No. 18-935

In the
Supreme Court of the United States

MICHELLE MONASKY,
Petitioner,
v.
DOMENICO TAGLIERI,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICUS CURIAE* REUNITE INTERNATIONAL CHILD ABDUCTION CENTRE IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICUS CURIAE*[1]

Reunite International Child Abduction Centre ("*Reunite*") is the leading charity in the United Kingdom (the "UK") specializing in advice, assistance, mediation, and research in relation to international parental child abduction and the movement of children across borders. It is funded, principally, by the UK Ministry of Justice and the UK Foreign and Commonwealth Office.

Reunite has intervened—providing written and sometimes also oral submissions—in many important international children's cases in the United Kingdom Supreme Court and in the European Court of Human Rights.[2] *Reunite* has also submitted *amicus curiae* merits-stage briefs to this Court in *Abbott v. Abbott*, 560 U.S. 1 (2010) and *Lozano v. Alvarez* 134 S.Ct. 1224 (2014). *Reunite* has been permitted to intervene in the five most recent cases to come before the United Kingdom Supreme Court that considered the concept of "habitual residence." *See A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)* [2013] UKSC 60 ("*A v A*"); *Re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction*

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[1] *Amicus Curiae* hereby certifies pursuant to Sup. Ct. R. 37.6 that this Brief was not authored in whole or in part by counsel for a party, nor did any person or entity other than *Amicus*, its members, or its counsel make a monetary contribution to fund the preparation or submission of this Brief. Counsel of record for the parties to this action have consented to the filing of this Brief.

[2] *See X v Latvia* (App. no. 27853/09); *Ignaccolo-Zenide v. Romania* (App. no. 31679/96).

Centre intervening) [2013] UKSC 75 ("*Re L*"); *Re LC (Children) (Reunite International Child Abduction Centre Intervening)* [2014] UKSC 1 ("*Re LC*"); *Re R (Children)* [2015] UKSC 35 ("*Re R*"); and *Re B (A Child) (Reunite International Child Abduction Centre and others intervening)* [2016] UKSC 4 ("*Re B*").

According to the United States Department of State's 2019 Annual Report on International Child Abduction, in 2017 and 2018 (the most recent years for which data is available) there were 43 international child abduction cases pending between the Central Authorities of the United States and the UK, involving 54 children.[3] *Reunite* therefore has an interest in the consistent international interpretation of the Convention, and in securing the prompt return of children wrongfully removed from or retained outside of their country of habitual residence.

This Court has been presented with two questions in this case. This brief addresses the second question only. In doing so, *Reunite* is not advancing, or seeking to advance, a particular outcome in these proceedings. In submitting this brief, *Reunite* seeks to offer assistance and information to this Court with particular reference to the current position in English law and, where appropriate, international law.

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[3] *See* https://travel.state.gov/content/dam/NEWIPCA Assets/pdfs/2019%20Report.pdf (last visited August 21, 2019).

SUMMARY OF ARGUMENT

"Habitual residence" forms the cornerstone of the 1980 Hague Convention.[4] The 1980 Hague Convention[5] is an international instrument, without a coordinating supra-national court to provide conformity of approach of interpretation among contracting States. When considering the approach to habitual residence under the 1980 Hague Convention, *Reunite* respectfully suggests that this Court may be assisted by an informative summary relating to the way in which the concept of habitual residence has been analyzed the United Kingdom Supreme Court, the Court of Justice of the European Union, and other common law states parties.

The second question presented to this Court concerns the analysis of parental intent in determining the habitual residence of an infant. There have in recent years been considerable developments in the approach taken by the United Kingdom Supreme Court ("UKSC") in the determination of a child's habitual residence for children of all ages. In *Reunite*'s submission, these developments will be helpful to the Court's analysis here.

Historically, it appeared that the English courts applied legal "rules" (or, at the very least, presumptions) to the determination of a child's

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[4] *In Mozes v. Mozes*, 239 F.3d 1067, 1072 (9th Cir. 2001), the court described habitual residence as "the central—often outcome-determinative—concept on which the entire system is founded."

