

**RE S (BRUSSELS II: RECOGNITION:  
BEST INTERESTS OF CHILD) (NO 1)**  
**[2003] EWHC 2115 (Fam)**

Family Division

Holman J

3 September 2003

*Brussels II – Jurisdiction – Contact – Competence to consider matters concerning a child not habitually resident in country – Whether both parents had accepted jurisdiction of court – Whether jurisdiction in best interests of child – Whether decision of foreign court reviewable*

The father, from Belgium, and the mother, a citizen of both the UK and Italy, lived in Belgium. The child was born in Belgium, but the parents separated before the child's first birthday and some months later the mother took the child to live in England. The father began divorce proceedings in Belgium, seeking, inter alia, remedies in relation to the child. The mother participated in those proceedings in which each parent made a claim for exclusive parental authority. In an interim order the court granted each parent parental authority but stated that the child's main residence would be at the mother's address in England. The order provided for the child spending periods of up to a fortnight at a time with the father in Belgium, relatively evenly spaced throughout the year. The father applied to the English court for recognition, registration and enforcement of the order under 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), while the mother appealed against the order in Belgium, inter alia, challenging the competence or jurisdiction of the Belgian courts to deal with matters concerning the child. The Belgian appeal court dismissed the mother's appeal, finding, on the question of parental responsibility, that, as the mother had not challenged the competence of the Belgian court of first instance, she had 'accepted' the jurisdiction of the court within Art 3(2)(a) of Brussels II and further that the jurisdiction of the court was 'in the best interests of the child' within Art 3(2)(b) of Brussels II. The father's English application was nonetheless resisted by the mother, who argued that the father had misled the Belgian court of first instance into believing that the child was still habitually resident in Belgium, that the father intended to retain the child in Belgium, and that the regime for contact was contrary to 'the best interests of the child' because the child, now aged 2¾, was too young to spend such long periods away from his mother.

**Held** – recognising and giving the father permission to register the judgment and fixing a further hearing date for enforcement issues –

(1) The question of jurisdiction had recently been very fully argued before and considered by the Belgian appeal court. Whatever might have been believed or assumed by the court of first instance, the later judgment and decision of the appeal court put it beyond doubt that there was jurisdiction in the Belgian courts (see para [26]).

(2) The possibility that the father might be planning unlawfully to keep the child in Belgium if contact were permitted did not go to either recognition or registration, although if it were proved that there was a real risk that the father might wrongfully retain the child in Belgium, that would be highly relevant to any steps taken in enforcement of the order (see para [27]).

(3) Provision for such relatively long and frequent periods of staying contact, not only away from the mother, but also in a foreign country, had not sufficiently taken account of the child's very young age, and the fact that he had never been separated

from the mother. However, the Belgian appeal court had recently considered carefully the appropriateness of the order, and Art 19 provided that in no circumstances might a judgment be reviewed as to its substance (see paras [29], [31]).

(4) Recognition could only be refused if it were manifestly contrary to public policy, taking into account the best interests of the child. This order was not so strongly contrary to the welfare of the child concerned that it would be possible to conclude that its recognition was manifestly contrary to public policy. No defence or exception to recognition and registration of the judgment had been established and the court was bound to recognise the order (see paras [32], [33]).

#### **Statutory provisions considered**

Family Proceedings Rules 1991 (SI 1991/1247), r 7.42–7.46, 7.48(1)

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 2, 3, 14, 15(2)(a), 17, 19, 21

#### **Case referred to in judgment**

*Krombach v Bamberski* (Case C-7/98) [2001] 3 WLR 488, [2001] All ER (EC) 584, ECJ

*Henry Setright QC* for the father

*Mark Everall QC* and *Marcus Scott-Manderson* for the mother

#### **HOLMAN J:**

[1] In this judgment I will for convenience refer 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 as Brussels II. This is an application by the father to enforce a judgment and order of the *Rechtbank van Eerste Aanleg* of Antwerp (the Antwerp court of first instance) dated 12 July 2002 (the relevant hearing was on 10 July) pursuant to the provisions of Brussels II.

[2] The essential background history is as follows. The father is a citizen of Belgium. The mother is a citizen of both the UK and Italy. They married in 1996 and thereafter lived in Belgium. Their only child, M, was born on 11 December 2000, so he is now aged about 2¾. Very sadly, differences arose between the parents and they separated in November 2001. At that stage the mother and M, who was then aged about 11 months, remained in the former matrimonial home, whilst the father moved to live at the home of his parents. Despite the difficulties in their marriage, the parents were able to co-operate in relation to their baby son, and the mother freely enabled the father to see and spend time with M on three evenings a week and also for several hours each weekend. The co-operation extended further in that in December 2001 and January 2002 they had joint discussions with a notary in Antwerp as to resolving their matrimonial differences and other issues between them.

