

RE A (FOREIGN CONTACT ORDER: JURISDICTION)
[2003] EWHC 2911 (Fam)

Family Division

Sumner J

2 December 2003

Brussels II – Jurisdiction – Spanish order for residence to mother in England with monthly contact in Spain – Father’s appeal rejected – Father’s further enforcement attempts and new application for residence – Whether the Spanish courts’ jurisdiction came to an end when father’s appeal rejected

The mother, an English national, and the father, a Spanish national, were married and lived in Spain, where their son was born. They divorced in 1999 and on 4 June 2001 a Spanish court gave the mother permission to live with the daughter in England, with fortnightly contact to the father alternating between Spain and England. The father appealed the order and, because the mother was not arranging for the child to go to Spain each month, made a series of applications to enforce the order. On 2 October 2001 the mother applied in the Principal Registry in London for an order to vary the Spanish contact arrangements, but her application was rejected on the grounds that the proceedings in Spain were not final as the father’s appeal had not yet been determined. On 7 June 2002 the Spanish court rejected the father’s appeal against the order of 4 June 2001. Approximately 1 year later, in May 2003, the father again applied for enforcement of the original order and sought residence with contact to the mother. The two applications before the English court were the mother’s stayed application of 2 October 2001 and a second defined contact application of 8 May 2003.

Held – declaring that the English court had jurisdiction to hear the mother’s application – setting the matter down for directions and suspending the provision of the order of 4 June 2001 that the child should go to Spain each month –

(1) Subsequent applications to enforce the terms of a final order did not alter its status as a final order. Otherwise the concept of a final judgment was that of one suspended. Council Regulation (EC) (No 1347/2000) of 29 May 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of Both Spouses (Brussels II) contemplated that there might be further proceedings in relation to the children after final judgment, such as changing residence or enforcing an order. These did not alter the status of the final order. After a final judgment, jurisdiction passed on to another Member State who could enforce that final judgment (see paras [55], [56], [58], [59]).

(2) The father’s applications to enforce the order of 4 June 2001 and his application for change in residence in May 2003 did not affect the finality of the judgment of 4 June 2001 for the purposes of Brussels II. However, it only became a final judgment following the unsuccessful appeal decided on 7 June 2002 (see para [60]).

Per curiam: under Brussels II the father could apply to enforce the order of June 2001 within this jurisdiction or make other applications under the Children Act 1989.

Statutory provisions considered

Children Act 1989

European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children 1980, Arts 9, 10, 11

Council Regulation (EC) (No 1347/2000) of 29 May 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of Both Spouses (Brussels II), Arts 1(1), 2, 3, 9, 13, 37

Council Regulation (EC) (No 2201/2003) of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility (repealing Council Regulation (EC) (No 1347/2000)) (Brussels IIA)

Cases referred to in judgment

A v L (Jurisdiction: Brussels II) [2002] 1 FLR 1042, FD

G (Foreign Contact Order: Enforcement), Re [2003] EWCA Civ 1607, [2004] 1 WLR 521, [2004] 1 FLR 378, CA

Marcus Scott-Manderson for the petitioner

Indira Ramsahoye for the respondent

Cur adv vult

SUMNER J:

Introduction

[1] Two applications came before me on 19 November 2003. They relate to the child of the parties, A, born on 13 April 1995. He is now 8 years of age. The applicant, J, is A's mother. The respondent, C, is his father. I shall refer to them as the mother and the father.

[2] The first application is that of the mother of 2 October 2001 issued in the Principal Registry of the High Court of Justice, Family Division, in London. It sought a contact order on the basis that an earlier contact order made by the Spanish court was impracticable. That application was stayed as a result of an order of His Honour Judge Garner sitting in the Family Division of the High Court in London on 14 January 2002 (see *A v L (Jurisdiction: Brussels II)* [2002] 1 FLR 1042).

[3] The second application is also that of the mother. It is dated 8 May 2003, again issued in the Principal Registry. It seeks an order defining contact between A and his father and also a residence order in favour of the mother. The father opposes both applications. After hearing argument I reserved judgment.

The dispute

[4] The parties married and lived in Spain before A was born. A Spanish court granted them a divorce in June 2001. It gave the mother permission to bring A to live with her in England and made orders about contact.