[5] Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670.

habitual residence, with particular emphasis on the intention of the parents with regard to the child's habitual residence. More recently, however, the UKSC has reverted to a broader and more factual approach following two important judgments of the Court of Justice of the European Union ("the CJEU"). In summary, the modern UK habitual residence analysis considers the intention of each of the parents as one of several factors to be analyzed in determining a child's habitual residence. The intent of each of the parents is a factor that will be weighted differently in each case depending on the particular facts and circumstances of the individual case. The UK jurisprudence has moved away from emphasizing the intent of the parents and now undertakes a more holistic, fact-based enquiry into the child's circumstances.

In that regard, and having in mind that current United States interpretations of habitual residence in the context of the 1980 Hague Convention have been made with reference to what are *now* historical English authorities, *Reunite* seeks to provide detail as to the evolution of the interpretation of habitual residence in the courts of the UK and EU as applied to children of all ages.

ARGUMENT

I. The UK's Evolving Interpretation of Habitual Residence.

A. Habitual residence is not defined by the Hague Conference.

By the 1960s and in the years following, the concept of "habitual residence" was repeatedly used in a large number of international conventions conceived and drafted by the Hague Conference. It was and continues to be the consistent approach of the Hague Conference not to define "habitual residence" for the purposes of its conventions. This decision is generally thought to be because to do so would inhibit the latitude of domestic courts to apply the concept to the factual circumstances of the particular case. As long ago as 1951, the Committee Chairman of the VIIth Session of the Hague Conference commented that: "habitual residence is a factual notion and needs no connection with any given law system." *See*, *Nationality or Domicile? The Present State of Affairs, 3 Recueil des Cours de L'Academie de Droit International de la Haye,* 1969 at 428.

That disinclination to define the term "habitual residence" has continued to the present day. In the Explanatory Report to the 1980 Hague Convention, Professor Pérez-Vera said "[t]he Convention, following a long-established tradition of the Hague Conference does not define the legal concepts used by it."[6] The

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[6] Elisa Pérez-Vera, *Explanatory Report: Hague Conference on Private International Law,* 3 Acts and Documents of the 14th Session at ¶ 83 (*see also* ¶ 66) (1980).

interpretation of the concept of "habitual residence" has therefore developed and evolved in the jurisprudence of States Parties in the years following ratification of the 1980 Hague Convention.

B. *Ex P Shah* – The early approach to habitual residence focusing on parental intent.

The classic starting point for the interpretation of habitual residence under the law of England and Wales was until recently (when the European approach was adopted and adapted by the UKSC) derived from the test of "ordinary residence" set out in the opinion of Lord Scarman in *Ex p Shah*. *See A v A* at ¶ 37-38 (citing *Ex p Shah*, [1983] 2 AC 309(Eng.)). In *Ex p Shah*, Lord Scarman based the definition of "habitually resident" on the words "ordinarily resident" as follows:

> Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that 'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.

Ex p Shah, 2 AC 309 at ¶ 343G-H.

Lord Scarman's "… reference [in *Ex p Shah*] to adopting an abode voluntarily and for settled purposes…" inevitably shifted the focus of the court's habitual residence enquiry away from the "actual situation of the child" and to the intentions of the parents because a child usually has "… little choice

about where he lives and no settled purpose, other than survival, in living there." *A v A* at ¶ 38. (abandoning the intent-based approach of *Ex p Shah*).

Following the opinion of Lord Scarman in *Ex p Shah*, the interpretation of habitual residence by the courts of England and Wales continued to evolve. It did so in a way that resulted in the application of legal "rules" (or, at the very least, presumptions) to the determination of a child's habitual residence, with particular reference to the intention of the parents.

For example, in *Re J (A Minor)*, (a case which concerned the interpretation of Article 3 of the 1980 Hague Convention), Lord Brandon in the House of Lords said:

> The first point is that the expression 'habitually resident'… is nowhere defined. It follows, I think, that the expression is not to be treated as a term of art with some special meaning, but is rather to be understood according to the ordinary and natural meaning of the two words which it contains. The second point is that the question of whether a person is or is not habitually resident in a specified country is a question of fact to be decided by reference to all the circumstances of any particular case. The third point is that there is a significant difference between a person ceasing to be habitually resident in country A, and his subsequently becoming habitually resident in country B. … An appreciable period of time and a settled intention will be necessary to enable him or her to become so. During that

> appreciable period of time the person will have ceased to be habitually resident in country A but not yet have become habitually resident in country B. The fourth point is that, where a child of J's age is in the sole lawful custody of the mother, his situation with regard to habitual residence will necessarily be the same as hers.