[3] On 25 April 2002 the mother, whose own mother lives in England, moved with M to Hertfordshire, England, in which area she and M have lived every since.

[4] On 12 June 2002 the father commenced proceedings in the Antwerp court of first instance, in which he sought a divorce between the parents and also various other remedies in relation to M. Those proceedings were clearly

served upon the mother, for there was a hearing in Antwerp on 10 July 2002 at which she and the father were both represented. It is the order made by that court on 12 July, following that hearing, that the father now seeks to have recognised, registered and enforced here in England.

[5] It is, of course, important to refer and to have regard to the whole terms of that order, but I will try to summarise its essential features. It begins by describing the proceedings before the court that day as ‘interim injunction proceedings’. There were present a judge (Mrs I Schoeters), the registrar of the court (Mrs M De Reyck) and also – and importantly – a person, Mrs L Geys, who is described as the deputy public prosecutor. A close reading of the order as a whole, and in particular the signatures at the end, makes it plain that Mrs L Geys was not herself a part of the decision-making tribunal but rather was an official who gave oral advice to the court as to the best interests of M.

[6] The order clearly states that the place of residence of the mother is [address given] in Royston. The order makes plain that, as well as the principal claim of the father, there was also a counterclaim by the mother herself. Indeed, one reads on to see that each parent was making a claim to the court for the exclusive exertion of parental authority in relation to M. The court, however, came to the view that there was no ground whatsoever to confer the exclusive exertion of parental authority on either parent and, accordingly, deemed it appropriate that there should be the joint exertion of parental authority but that the child’s main residence should be at the address of his mother. It is clear, therefore, on the face of that order that the Antwerp court of first instance was appreciating and approbating that M was living at, and should live at [address given] in Royston, England.

[7] The order goes on to make it plain that it amounts to ‘provisional measures ... for as long as the present divorce proceedings are pending between the parties’. As I read the order, it will have no life or continuing effect so soon as there is a final divorce between these parties or, indeed, if for some other reason (for example, however improbably, if there were a reconciliation) the present divorce proceedings come to an end.

[8] The order then makes very clear and precise provision as to the amount of time that M should spend with each of his parents. In summary, it provides that he should spend periods of up to a fortnight at a time staying with his father in Belgium, relatively evenly spaced throughout the year and defined by reference to ‘holidays’. As M was only aged about 18 months at the time, he was not of course at school. But I accept the submission of Mr Setright QC, on behalf of the father, that it is clear from the later judgment of the court of appeal in Antwerp, to which I will later refer, that the reference to the various holidays carries with it a precise and clearly understood meaning in Belgium. Clearly, it is my duty to construe this order purposively and I have no doubt that by reference to a Belgium school calendar or other materials it would not be difficult to put precise dates upon the general wording that appears in the order itself.

[9] The order also made provision for the father to pay maintenance to the mother for M and imposed certain other rights and duties on each of the parties.

[10] Quite soon after that order was made, the father commenced his present proceedings here in the High Court in London for the recognition, registration and enforcement of that order pursuant to Brussels II. Various

interim orders were made here in London in August and September 2002. Meantime, however, the mother had commenced an appeal against the Belgian order to a higher court in Belgium. As a result, it was recognised here, within these proceedings, that effectively no further steps could be taken in proceedings for the recognition and registration of that order until the outcome of the appeal in Belgium was known. The appeal decision itself was given on 6 May 2003 and since then the present proceedings have been revived and now come before me today.

[11] The mother's appeal was to the Hof van Beroep Antwerpen Kamer 3 bis, to which I will refer to as the Antwerp court of appeal. It is clear that the mother was only concerned to appeal from certain aspects of the order of 12 July 2002. Within the summary of the 'facts and preceding proceedings' in the appeal proceedings the mother stated:

'The pleading party [viz herself] entered an appeal against this ruling ... but only with regard to the joint exercising of parental authority on the one hand and the terms of the right of access granted to the respondent on the other hand.'

In other words, there were other aspects of the decision and order of the Antwerp court of first instance which the mother did not challenge, and of which indeed she continues to take advantage. These include the provision for maintenance and certain other provisions dealing with the rights and obligations of each of the parties.