[5] The father started proceedings in Spain to enforce that contact order. In May 2003 the father sought an order in Spain for custody of A. That is due to be heard by a Spanish court on 17 December 2003.

[6] Before me the mother says that pursuant to Council Regulation (EC) (No 1347/2000) of 29 May 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of Both Spouses (Brussels II), the Spanish courts no longer have jurisdiction. The father disputes that proposition. My task is to

rule on the question of jurisdiction between the English and Spanish courts. The point has not been raised or argued in Spain.

[7] I shall set out the background to the present position, including the previous proceedings. It is not in dispute. I will then set out the parties' submissions, the relevant parts of *Brussels II*, and my conclusions.

The background

[8] The mother is a 42-year-old English national. The father is a 40-year-old Spanish national. They married in Madrid on 11 June 1994. The mother was at the time working as a solicitor in Madrid for a leading firm of London solicitors. The father was working as an economist for the Spanish government.

[9] Following the marriage the parties lived in Madrid. A was born in 1995. In 1999 the parties were proposing to adopt AS, an Indian girl who is now 7 years of age. The parties separated. The mother was granted an adoption order in respect of AS who has since lived with the mother and A.

[10] In March 1999 the parties entered into a maintenance agreement. It recognised the parental authority of both parents, granted custody and protection to the mother, and directed staying contact of A to his father every other weekend. In May 1999 a separation order confirmed the maintenance agreement.

[11] The mother subsequently applied for an order permitting her to live with A in England with holiday contact to the father. The father opposed this application. A report from a psychologist was obtained. On 4 June 2001 Her Honour Judge Roddilla Roddilla, a magistrate-judge of the Court of First Instance of Madrid, gave the mother permission to change A's residence to the UK.

[12] She made orders relating to his maintenance. She directed that the father was to have contact with A on the first and third weekend of every month. The father was to come to England on one weekend and A was to go to Spain on the other. There was a right to appeal within 5 days. The mother returned to England on 28 June 2001 and has lived here with A and AS since then.

[13] The father appealed the order of June 2001 on 6 September 2001. Thereafter he made a series of applications to enforce the contact order. The reason was that the mother was not arranging for A to go to Spain each month but on average about every other month. She compensated the father for this loss by increasing holiday contact. The father took up most but not all of his contact visits to the UK.

[14] The father has exhibited to his statement of 29 September 2003 a series of applications and orders in Spain between June 2001 and August 2003. It is not complete, leaving out the result of the hearing of his appeal and applications and order made in England. I shall summarise the history.

Spanish and English proceedings

[15] On 2 October 2001 the mother applied in the Principal Registry in London for a contact order. On 28 December 2001 the father applied to the Spanish court which had made the order of 4 June 2001 to enforce it. The application in London came before His Honour Judge Garner on 14 January 2002 (see *A v L (Jurisdiction: Brussels II)* [2002] 1 FLR 1042). He rejected the mother's application on the grounds that the proceedings in

Spain were not final as the father's appeal had not yet been determined. He expressed sympathy for the difficulties created for the mother and A in complying with the terms of the Spanish order.

[16] On 6 February 2002 the Spanish court ordered the mother to comply. On 22 March 2002 the father again applied for enforcement of the order. On 6 May 2002 Her Honour Judge Roddilla Roddilla made a further order:

'... this court hereby orders to summon the non-custodial parent via her representation before the court so that, without any excuse or pretext whatsoever, she immediately complies, in its own terms with what is established in the judgment on 4 June 2001 in the aspects relating to fulfilment of the agreed regime of visits ...'

[17] On 28 May 2002 the father once more applied for enforcement of the order of 4 June 2001 alleging continuing breaches. On 7 June 2002 the Audiencia Provincial de Madrid rejected the father's appeal against the original order of June 2001 which gave the mother permission to come to the UK with A. On 26 June 2002 Her Honour Judge Roddilla Roddilla directed the mother strictly and exactly to comply with her order of June 2001.

[18] There was then a gap in proceedings for nearly a year, until on 26 May 2003 the father again applied for enforcement of the order of 4 June 2001. This was a different application because the father sought an amendment of the custody and protection in his favour, with a regime of visits in favour of the mother equal to that which had previously been granted to him.