Re J (A Minor)(Abduction: Custody Rights) [1990] 2 AC 562 (Eng.) at ¶¶ 578F – 579H.

The habitual residence analysis in *Re J* resulted in England and Wales in what has come to be described as a "rule," based on dictum in the case, which was thereafter relied upon in cases that followed. The (now former) "rule" that flowed from the intent analysis of *Ex p Shah* and *Re J* was that where two parents had parental responsibility for a child, one could not change the child's habitual residence unilaterally. *See A v A* at ¶ 39 (citing *Re J* at ¶ 572). As explained in Section D below, the "rule" has now been abandoned in the UK.

United States jurisprudence on habitual residence also evolved from the parental intent approach of *Ex p Shah* and *Re J*. Indeed, in *Mozes*, the Ninth Circuit considered English authority, including *Ex p Shah* and *Re J*, which appears to have influenced the formulation of its parental intent test, although did not result in the exact same "rule" as *Re J* with respect to a unilateral change of habitual residence. *Mozes*, 239 F.3d at 1072-78 (citing *Re J* (also known as *C v. S*) and *Ex p Shah* (also known as *Shah v. Barnet London Borough Council and other appeals*)).

C. Court of Justice of the European Union cases leading to the modern UKSC approach.

In recent years, the interpretation of the concept of habitual residence in the law relating to children in England and Wales has been radically influenced and reshaped by certain decisions of the CJEU. This has, in particular, been a result of the coming into force of the directly applicable European Regulation, Brussels IIa, which has been said to "complement" and "bolster" the provisions of the 1980 Hague Convention. The UKSC has, in a number of decisions discussed in Section D below, sought to harmonize the concept of habitual residence in the law of England and Wales with the reasoning of the decisions of the CJEU.

The UKSC has reverted to a more factual approach, moving away from a parental intent focused approach, following two important judgments of the CJEU, Case C-523/07, *Proceedings brought by A*, [2009] E.C.R. I-2805 ("*Proceedings brought by A*"), and Case C-497/10, *Mercredi v Chaffe*, [2010] E.C.R. I-14309 ("*Mercredi*").

In the context of the present case, the CJEU decision of *Mercredi* is particularly significant. In that case a mother removed her two-month-old child from England and Wales to the French island of Reunion. In determining the interpretation of habitual residence for the relevant article in the European Regulation, Brussels IIa, the CJEU said:

> The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises

> various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant.
>
> As a general rule, the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of.
>
> That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent. Consequently, where, as in the main proceedings, the infant is in fact looked after by her mother, it is necessary to assess the mother's integration in her social and family environment. In that regard, the tests stated in the court's case law, such as the reasons for the move by the child's mother to another member state, the languages known to the mother or again her geographic and family origins may become relevant.

Mercredi, at ¶¶ 53-55.

D. The modern UKSC approach.

Largely precipitated by the two recent decisions of the CJEU, the UKSC has, since 2013, considered the proper interpretation of habitual residence in cases concerning children on no less than five occasions: (i) *A v A* (9 September 2013); (ii) *Re L (A Child)* (4 December 2013); (iii) *Re LC (Children)* (15 January 2014); (iv) *Re R (Children)* (22 May 2015); and (v) *Re B (A Child)* (3 February 2016). Each of the five cases determined by the UKSC has contributed to the evolution its interpretation of the concept of habitual residence.

