother had a legal justification for her removal of the Child in September 2025, subject of course to the Court being satisfied that the consent given by the Father in September 2024 continued to subsist as of 24 September 2025. The question therefore is whether the consent the Father provided in the Agreement continued to subsist as of 24 September 2025, the issue to which I now turn.

Undue reliance on the decision in the PJ case

87. As provided for in the case law, “...*Advance consent may be given to removal at some future but unspecified time or upon the happening of an event that can be objectively verified by both parties...*” (principle 7 in *Re G*). That principle also requires that “*such consent must still be operative at the time of the removal*”. Part of the case advanced by the Father on the appeal is that his consent had lapsed by the time of the Mother’s relocation to Ireland with the Child, his counsel arguing that on any objective analysis of the Agreement, twelve months is too long for the Agreement to have subsisted.

88. The Judge took a similar view. At para. 40 of the judgment, he noted that a considerable period of time (12 months) had elapsed between giving of the consent and the Mother’s “*purported*” reliance thereon. He opined that this was four times longer than the period of time at issue in *Re PJ*. It will be recalled that in the *PJ* case, the parents had agreed in June 2008 to reconcile on the basis that if the mother’s return with the children to family life in Spain with the father did not work out, she could return to live separately with the children to Wales. On that basis, the mother had returned to the family home in Spain with the children in August and September 2008 and the children resumed schooling in Spain. However, on 15 October 2008 she removed the children to Wales. For the reasons set out in their judgment, the Court of Appeal of England and Wales held that the father had not consented to the children’s removal the Court having agreed with the trial judge that the manner of the mother’s departure from Spain meant that she knew or suspected that the father would not consent to the children’s removal.

89. In the present case, having alluded to the *PJ* case, the Judge went on to state: “*such a long passage of time between the giving of the consent and the removal provides support for the view that the consent in this case was not 'operative' on the date of the removal. This is particularly so, because the facts of the PJ case are so similar to those in this case.*” (para.

40). As referred to earlier, at para. 48, he expressed the view that if three months was considered too long in the *PJ* case for the consent to remain operative, “*then a period of 12 months is definitely too long for the consent, in a similar context, to be operative*”.

90. The Mother’s position on the appeal is that there is no merit in the argument that the Agreement had abated by the passage of time having regard to the provision in the Agreement for the Mother, in the event of a breakdown of the reconciliation, to be able to relocate to Ireland with the Child “*and any future Children*”. This, she says, must mean, contrary to the findings of the Judge, that the parties intended the Agreement to subsist for a period of at least nine months, at a minimum. In those circumstances, she says, there was no basis for the Judge to align the parties’ circumstances with the circumstances that pertained in the *PJ* case which, she says, were entirely distinguishable from the present case.

91. In short, the Mother’s contention is that there was no time restriction on when she could act on the relocation clause provided for in the Agreement. She further submits that there was no notification period required from her to the Father in circumstances where the backdrop to and purpose of the Agreement was the Father’s behaviour over the period November 2023 to February 2024. She also adverts to the fact that the parties had agreed that the Agreement would be legally binding forever.

92. I will refrain from commenting on the Mother’s argument that the Father’s consent could not have lapsed since the Agreement was “*legally binding forever*” in circumstances where, on the facts here, we are clearly not in the territory where the Court is required to opine on that submission. Suffice it to say that the factual matrix establishes that the Mother exercised her entitlement to relocate with the Child within five months of the breakdown of the parties’ reconciliation, a breakdown which was continuing as of the date of the Child’s removal (as evidenced by the actions of both parties).

93. As to the question, therefore, of whether the Father's consent remained extant as of the date of removal, the first thing to be observed is that the Mother's action in September 2025 was taken pursuant to a thought-out agreement between the parties which had been reduced to writing and which clearly envisaged an agreement that would, at the very minimum, subsist for nine months, if not longer, having regard to the provisions of clause 2.1. Whilst acutely conscious that the consent entered into by the parties is not to be construed in the context of the law of contract but rather to be viewed in the context "*of the realities of family life, or more precisely, in the context of the disintegration of family life*", I consider that the time that had elapsed before the Father's consent was acted on by the Mother was not significant given the backdrop to the Agreement and the fact that it had provided for relocation in circumstances where the parties might have had another child (or children) in addition to the Child the subject of the within proceedings by the time the Mother invoked the Agreement (assuming of course that the condition precedent for the invoking of the consent could be established, and that the Father's consent had not otherwise been withdrawn).