[19] On 10 July 2003 the mother was ordered by the Spanish court to appear in court in person within 10 days. If she did not do so, she might be considered to be in contempt of court.

[20] The father filed a statement in support about this time. It set out his account of the difficulties that had arisen since the parties separated. It does not deal with the difficulties that may have been caused for A by compliance with the order of June 2001.

[21] The mother applied to vary the order of the Spanish court but this was rejected. On 24 June 2003 she was summonsed to attend a hearing before the Spanish court. This is to be on 17 December 2003.

Representation

[22] Before me the mother has been represented by Mr Marcus Scott-Manderson, the father has been represented by Miss Indira Ramsahoye; both are counsel experienced in family cases.

The issue

[23] The central issue is whether this court has jurisdiction to hear the mother's application bearing in mind three factors. First, Spanish courts have hitherto exercised jurisdiction in relation to both the mother's and the father's applications. That jurisdiction has not been challenged.

[24] Secondly, there is a need to give full respect and efficacy to the orders of the courts of another Member State. Thirdly, both States are signatories to Brussels II.

The mother's case

[25] On behalf of the mother, Mr Scott-Manderson argues that the relevant instrument governing the jurisdiction of the courts of Spain and the UK is Brussels II which came into force on 1 March 2001. It is a instrument '... on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses'.

[26] As the preamble states, its aim is to improve and simplify the free movement of judgments in divorce and proceedings relating to parental responsibility for children at that time. The jurisdiction of the original Member State is limited in time; thereafter Brussels II provides for the enforcement of any order of the original Member State in another Member State.

[27] Under Art 3 the Spanish courts have hitherto had jurisdiction in respect of both contact and residence matters relating to A. Mr Scott-Manderson argues that their jurisdiction came to an end when the father's appeal was rejected in Spain in June 2002.

[28] He says that this arises under a proper construction of Art 3(3). He relies on a judgment of the Court of Appeal in London given on 11 November 2003 in the matter of *Re G (Foreign Contact Order: Enforcement)* [2003] EWCA Civ 1607, [2004] 1 WLR 521, [2004] 1 FLR 378 in support of his submission.

The father's case

[29] For the father, Miss Ramsahoye accepts that Brussels II governs the jurisdiction of the Spanish and UK courts in relation to this dispute. She argues that Art 3(3) has not brought the Spanish proceedings to an end where the father is still seeking to enforce the original order of June 2001.

Brussels IIA

[30] In the case of *Re G (Foreign Contact Order: Enforcement)* (above) Thorpe LJ pointed out that the Council of Ministers have approved a revision of Brussels II, namely Council Regulation (EC) (No 2201/2003) of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility (repealing Council Regulation (EC) (No 1347/2000)) sometimes referred to as Brussels IIA which will come into force in 1 March 2005. Mr Scott-Manderson has referred me to that Regulation. It establishes that, after March 2005, where one Member State permits a parent to move a child to another Member State, the original State will retain jurisdiction for a 3-month period only.

[31] This is an illustration of the way that the European Union is moving. It is not of assistance to me in a proper construction of Brussels II.

Brussels II

[32] Brussels II has a preamble of 25 paragraphs, a body of 46 Articles, and 5 annexes. Both Spain and the UK are signatories to it. It follows that it is as binding on the courts of the UK as it is on those of Spain. For the purpose of this judgment I shall refer to certain paragraphs in the preamble and to some of the Articles.

The preamble

[33] Under paras 9, 10 and 11 it is provided as follows:

(9) The scope of this Regulation should cover civil proceedings and non-judicial proceedings in matrimonial matters in certain States, and exclude purely religious procedures. It should therefore be provided that the reference to “courts” includes all the authorities, judicial or otherwise, with jurisdiction in matrimonial matters.

(10) This Regulation should be confined to proceedings relating to divorce, legal separation or marriage annulment. The recognition of divorce and annulment rulings affects only the dissolution of matrimonial ties; despite that fact that they may be interrelated, the Regulation does not affect issues such as the fault of the spouses, property consequences of the marriage, the maintenance obligation or any other ancillary measures.