The first, *A v A*, concerned children who had been retained by their father and his family in Pakistan[7] against their mother's wishes. This was the first occasion that the UKSC had had the opportunity to consider in detail the proper interpretation of habitual residence in the light of the two decisions of the CJEU identified above. In giving the leading judgment, Baroness Hale expressly abandoned the previous habitual residence approach of *Ex p Shah*. In her judgment, Baroness Hale summarized the correct, modern approach to the habitual residence analysis as

[7] Accordingly, *A v A* was not a 1980 Hague Convention case, but rather a case based on the 2003 bilateral UK-Pakistan Judicial Protocol on Children Matters. *See A v A* at ¶7; *see also* UK-Pakistan Judicial Protocol on Children Matters (text available at:http://www.reunite.org/edit/files/Library%20-%20International%20Regulations/UK-Pakistan%20Protocol.pdf) (last visited August 21, 2019). The concept of "habitual residence," however, has the same meaning when analyzed in the 1980 Hague Convention context as explained in *Re L infra.*

follows (those passages omitted below are relevant to the present discussion):

> (i) All are agreed that habitual residence is a question of fact and not a legal concept such as domicile. There is no legal rule akin to that whereby a child automatically takes the domicile of his parents.
>
> (ii) …
>
> (iii) The test adopted by the European court is 'the place which reflects some degree of integration by the child in a social and family environment' in the country concerned. This depends upon numerous factors, including the reasons for the family's stay in the country in question.
>
> (iv) …
>
> (v) In my view, the test adopted by the European court is preferable to that earlier adopted by the English courts, being focused on the situation of the child, with the purposes and intentions of the parents being merely one of the relevant factors. The test derived from *Shah* should be abandoned when deciding the habitual residence of a child.
>
> (vi) The social and family environment of an infant or young child is shared with those (whether parents or others) upon whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the

> social and family environment of the country concerned.
>
> (vii) The essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce.
>
> (viii) As the Advocate General pointed out in opinion, para 45 and the court confirmed in judgment, para [43] of Proceedings brought by A (Case C-523/07) [2010] Fam 42, it is possible that a child may have no country of habitual residence at a particular point in time.

A v A at ¶ 54.

The UKSC in *A v A* therefore shifted the focus of the court's habitual residence enquiry back to the actual situation of the child, including the intentions of the parents as one of the relevant factors. *Id*.

In *Re L*, the second of the five cases, the UKSC for the first time considered the interpretation of habitual residence in relation to the provisions of the 1980 Hague Convention. As the Court acknowledged, "*A v A* was not a Hague Convention case." *Re L* at ¶ 19. However, the Court held that the test enunciated in *A v A* should apply to proceedings under the 1980 Hague Convention. *Id*. Baroness Hale went on to consider the role of parental intention in the habitual residence enquiry:

> … it is clear that parental intention does play a part in establishing or changing the habitual

> residence of a child: not parental intent in relation to habitual residence as a legal concept, but parental intent in relation to the reasons for a child's leaving one country and going to stay in another. This will have to be factored in, along with all the other relevant factors, in deciding whether a move from one country to another has a sufficient degree of stability to amount to a change of habitual residence.

Id. at ¶ 23.

The principal issue for the UKSC in the third case, *Re LC,* was whether, in proceedings under the 1980 Hague Convention, "the court in making…[a] determination in relation to an adolescent child who has resided, particularly if only for a short time, in a place under the care of one of her parents, [could] have regard to her own state of mind during her period of residence there in relation to the nature and quality of that residence." *See Re LC* at ¶ 1. In addressing that principal issue, Lord Wilson (giving the judgment of the Court) said:

> Where a child of any age goes lawfully to reside with a parent in a state in which the parent is habitually resident, it will no doubt be highly unusual for that child not to acquire habitual residence there too. The same may be said of a situation in which, perhaps after living with a member of the wider family, a child goes to reside there with both parents. But in highly unusual cases there must be room for a different conclusion; and the requirement of some integration creates room for it perfectly… I see

> no justification for a refusal even to consider evidence of her own state of mind during the period of residence there. Her mind may – possibly – have been in a state of rebellious turmoil about the home chosen for her which would be inconsistent with any significant degree of integration on her part…What can occasionally be relevant to whether an older child shares her parent's habitual residence is her state of mind during the period of her residence with that parent.

Id. at ¶ 37.

In *Re R*, the fourth of the five cases, the UKSC had once again to consider the issue of habitual residence in proceedings under the 1980 Hague Convention. Lord Reed, giving the judgment of the Court, stated:

> It is therefore the stability of the residence that is important, not whether it is of a permanent character. There is no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely.