[12] It is quite clear from the mother's pleading within the appeal proceedings that she herself had not in any way originally challenged the jurisdiction of the Antwerp court of first instance. Indeed, her pleadings state:

'The pleading party entered no objection against the application to grant separate residence and even requested separate residence at her address in Royston, England in a counterclaim.'

But within her pleadings to the Antwerp court of appeal the mother did clearly challenge the underlying jurisdiction of the Belgian court, at any rate in relation to issues of parental authority and contact. This clearly appears from a section in her pleadings headed 'II. In Law' and beneath that '(1) The court's lack of jurisdiction', and the passage that follows. She also, by her appeal, clearly challenged the original order as to contact on its merits and contended that it was not appropriate for M at his present age to stay with his father for periods of up to a fortnight, still less that he should do so in Belgium.

[13] The Antwerp court of appeal ruled on the appeal in a full and careful judgment dated 6 May 2003, which I have read with care in translation. The judgment clearly recites that both parents were represented before the court by counsel. It recites that they had considered the pleadings and the other documents of the proceedings. It clearly recites that the mother was challenging the competence or jurisdiction of the Belgian courts to deal with matters concerning M and that she wished the appellate court to state that the English court has exclusive jurisdiction in relation to him.

[14] The first conclusion of the Antwerp court of appeal was that the mother's challenge to, and appeal against, the jurisdiction of the court of first

instance was wrong. Towards the end of the second page of their judgment in translation the court states:

‘Having considered that appellant wrongly challenges the competence of the Belgian judge applied to and pursuant to her residing in England with the child of the parties claims that the English judge has exclusive jurisdiction, thereby referring to [Brussels II] with regard to the competence and the acknowledgement and execution of judgments in matrimonial actions and with regard to the parental responsibilities for mutual children; that appellant did indeed accept the assignment of the dispute to the judge of first instance in interim injunction proceedings and did not challenge the latter’s competence then, as appears from appellant’s pleadings filed on 10 July 2002 whereby she moreover did lodge a counterclaim and consequently, pursuant to Art 2 and 3 of the said regulation, thus accepted the competence of the judicial instance; that there is no further indication that the competence of the Belgian judge were not justified by the child’s interests since both parents and the child lived together in Belgium for several years, a situation which did not change until after the appellant’s unilateral decision to move to England with the child; that respondent rightly and in a fully legally valid way applied to the judge of the divorce proceeding and of the inherent interim injunction proceedings, since both parties had their residence in Belgium and appellant did not change her legal residence, so that the writ of summons was validly served upon her address [and an address is then given].’

[15] Article 2 of Brussels II makes provision for jurisdiction in matters relating to divorce. Jurisdiction lies with the courts of the Member State, including the State in whose territory the spouses were last habitually resident, insofar as one of them still resides there. There can clearly be no doubt that the Antwerp court of first instance had and has jurisdiction in relation to the divorce itself, since these two parties were last habitually resident in Belgium and the father, or for this purpose the husband, still resides there.

[16] In relation to matters of parental responsibility, Art 3 of Brussels II provides as follows:

‘(1) The courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce ... 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 court has been accepted by the spouses and is in the best interests of the child.’

[17] It is fair to say that such documents as I have seen (but I stress that there may be many documents that I have not seen) do not make express or clear the precise basis upon which the Antwerp court of first instance assumed and exercised jurisdiction in matters relating to parental responsibility over M. On behalf of the mother it is strongly submitted that the court of first instance was, or at least may have been, misled by the father into the view that, at the time of the proceedings and order in June and July 2002, M was still 'habitually resident' in Belgium, because the father appears to have been asserting at that stage that he had not consented to the mother taking M to live in England. However that may be, it seems to me that the question of jurisdiction was very exhaustively argued before, and considered by, the Antwerp court of appeal in May 2003.

[18] I accept the submission of Mr Setright that in the passage of the judgment that I have most recently quoted, the Antwerp court of appeal was finding and holding that the courts of Belgium had and have jurisdiction in matters relating to parental responsibility over M under the ground within Art 3(2) of Brussels II. Clearly, M is habitually resident in a Member State. Clearly, at least one of the spouses has parental responsibility in relation to him. The only question is whether the requirements of the two limbs of Art 3(2)(b) were satisfied. The Antwerp court of appeal clearly found that the mother had not challenged the competence of the court of first instance and, moreover, had lodged her own counterclaim and, as they say in terms, 'thus accepted the competence of the judicial instance'.