(11) This Regulation covers parental responsibility for children of both spouses on issues that are closely linked to proceedings for divorce, legal separation or marriage annulment.’

Relevant Articles

[34] Under Art 1(1):

‘This Regulation shall apply to—

- (a) civil proceedings relating to divorce, legal separation or marriage annulment;
- (b) civil proceedings relating to parental responsibility for the children of both spouses on the occasion of the matrimonial proceedings referred to in (a).’

[35] For the purpose of these proceedings both counsel accept that the expression ‘parental responsibility’ covers proceedings by either parent for contact to or a residence order in respect of A. I agree.

[36] Article 2 sets out the circumstances in which jurisdiction shall lie with the courts of the Member State. There has been no dispute that within the terms of that Article both courts in Spain and the UK have jurisdiction, provided the jurisdiction of the Spanish courts has not come to an end. That is determined by Art 3.

[37] Article 3 is in these terms:

‘Parental responsibility

(1) The courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in that Member State.

(2) Where the child is not habitually resident in the Member State referred to in paragraph 1, the courts of that State shall have jurisdiction in such a matter if the child is habitually resident in one of the Member States and—

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

[38] By Art 9:

‘Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.’

[39] By Art 13:

‘Meaning of “judgment”

(1) For the purpose of this Regulation, “judgment” means a divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.’

Argument

[40] There is no dispute between counsel that the order of 4 June 2001 was a divorce pronounced by a court of a Member State pursuant to Art 13. It was also, they agree, a judgment relating to the parental responsibility of the parties within the same Article.

[41] Mr Scott-Manderson argues that that judgment, however, did not become final until the father’s appeal against it was heard and determined by a Spanish court on 7 June 2002. Accordingly he accepts that the judgment of His Honour Judge Garner on 14 January 2002 is correct.

[42] He says that the application of the father of 12 February 2003 seeking to have A’s residence changed from the mother to himself is plainly new proceedings. It is given a new court number. It is that application which is proceeding before the Spanish courts now more than a year after his earlier appeal was dismissed. For this reason they are new proceedings after a final judgment was given.

[43] It is accepted by both counsel that it matters not whether I consider the first application of the mother of 2 October 2001 or her further application of

8 May 2003. I have reservations about this concession. Whilst the first application was stayed by the order of His Honour Judge Garner in January 2002, it would normally relate to the state of affairs at the time it was issued.

[44] That judgment of January 2002 shows that at that time there was no jurisdiction because the appeal was outstanding. However, that may not be the case in relation to the mother's second application of 8 May 2003 if Mr Scott-Manderson's submission is correct. It is that in May 2003 the only proceedings before the Spanish court were the father's application to enforce the order of June 2001, and later the father's application for custody of 23 May 2003.

[45] Miss Ramsahoye, for the mother, says that there has been no final order yet. She accepts that, but for the subsequent applications, the unsuccessful appeal would make the order of June 2001 a final judgment. She submits that it makes no difference whether the application to enforce the contact then ordered was made either before or after the final order.

[46] She says that because, if it is correct that the appeal confirmed the original order, then the application to enforce it came after final judgment. Her main point, however, is that, if an application is made after a final order to enforce its terms, then that order is not a final order.

[47] When I sought to determine how long after a judgment an application could be made which would, on her argument, affect the finality of the judgment, Miss Ramsahoye took a pragmatic approach. An application within a year would be acceptable. She accepts that one made after 5 years might well not be.

[48] She agrees that the mother's departure for the UK with A was lawful as it happened after the order of June 2001. Also she accepts that A is now habitually resident in England and Wales. She argues, however, that that is not the test under Brussels II. The court is concerned only with the proper construction of Art 3(3). I agree.

Preliminary considerations

[49] As paras 10 and 11 of the preamble establish, Brussels II is concerned with 'divorce, legal separation or marriage annulment'. The recognition of divorce and annulment rulings affects only the dissolution of matrimonial ties; despite the fact that they may be interrelated, Brussels II does not affect issues such as the fault of the parties, property consequences of the marriage, maintenance obligations or any other ancillary measures.