94. In my view, the Judge failed to recognise the distinguishing factors in the present case, not least that the Relocation Agreement was never understood to be a short-term agreement. Nor did he seem to appreciate that by virtue of the terms of the Agreement, a certain period of time had to be allowed to elapse from the time of its execution before the Mother could invoke the Agreement, in order to see if the parties' marital reconciliation would work out. Patently, in the period from September 2024 to April 2025, the parties were in the throes of their reconciliation efforts even if that reconciliation was beset with difficulties, as the evidence shows it was. In short, in my view, given all of the above considerations, there was no valid basis for the Judge to rely on the timelines that pertained in the *PJ* case as support for his finding that the consent in issue here had lapsed by the efflux of time.

95. It is also of note that any variation of the Agreement was required to be reduced to writing and there was no variation.

96. I am also not convinced by the Judge's reasoning that if he found the consent operative, it would be open-ended and could be exercised at any time, even in the distant future. The Father's consent could have been withdrawn at any time before the removal, but he failed to do so at any point between the breakdown of the parties' reconciliation and the removal of the Child on 24 September 2025. This is an important factor, in my view, given that the parties had gone to considerable pains to formalise the expression of consent. Accordingly, I accept the Mother's contention that the Court should look for comparable formality in the withdrawal of the consent, a matter to which I will return below.

Surreptitious removal as indicator that consent was not subsisting

97. It will be recalled that the Mother removed the Child in September 2025 without telling the Father. Similarly, in *PJ*, it was not in dispute that the removal was surreptitious and that the immediate intentions of the mother (the removing parent) in *PJ* were concealed from the father until he was alerted to the removal by the eldest child.

98. As may be seen from the judgment under appeal here, the Judge considered whether the Father had "*clearly and unequivocally*" consented to the removal of the Child in September 2025 again by reference to the factual matrix at issue in the *PJ* case. At para. 50, he found that the fact that the Mother removed the Child surreptitiously supported the conclusion that there was no consent from the Father (a conclusion also reached in the *PJ* case). The Judge opined:

"After all, if the father had clearly and unequivocally consented to the child's removal, there would be no need to remove the child surreptitiously. Indeed the mother's email indicates that she knew or did not believe that he would consent to the removal, since this must be the reason she expected him to 'react volatilyly'"

99. Whilst it is acknowledged that she did not advise the Father of her departure, the Mother's position on the appeal is that the very terms of the Relocation Agreement envisaged that she would not inform the Father at the time that she was leaving. In this regard, she relies on the decision of the Scottish Courts of Session in *Zenel v. Heddow*. In that case, the mother had left Australia and returned to Scotland after a reconciliation with the father of the child in question had failed. Her return to Scotland was premised on an agreement reached with the father that she could return home to Scotland in the event of a breakdown in the reconciliation, and she did so clandestinely. Here, the Mother points to the fact that in *Zenel*, the manner of the removal of the child was not held against the removing parent by the Scottish Court.

100. The Father, however, submits that the fact that there was subterfuge surrounding the removal of the Child must be taken as indicative of the Mother's belief or assumption that he was not maintaining his consent at the time of the removal. He says that the case law has developed since that decision in *Zenel* such that that case is no longer good authority. Counsel for the Father cites *Re PJ* as authority for the proposition that the subterfuge of the removing parent is an indicator that consent was no longer extant. Reliance is also placed on the dicta of Jackson L. J. in *Re G*, at principle (2): "*The words and actions of the removing parent may also be a significant indicator of whether the parent genuinely believed that consent had been given, and consequently an indicator of whether consent had in fact been given*".

101. Whilst it is of course the case that the words and actions of the removing parent may be an indicator of whether they believed consent had in fact been given, it must also be borne in mind, as Jackson L.J. observed at principle 2, that "*a primary focus is likely to be on the words and actions of the remaining parent*". Here, it bears repeating that the Mother's removal of the Child was against the backdrop of an agreement the parties had reached that in

the event of a breakdown of their reconciliation, the Mother could relocate to Ireland with the Child. Between April 2025 when the Mother and Child left the family home and September 2025 when she departed for Ireland, there was no indication from the Father that he was resiling from the terms of the Relocation Agreement or that he had otherwise withdrawn his consent. On the contrary, his entire actions including renting out the family home and taking up a full-time position in the military from 1 August 2025 and in being deployed outside Kansas were consistent with his acceptance of the failure of the marital reconciliation. Importantly also, this was not a situation of the kind referred to by Jackson L.J. in *re G* where the Mother (the departing parent) had deliberately “*gone to ground*”, such that a court might draw the inference that the Mother knew prior to the departure that the consent of the Father was lacking. Here, having knowledge of where the Mother was residing with the Child, at any time between April and 24 September 2025 the Father could have advised the Mother that he was no longer consenting to her taking the Child to Ireland, but he did not do so, either in words or conduct. As said by Jackson L. J. in *Re G*, at principle 9, “...*The giving or withdrawal of consent by a remaining parent must have been made known by the words and/or conduct to the removing parent. A consent or withdrawal of consent of which a removing parent is unaware cannot be effective.*” It bears repeating that the present case is not one where the remaining parent had changed their mind and did not have an opportunity to communicate with the departing parent because the latter had “*gone to ground*”.