Re R at ¶ 16.

In *Re B (A Child),* the last of the five recent cases, the issue was whether the court had jurisdiction to make orders about a child at a particular time. Lord Wilson, giving the judgment of the majority of the Court (3:2), said:

> I conclude that the modern concept of a child's habitual residence operates in such a way as to make it highly unlikely, albeit conceivable, that a child will be in the limbo in which the courts below have placed B. The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw. As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up probably come the child's roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it.

Re B (A Child) at ¶45.

E. The significance of parental intent in the modern UKSC approach.

It is clear from the extracts of the five UKSC cases that appear above that parental intention (and, in certain limited circumstances, the "state of mind" of the child itself) continue to be relevant when determining where a child is habitually resident. The focus of the enquiry into that intention has, however, shifted considerably from that which was typically undertaken when cases were decided under the previous approach as established in *Ex p Shah* and *Re J*.

In particular, when considering parental intention, the following applies:

(i) The focus of the enquiry is on the situation of the child "with the purposes

and intentions of the parents being merely one of the relevant factors." *A v A* at ¶ 54 (v);

(ii) Parental intention is relevant and "does play a part in establishing or changing the habitual residence of a child: not parental intent in relation to habitual residence as a legal concept, but parental intent in relation to the reasons for a child's leaving one country and going to stay in another." *Re L* at ¶ 23;

(iii) In appropriate cases, the "state of mind" of a competent, adolescent child can be relevant to the determination of their habitual residence *Re LC Children* at ¶ 37;

(iv) It is a misdirection to approach an enquiry into a child's habitual residence by seeking to determine whether or not there is an intention for that child to acquire a habitual residence. As Baroness Hale held in *Re LC,* "[i]t is not a matter of intention: one does not acquire a habitual residence merely by intending to do so; nor does one fail to acquire one merely by not intending to do so…" *Re LC* at ¶ 59; and

(v) "There is no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention

> on the part of one or both parents to reside there permanently or indefinitely." *Re R* at ¶ 16.

It can therefore be seen that, while still important, parental intention is not necessarily given greater weight in English and Welsh law than any other factor when determining a child's habitual residence. Further, the court evaluates parental intention in relation to the nature of the child's stay in the country in question (by way of example, whether it was for a holiday, or some other temporary purpose, or whether it was intended to be for a longer duration).

In that way, parental intention is treated as one factor within a broad factual enquiry, rather than as a separate and, perhaps, determinative enquiry that precedes or is separate from an evaluation of the child's circumstances. Within such an enquiry, the factors that are relevant to the habitual residence determination will vary in terms of the weight that they are given depending on the circumstances of the case. Lord Wilson's judgment in *Re B* provides an example of how those facts might be weighed up against each other. *See Re B* at ¶¶ 49–51.

II. Other International Perspectives: Australia, New Zealand, and Canada.

Although in recent years the UKSC has sought in relation to cases concerned with the 1980 Hague Convention to adopt an approach to the issue of "habitual residence" that sits largely consistently with the jurisprudence of the CJEU, other countries (for example, common law countries outside the European

Union) have, perhaps inevitably, developed different approaches to the concept. In circumstances where the provisions of the 1980 Hague Convention do not define the term, it is inevitable that different shades of meaning have evolved from one Contracting State to another. That said, the appellate courts of New Zealand and Australia have developed something of a consistent interpretation.

In *Punter v Secretary for Justice* [2007] 1 NZLR 40, the New Zealand Court of Appeal said, in relation to a court's enquiry into "habitual residence," (which was described as "a broad factual enquiry"), as follows:

> Such an enquiry should take into account all relevant factors, including settled purpose, the actual and intended length of stay in a state, the purpose of the stay, the strength of ties to the state and to any other state (both in the past and currently), the degree of assimilation into the state, including living and schooling arrangements, and cultural, social and economic integration…

Punter at ¶ 88.