[19] As to the second limb of para (2)(b), the court of appeal went on to say:

'There is no further indication that the competence of the Belgian judge were not justified by the child's interests,'

which is another way of saying, in the language of Art 3(2)(b), that the jurisdiction of the court 'is in the best interests of the child'.

[20] I am thus satisfied that after full and careful consideration the Antwerp court of appeal has recently addressed and considered the whole question of jurisdiction in this case and has clearly concluded that the courts of Belgium did and do have jurisdiction and that jurisdiction is not dependent upon the proposition (whether true or false) that at the commencement of the proceedings M was habitually resident in Belgium.

[21] On behalf of the father, Mr Setright accordingly makes the short and simple submission that this is a case which falls squarely within the framework of Brussels II. There is in existence a judgment and order by a court in another Member State which was exercising jurisdiction based upon Arts 2 and 3 respectively. The proceedings in Belgium are still continuing in the sense that the divorce has not yet become final. By Art 17, I may not review the jurisdiction of the Belgian court. By Art 19, under no circumstances may the judgment of the Belgian court be reviewed as to its substance. Accordingly, he submits that Art 14 applies to this case. Article 14(1) provides that:

'A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.'

Article 21 makes special provision in relation to the UK for registration. Rule 7.42–7.46 of the Family Proceedings Rules 1991 makes procedural provision as to registration, and he asks me to give permission under r 7.44 for the judgment to be registered here, which by r 7.48(1) serves as a decision that the judgment is recognised here.

[22] On behalf of the mother, Mr Everall QC has raised a number of arguments by way of defence to recognition and registration. Some have fallen away during the course of the day, in particular by the lamentably late production on behalf of the father of a formal certificate from the Belgian court, in fact dated 16 August 2002, certifying that the underlying judgment was not given in default of appearance, is enforceable under the law of Belgium and has been served upon the mother.

[23] Essentially, the arguments of Mr Everall now fall under three heads. First, he maintains a submission which relates to matters of jurisdiction, but, being alive to the provisions of Art 17 and with characteristic ingenuity, he raises the point within Art 15. The only part of Art 15 which is relied upon is para (2)(a), which provides as follows:

‘A judgment relating to the parental responsibility of the spouses given on the occasion of matrimonial proceedings as referred to in Article 13 shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child ...’

[24] Put shortly, and I regret without sufficient deference to the detail and skill with which it was developed, the argument is as follows. The father untruthfully represented to the Antwerp court of first instance that the mother had brought M to England without his consent. This may have been the foundation of a belief on the part of the Belgian court that M was still ‘habitually resident’ within Belgium, and accordingly the Antwerp court of first instance may have proceeded on that false premise as to its jurisdiction. If so, submits Mr Everall, there was effectively an abuse of process. He neatly submits that he is not inviting me to review the jurisdiction of the Belgian court itself, but rather is challenging the manner in which the father invoked that jurisdiction. He submits that it would be manifestly contrary to English public policy to recognise and give effect to a foreign order that was obtained by a lie or deception. In that regard, he relies upon footnote 86 on p 438 of *Civil Jurisdiction and Judgements* (LLP Professional Publishing, 3rd edn, 2002) by Adrian Briggs and Peter Rees. The footnote comments that:

‘... if the claimant by lies and fraud persuaded the court it had jurisdiction, public policy may still be relied upon on the footing that it is not the *jurisdictional rules* themselves, but the manner in which the claimant sought to rely on them, which would be against public policy.’

[25] I am not satisfied that this defence has been made out. In the first place, it depends to a considerable degree on the contents of an affidavit that the mother only swore today, together with an exhibit to that affidavit. The

father has not seen the affidavit and has had no opportunity to reply to it. I simply cannot today assume that the facts are as stated by the mother in her affidavit, despite the potent force of the exhibited letter. I could, of course, adjourn this hearing to give the father an opportunity to reply, but as these proceedings have been current for over a year now and as the mother is so extraordinarily late in producing that evidence, it seems to me that that would be disproportionate and a wrong exercise of my discretion. So, first, I am not satisfied as to the evidential basis upon which the argument is based.