[50] Paragraph 11 makes clear that the aspect of parental responsibility for children covered by Brussels II relates to 'issues that are closely linked to proceedings for divorce, legal separation or marriage annulment'. From that I conclude that Brussels II is limited in scope.

[51] It is expressly anticipated that there may be ancillary measures between the parties which it does not cover. Furthermore, there may be other issues about parental responsibility for children which are also not covered. This is because it is limited to those proceedings that are closely linked to proceedings for divorce which have become final.

[52] It follows from Arts 1–3 of Brussels II that the Spanish courts had jurisdiction both in relation to the divorce and to parental responsibility in June 2001. The contrary has not been argued. The question is whether the

time has yet come when that jurisdiction, in the words of Art 3(3), 'shall cease'.

[53] I turn again to the wording of that Article:

'The jurisdiction conferred by paragraphs 1 and 2 shall cease as soon as—

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

[54] It is accepted by both parties that the effect of the unsuccessful appeal was to make a final judgment in relation to both divorce and parental responsibility at that time. Accordingly the crucial question is whether an application or applications after the final judgment to enforce its provisions alters the status of that judgment within the meaning of Art 3.

Conclusion

[55] Having considered the various arguments, I am satisfied that, on a proper construction of Brussels II, subsequent applications to enforce the terms of a final order do not alter its status as a final order. There are a number of reasons for this.

[56] First, if Miss Ramsahoye's construction is correct, the concept of a final judgment is one that is suspended. It is only a final judgment provided that no further applications are made under it within the time frame that she envisages. It could be, she says, up to 5 years.

[57] On her argument, until that time is reached the final order is not final. That gives the concept of a final judgment a degree of uncertainty and unreality which I am satisfied was never intended. It also provides for a form of continuous jurisdiction beyond what would otherwise be a final order when it is plain that jurisdiction ceases after a final judgment.

[58] Secondly, Brussels II contemplates that there may be further proceedings in relation to the children after final judgment. That could arise as here because one parent wishes to change the residence of a child, or, for instance, to enforce a term which may have been obeyed for a time and then broken. That does not alter the status of the final order.

[59] There is no bar on such proceedings. What Brussels II provides is the time during which the Member State which made the first order should retain jurisdiction. It is only until such time as that first order or a subsequent one becomes a final judgment. Thereafter jurisdiction in an appropriate case passes to another Member State who can enforce that final judgment.

[60] I hold that both the applications by the father to enforce the order of June 2001 and his new application of May 2003 of a radically different nature, namely to change residence, do not affect the validity of the finality for the purpose of Brussels II of the final judgment of June 2001. However, it only became a final judgment following the unsuccessful appeal a year later.

[61] Thirdly, there is the particular nature of the final order made in this case. It sanctioned the mother's move to the UK with A. It was thereby permitting a party to remove a child to another jurisdiction not for some limited period, but, if the mother so wished, for the whole of his minority. There is in any such application a degree of finality which few other orders achieve within the framework of parental responsibility or family law. It emphasises the finality of the judgment.

[62] I am greatly supported in this conclusion by the judgment of Thorpe LJ in *Re G (Foreign Contact Order: Enforcement)* [2003] EWCA Civ 1607, [2004] 1 WLR 521, [2004] 1 FLR 378 to which I have already referred. The background to that case is quite complex but for the purpose of my judgment I can set it out shortly.

[63] A married couple from Italy moved to France with their two children. In due course the father left and, whilst in Italy, started proceedings in France. A divorce was granted. The mother was granted permission by a French court in December 2002 to move to London.

[64] Directions were given concerning contact by the father to the two children. They broke down over Christmas. The father accordingly applied in France in December for enforcement of the contact order and a reduction in child payments. The mother cross-applied for an increase in child maintenance.

[65] The mother argued that the French judge had no jurisdiction in relation to the father's application. This was rejected by a French court on the basis that the mother and children were still in France when the father made his application.

[66] The arrangements again failed at Easter 2003. The father applied to the Central Authority in London to enforce the contact order. Wall J, a High Court judge in the Family Division in London, registered the contact order and directed that it should be enforced.

[67] The appeal was heard at first instance under Arts 9, 10 and 11 of the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children 1980 (the European Convention). During the hearing of the appeal in the Court of Appeal it became apparent that Brussels II, under Art 37, took precedence over the European Convention.