That analysis was commended by the High Court of Australia in *LK v Director-General, Department of Community Services* [2009] HCA 9 at ¶ 44, which explained that that "the search is for the connection between the child and the particular state…the relevant criterion is a shared intention that the children live in a particular place with a sufficient degree of continuity to be properly described as settled." The High Court further explained that:

> the application of the expression "habitual residence" permits consideration of a wide variety of circumstances that bear upon where a person is said to reside and whether that residence is to be described as habitual. Secondly, the past and present intentions of the person under consideration will often bear upon the significance that is to be attached to particular circumstances like the duration of a person's connections with a particular place of residence.

Id. at ¶ 23

In relation specifically to the impact of a particular parent's intentions on the analysis of a child's "habitual residence" the High Court said:

> when considering where a child is habitually resident, attention cannot be confined to the intentions of the parent who in fact has the day-to-day care of the child. It will usually be necessary to consider what each parent intends for the child. When parents are living together, young children will have the same habitual residence as their parents. No less importantly, it may be accepted that the general rule is that neither parent can unilaterally change that place of habitual residence. The assent of the other parent (or a court order) would be necessary. But again, if it becomes necessary to examine the intentions of the parents, the possibility of ambiguity or uncertainty on the

> part of one or both of them must be acknowledged.

Id. at ¶ 29.

More recently, in a 1980 Hague Convention case, the majority of the Supreme Court of Canada, after an extensive survey of the international approach, including the decisions of the CJEU, adopted what it described as the "hybrid approach" to the habitual residence analysis (in contrast to the "parental intention approach" and the "child-centered approach"). *See Office of the Children's Lawyer v Balev*, 2018 SCC 16 (Can.) at ¶¶ 5, 39, 42, 44-47. It explained the "hybrid approach" as follows:

> … instead of focusing primarily or exclusively on either parental intention or the child's acclimatization, the judge determining habitual residence under Article 3 must look to all relevant considerations arising from the facts of the case at hand.

Id. at ¶ 42.

The "hybrid approach" to habitual residence was, in the view of the Supreme Court of Canada, the approach which had been endorsed by recent decisions from, amongst others, the CJEU, the UK, Australia and New Zealand. *Id*. at ¶ 50. The Court determined that it should be followed in Canada because: (i) the principle of harmonization supported that approach; and (ii) the approach best conformed to the text, structure and purpose of the 1980 Hague Convention. *Id*. at ¶ 48.

CONCLUSION

In *Re H (Children)*, Lady Justice Black (sitting in the Court of Appeal for England and Wales) explained the importance of the decision of the UKSC in *A v A* in the following way: "Overall, what to my mind emerges from Lord Hughes' judgment, as from Baroness Hale's, is a general disinclination to encumber the factual concept of habitual residence with supplementary rules…" *Re H (Children)* [2014] EWCA Civ. 1101 (Eng.) at ¶ 30. In relation to *Re L (A Child)*, she added that: "*Re L* also shows a continuing reluctance on the part of the court to permit legal glosses to be placed on the factual concept of habitual residence…" *Re L (A Child)* at ¶ 32.

Finally, Lady Justice Black observed that any remaining "rules" (and, particularly in that context, the "rule" that one parent could not change a child's habitual residence without the consent of the other) should be consigned "to history in favour of a factual enquiry tailored to the circumstances of the individual case." *Id*. at ¶ 34.

Accordingly, the focus of the trial court will be on the basic, factual reality of the child's life, taking into account all of the circumstances that are relevant to deciding "the place which reflects some degree of integration by the child in a social and family environment," and so where the child is habitually resident. That is not to say that parental intention is irrelevant. Parental intention remains a factor, and in certain cases it might be a factor that commands significant weight. However, the factual approach that is now required pursuant to the decisions of the CJEU

as applied by the UKSC requires that no single factor is automatically given precedence or greater weight over another, unless the particular facts of the case requires such an approach.

In advancing the submissions made above, *Reunite* seeks to assist the Supreme Court of the United States in considering the issue of how parental intent in the context of an infant's habitual residence should be analyzed. As noted at the outset, *Reunite* has not advanced any submissions as to the application of the law to the particular facts of this case. *Reunite* does, however, submit that the issues engaged in this appeal are of fundamental importance to the operation and application of the 1980 Hague Convention in the USA and in the rest of the world, and that the habitual residence analysis now applied by the UKSC may be of assistance to the Supreme Court here.

Respectfully Submitted,

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