[26] Secondly, however, whatever the position may have been before the Antwerp court of first instance, I am quite satisfied, as I have already described, that this whole question of jurisdiction was very fully argued before and considered by the Antwerp court of appeal as recently as May. Indeed, I have been told that the letter that the mother exhibits and places reliance upon before me was also included with the documents that she placed before the Antwerp court of appeal and, I must assume, was considered by that court. It seems to me quite clear that, whatever may have been believed or assumed by the Antwerp court of first instance, the later judgment and decision of the Antwerp court of appeal puts it beyond doubt that on any view of the facts and history of this case there was and is jurisdiction in the Belgian courts.

[27] The second defence raised by Mr Overall also relies to a considerable degree upon the very recent affidavit of the mother. She says, in effect, that last summer, that is, July 2002, the father was planning unlawfully to keep M in Belgium if he got him there for contact. Mr Overall submits that, if this order is registered and recognised here and if it is enforced so that M actually travels to Belgium, there is a risk that the father will unlawfully retain M in Belgium. So he submits that it would be manifestly contrary to English public policy to recognise and register an order that the father would then use as the trigger for an illegal act. Again, that submission depends heavily on this very late evidence from the mother. Further, however, it does not seem to me that the point goes to either recognition or registration. Certainly, if it is later proved, after hearing evidence from both parents, that there is a real risk that the father might wrongfully retain M in Belgium and not return him to his mother, then that would be highly relevant to any steps taken in *enforcement* of this order; but that does not seem to me to render *recognition* of the order manifestly contrary to English public policy.

[28] I come at last to the third and, as it seems to me, only defence which may be one of any substance. Again, it relies upon Art 15(2)(a). In the language of Mr Overall and Mr Scott-Manderson's most excellent written skeleton argument, the submission is that 'on the merits the regime of contact laid down for M is contrary to his interests to such an extent that to register and enforce would be contrary to "the best interests of the child"'. They then advert to the fact that M is even now only aged 2¾ and that the order contemplates relatively long periods of staying contact without any introductory shorter periods of contact; and they point out that, according to a passage in the judgment of the Antwerp court of appeal, the judge at first instance was making an order for 'the usual steps', which they suggest did not sufficiently focus on the very young age of M.

[29] At this point, and with the utmost respect for the courts of Belgium, my personal conscience requires me to make it plain that if I had been deciding upon the issue of contact to M in July 2002, when he was only aged 1½,

I would not have made an order in the terms of the order of the Antwerp court of first instance. It does seem to me, with genuine and great respect to that court, that provision for such relatively long and frequent periods of staying contact, not only away from his mother, but in a foreign country, did not sufficiently take account of the very young age of M at that stage and of the fact that he had never ever been separated from his mother, with whom it is likely that he had very strong primary attachments. Clearly, the older M gets, the greater his understanding develops, and the greater his knowledge and understanding of his father and his relationship with his father separate from his mother, so the more it becomes possible to contemplate extended periods of staying contact with his father away from his mother. Indeed, to my mind there is no doubt at all that a programme of contact in the terms of, or similar to, the order of 12 July 2002 must be the aim and goal in the best interests of M in this case. He is blessed with an Italian/English mother, who lives in England, and a Belgian father who lives in Belgium. It is extremely important that he should be able to spend significant periods of time with both parents in their respective homes in the two countries and cultures with which he is equally connected. The only reservation in my mind is as to timing and (if there is a real risk of non-return) as to appropriate safeguards.

[30] However, the appropriateness of the underlying order has, as recently as May this year, been carefully considered by the Antwerp court of appeal. It is quite clear from the mother's pleadings, as I have already said, that she put in issue the appropriateness or merits of the underlying order and that was fully and carefully addressed by the Antwerp court of appeal. They said:

'Having considered that it is essential for the development of the child M, at present 2½ years old, to have regular contacts with each of both parents; that respondent accepts that the child has its main residence with his mother but rightly demands, as a counterweight, that the child will stay with him in Belgium for very regular and well-structured periods, as he was born in that country and lived there with both his parents for more than a year; that the arrangement proposed by the appellant clearly fails to enable and maintain the close contacts between the child and his father and to make him acquainted with his father's environment in Belgium; ... that ... such a long absence from the father's environment would be most harmful and certainly not conducive to the child's harmonic development; having considered that the settlement worked out by the judge of first instance does indeed deviate from what is usually decided but rightly considers the geographical distance between both parents' residences; that therefore the contacts have been rightly grouped around the various holiday periods in Belgium and that appellant does neither state nor prove those periods to be thoroughly different in England; that the arrangement worked out by the judge in first instance therefore has to be confirmed on appeal.'