102. Undoubtedly, the Mother left the US with the Child in September 2025 without advising the Father. However, I do not believe that the Judge was correct to draw the inference that the Mother’s actions in this regard were indicative of her awareness or assumption that the Father had withdrawn his consent, in circumstances where the Father had never in fact withdrawn his consent and where the factual matrix pertaining to the parties’ living arrangements were entirely different to the family arrangements that pertained in the

PJ case. In my view, in finding a lack of consent due to the surreptitious nature of the Child's removal, the Judge overlooked the evidence that the Mother had obtained separate accommodation for herself and the Child, the fact that the Father had been made aware that he was not wanted at that accommodation and the fact that he had moved to another state. These were circumstances quite unlike those that pertained in the *PJ* case where, prior to the removing parent's departure in that case she and the children had resumed living in the family home with the father and the children had settled back in school in Spain, all factors, which in my view, were capable of explaining why the removing parent in *PJ* acted as she did and which were equally capable of giving rise to the inferences drawn by the courts in that case.

103. More importantly, in the present case, there were credible factors, other than a belief or assumption on the part of the Mother that she did not have the Father's consent, which explained the manner of her departure. The Father had a history of volatility to which the Mother had alluded in her 29 September 2025 email. Whilst, as we see, the Judge considered that the reason she had left in the manner she did was because she knew the Father did not clearly and unequivocally consented to the removal of the Child, to my mind, in reaching that conclusion, he failed to give due consideration to the father's "*history*" of volatile behaviour as referred to in the Mother's email.

104. Whilst I accept that the Judge could not be expected to adjudicate on the conflicts on this issue to which the affidavit evidence gave rise, nevertheless there was evidence before him *via* the statements and emails of third parties (including the Father's mother) which corroborated the Mother's account of the Father's volatility throughout the marriage. This evidence included the volatility he displayed shortly after she returned to the family home post-Christmas 2023 (as detailed in the Father's mother's email and which led to his mother offering the Mother shelter), the volatility his former employer's "*Cease and Desist*" letter referenced (**Book of Evidence, tab 26**), the volatility referenced in the communication that

emanated from the Mother's midwife in the period preceding the birth of the Child and the volatility he displayed on 1 August 2025. To my mind, therefore, it was not "*plain as a pikestaff*" that the volatility the Mother anticipated from the Father, had she advised him in advance that she was going to act on the Relocation Agreement, was because she was aware he had somehow withdrawn the consent he had expressly given in September 2024. As I have already said, there is in fact no evidence that the Father had resiled from the consent he had given prior to the Mother's departure for Ireland on 24 September 2025.

Summary

105. In all the circumstances of this case, I part ways with the finding of the Judge that the Father had not "*clearly and unequivocally consented*" to the removal of the Child prior to her removal to Ireland. I also part ways with his finding that that consent had somehow abated or been withdrawn. To again rehearse the words of Jackson L.J at principle 9 of *Re. G*: "*The giving or withdrawing of consent by a remaining parent must have been made known by words and/or conduct to the removing parent. A consent or withdrawal of consent of which a removing parent is unaware cannot be effective.*" Jackson L.J. went on to say that there were "*compelling*" reasons why the removing parent must be aware of whether or not consent exists:

"26. ... *The first is that as a matter of ordinary language the word 'consent' denotes the giving of permission to another person to do something. For the permission to be meaningful, it must be made known. This natural reading is reinforced by the fact that consent appears in the Convention as a verb ('avait consenti/had consented'): what is required is an act or actions and not just an internal state of mind. But it is at the practical level that the need for communication is most obvious. Parties make important decisions based on the understanding that they have a consent to relocate on which they can safely rely. It would make a mockery of the Convention if the*

permission on which the removing parent had depended could be subsequently invalidated by an undisclosed change of heart on the part of the other parent, particularly as the result for the children would then be a mandatory return. Such an arbitrary consequence would be flatly contrary to the Convention's purpose of protecting children from the harmful effects of wrongful removal, and it would also be manifestly unfair to the removing parent and the children."

I fully endorse this rationale. Here, the Father had consented to the Mother relocating to Ireland with the Child in the event the parties' marital reconciliation broke down. That event came to pass. For the reasons I have already alluded to, when in September 2025 the Mother acted on foot of the Relocation Agreement, the Father's consent was extant and subsisting such that her removal of the Child was lawful.

106. The within appeal was allowed by the Court for all the reasons set out above. As this judgment is being delivered electronically Costello P. and Burns J. have indicated their agreement therewith.