[68] During the course of his judgment Thorpe LJ said in relation to Art 3 of Brussels II at para [40]:

'Judicial management and control of issues concerning children is generally extensive, frequently arising before the pronouncement of the decree and frequently continuing long after the pronouncement of the decree. This can only sensibly be seen as a continuous process. Of course an order conferring on one parent custody or residence is more easily classified as a unique determination encapsulated in a single order, but orders for contact or access generally have to be revisited and revised to reflect changes of circumstance. If Brussels II is to be effective, access orders of the court exercising jurisdiction must be enforceable whether the order is embodied in the decree that changes the marital status of the parents or whether in an order pre-dating or post-dating the decree.'

[69] Having set out a number of relevant considerations, he went on to say at para [46]:

‘Wherever it be made an order sanctioning the permanent removal of the children from the jurisdiction is likely to be classified as a final judgment in the parental responsibility proceedings. Thus in this case I would judge the order of 11 December 2002 to be the final order of the Paris court terminating its exclusive jurisdiction in relation to parental responsibility. The London court is then free to assume jurisdiction.’

[70] He pointed out that the father was not prevented from issuing fresh enforcement proceedings under Brussels II. He could also make his own application under the Children Act 1989 in London.

[71] Bearing in mind that the Court of Appeal supported the decision of Wall J, it can be said that Thorpe LJ’s comments were not essential to the determination of the matter then before the court. Nevertheless they are of considerable persuasive authority. I draw much support from them in respect of a conclusion I have reached in any event.

[72] I add in parenthesis that the reference by Thorpe LJ in para [40] to the enforceability of access orders of the court does not, I am satisfied, refer to enforcement in a Member State where a child is no longer living nor habitually resident. This I consider applies with greater strength where the child has been in another Member State for more than 2 years and there has been a final order.

Decision

[73] On my construction of Brussels II, the courts of England and Wales have jurisdiction on the mother’s application. That of the Spanish courts has ceased. I particularly rely upon the mother’s second application. I shall accordingly set the matter down for directions. The mother requests that I make an order or declaration at this stage that A be not bound to fly to Spain each month.

[74] In her statement she sets out in some detail the difficulties and problems that are created by the enforcement of that order. In particular it involves the mother removing A from school on a Friday. By so doing she runs the risk of acting contrary to the law. Furthermore, she says he is exhausted on his return.

[75] I have not heard this matter fully argued. For present purposes it is sufficient to say that, if it is right to order him to travel to Spain each month, which the mother does not accept, the form of the present order may well cause hardship and difficulties which it is difficult to believe were ever intended. I shall suspend that provision pending a further hearing.

Postscript

[76] I add by way of a postscript a plea to the parties to endeavour to resolve this matter without further dispute in court in whatever country it may be. The mother has exhibited to her recent statement a schedule setting out what has happened in relation to contact by the father with A. I understand it is not in dispute.

[77] It shows that on 10 occasions since June 2001 the mother has not sent A to Spain on the occasion in the month that he was due to go. The father has not come to England to exercise contact on four occasions. In compensation for contact lost, the mother has on 12 different occasions permitted the father a total of 14 extra days of contact.

[78] It is perhaps a pity that the father has felt it necessary, whether within this jurisdiction or not, to seek to enforce contact by applying to remove A from the care of his mother and the company of his adopted sister in the particular circumstances. It is to be hoped that the matter can be resolved without such an application.

[79] The mother, in her latest statement, acknowledges that she is fully supportive of contact for A with his father both in England and Spain. She says that A has a strong and close relationship with the respondent which she supports. I hope that that is sufficient to find a resolution of the present dispute without stressful and expensive court proceedings wherever they may take place.

[80] But in relation to the mother's application of May 2003, I hold that the jurisdiction of the Spanish courts in relation to A have ceased. The father may, however, under Brussels II, apply to enforce the order of June 2001 within this jurisdiction or make other applications under the Children Act 1989.

Order accordingly.

Solicitors: *Dawson Cornwell* for the petitioner
Divorce and Family Law Practice for the respondent.

RACHAEL KONDAK
Law Reporter