[31] So it seems to me that the Belgian court of appeal has recently considered carefully the appropriateness of the underlying order. It may or may not have been appropriate when M was aged only 1½, but the Antwerp court of appeal expressly took into account that in May he was aged 2½.

Again, I have to have firmly in mind that Art 19 provides that in no circumstances may a judgment be reviewed as to its substance.

[32] It seems to me that, in applying Art 15(2)(a), I have to give proper weight and effect to the language that is used. The Article does not refer simply to recognition being contrary to the best interests of the child. It refers, rather, to recognition being contrary to public policy, taking into account the best interests of the child. Merely to reconsider the best interests of the child would be to review the Belgian judgment (which is clearly welfare based) as to its substance, which is forbidden by Art 19. I have to take into account the best interests of M, but ultimately to consider whether recognition is manifestly contrary to English public policy. To say that something is contrary to public policy is a high hurdle, to which the Article adds the word 'manifestly'. This is an international convention and I must apply it purposively, giving appropriate weight to the word manifestly. Indeed, the judgment of the European Court in the case of *Krombach v Bamberski* [2001] 3 WLR 488, given on 28 March 2000, although given in a very different context, affords some guidance. At para [21] the court said in relation to a similar provision of a similar convention, although not employing the added qualification of 'manifestly':

'... the court has held that this provision must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of the Convention ... With regard, more specifically, to recourse to the public policy clause ... the court has made it clear that such recourse is to be had only in exceptional cases ...'

[33] I accept the submission of Mr Overall that it is possible to contemplate a situation in which an order of a foreign court is so strongly contrary to the welfare of the child concerned that it would be possible to conclude that its recognition was manifestly contrary to the public policy of our State. But, in my judgment, this order in relation to M falls far short of that. I have frankly said that in my view it is not an order which was in his best interests, but I am quite unable to conclude that it is so contrary to his best interests that it would be actually contrary, let alone manifestly contrary, to some English principle of public policy to enforce it. Accordingly, in my view, no defence or exception to recognition and registration of this judgment has been established and I am bound by the mandatory terms of Art 14(1) to recognise it.

[34] I accordingly hold that the judgment is recognised in England and Wales, and, pursuant to r 7.44 of the Family Proceedings Rules 1991, I make an order giving the father permission to register the judgment under Art 21(2) of Brussels II. Armed with my order, the father will now be able to take the necessary administrative steps actually to register it.

[35] Rule 7.44(2) provides:

'Every such order shall state the period within which an appeal may be made against the order for registration and shall contain a notification that the court will not enforce the judgment until after the expiration of that period.'

However, that provision is not referring to an appeal from me to a higher court, but rather to the appeal that would be made to the court of first instance if the normal procedure had been followed of an application for registration being heard and determined without notice initially to the other party. The way in which the present case has developed has been such that that step has, in effect, been by-passed and the decision as to long-term recognition and registration is being made here today after full notice to, and argument on behalf of, the mother. Accordingly, it is not necessary for the order in the present case to identify a period pursuant to r 7.44(2).

[36] As I have already made plain during the course of argument, it seems to me that Brussels II draws a clear distinction between recognition and registration on the one hand and enforcement on the other hand. I am conscious that Art 21(1) is in mandatory terms in that it provides that a judgment on the exercise of parental responsibility 'shall be enforced in another Member State', when it has been declared enforceable there; and that the process of registration amounts within the UK to declaring the judgment enforceable. Nevertheless, all issues of enforcement are for another day, and, provisionally, it seems to me that the English court, as the enforcing court, will have similar discretions as to the extent to which and terms upon which it enforces the order, as it would have when deciding how far to go in actual enforcement of an order of its own.<sup>1</sup>

[37] I propose to fix a date for a further hearing before myself, if these parents cannot reach amicable agreement, in a child-centred way, as to contact between the father and M and if the father seeks active or coercive steps by way of enforcement. I deeply regret that the father has not been present at this hearing today, which might have enabled constructive dialogue to take place outside the courtroom, rather than an extremely interesting legal analysis inside the courtroom. I shall direct that at the next hearing both parents must personally attend.

*Order accordingly.*

Solicitors: *Reynolds Porter Chamberlain* for the father  
*Dawson Cornwell* for the mother

PHILIPPA JOHNSON  
*Law Reporter*

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<sup>1</sup> Editor's note: as to enforcement, see *Re S (Brussels II: Recognition: Best Interests of Child) (No 2)* [2003] EWHC 2974 (Fam), [2004] 1 FLR 582.