Court File No. FC-09-1525

SUPERIOR COURT OF JUSTICE
FAMILY COURT

B E T W E E N:

JOHN DIELLIO

Applicant

- and -

SUSANNE KYRK DILELLIO

Respondent

****

PROCEEDINGS AT MOTION

BEFORE THE HONOURABLE JUSTICE C. LAFRENIERE
on March 19, 2010, at HAMILTON, Ontario

****

APPEARANCES:

R. Wellenreiter — Counsel for the Applicant

J. Marks — Counsel for the Respondent


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SUPERIOR COURT OF JUSTICE
FAMILY COURT

T A B L E O F C O N T E N T S

WITNESS	Exam. In-Ch.	Cr-Exam.	Re-Exam.

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Ruling by Lafreniere, J. p. 1

Transcript Ordered: June 3, 2010
Transcript Completed: October 18, 2010
Ordering Party Notified: October 26, 2010

Dilellio v. Dilellio
Reasons for Judgment - Lafreniere, J.

Friday, March 19, 2010

R E A S O N S F O R R U L I N G

LAFRENIERE, J.(Orally): The applicant issued his application on August 21st, 2009. A temporary order was made by Justice McLaren at the first appearance of November 4th, 2009, and an answer was filed that is dated February 5th, 2010.

The children were born in Sweden, however, from approximately the ages of two weeks returned to Hamilton where the parties had resided from the time of their marriage. The family lived together in Hamilton until 2001 when they moved to Sweden in September of 2001 when the children were three and four.

The parties and the children are dual citizens of Canada and Sweden. The family lived continuously in Sweden until August of 2009. The children have only attended school in Sweden, and they have attended school since the age the age of six. The family lived in Sweden as an intact family until August of 2009. From September 2001 until June 2009 the parties and children travelled to Hamilton as a family and stayed for extended periods of time in the home owned by the applicant prior to the marriage. He's owned the home since, Hamilton home since

1991. There were periods of time that the children and father remained behind while the mother returned to Sweden. The majority of the time – not getting into the disputed amount of the time – would appear to be during the children's school vacations. The father was a school teacher and off during the summer with the children.

Neither party worked in Canada during the period from September 2001 to June of 2009. Neither child attended school anywhere other than the school that they had attended from beginning school Rimbaud, Sweden before June 2009.

The trip scheduled for the children and the father to be in Hamilton from June 12th until August 15th of 2009 was no different than the other trips that the parties had taken in the previous summers. The mother did not – the mother consented to the father and the children being in Hamilton from June 12th to August 15th, 2009. She did not consent to the children being away from their home in Sweden for any other period of time.

I'm satisfied that the habitual residence of the children is Rimbaud, Sweden, which I'm going to talk about more in a moment, but first I'm going to say that I find that there's no issue of delay on the part of the mother. She

was told by the father on August 14th, and I don't think this is disputed in the evidence, that he would not be returning as planned with the children, and I find that this was the first indication to the mother that the father's plan was to stay in Ontario with the children.

I find that the mother made it known she did not consent, and to this date her position has not changed. She does not consent to the children remaining in Ontario. She filed her Hague applications with respect to seeking return of the two children to Sweden on August 26th, some twelve days after she was told that they would not be returning. There's no evidence to suggest that she has not vigorously and as quickly as she was able pursued this application.

Now, I find that on the evidence before me, and I - if I haven't said it earlier, I will note that I've read every affidavit in the record. I've read both factums. I've read the transcript of Justice McLaren. I've read both Books of Authority, and I've read the affidavits that were filed this morning, and I've considered the submissions of counsel, and I've relied on the relevant legislation.

I find that there was a settled intention on the part of this couple to reside in Rimbaud

Sweden based on the fact that that is where they worked and where their children attended school. I find that they intended to have a residence in Hamilton to which they could travel during the summer months when the children were not in school. But the habitual residence of the children for the purposes of a Hague Convention application is Rimbaud. Did I call it Limbeau (ph)?

MS. DILELLIO: No, no, you said Rimbaud.

THE COURT: Rimbaud, I've called it, Rimbaud, Sweden. This is the last place where the children resided with both parents. I think the law is clear that one parent cannot unilaterally change the habitual residence of the children, and the case law does not support a child of an intact family having two habitual residences. There's no question that this was an intact family until the father notified the mother in August of 2009 that he would not be returning to Sweden with the children.

I'm referring to the case *Wilson v. Huntley*, which is at tab one of the father's Book of Authorities, and I'm referring to paragraph 21, and it's where Justice MacKinnon was citing professor McLeod's textbook Child Custody Law and Practice. The quotation is,

> Most courts have ruled that a child may have only one habitual residence for the purpose of the

> Convention. In the case of multiple residences, the habitual residence is determined on the basis of such [such] factors as the length of the period of residence, existing social bonds and other circumstances of a personal or professional character that can indicate a more permanent tie to one country or the other.

And I think that what we've got here is we've got a situation where there's two residences, but only one of them can be the habitual residence, and I find based on the factors in this case the habitual residence is the residence in Sweden.

I'm also relying on paragraph 26 of this case where Justice MacKinnon states,

> The mother submits that the child can and did have two habitual residences: one with her in the United Kingdom during the time stipulated by the parties pursuant to their parenting agreement, and one with the father in Canada during the times agreed upon in which Kyra lived with him. She relies in particular [in particular] upon clause 3.15 of the parties' agreement. This clause states that

> either parent can invoke the Hague Convention if the child is not returned at the agreed upon times. This clause is said to be consistent with the shared intention of the parties that the child would enjoy a habitual residence with each of them in alternating periods.

The reason that I'm citing that paragraph is because it's clear that Justice MacKinnon had something in that case that I don't have. She had evidence of the intention of the parties. I don't have any evidence of the intention of the parties that there would be two habitual residences. I think what I have is a case where one parent has taken matters into his own hands, and that's the finding that I'm making, and unilaterally attempted to change the habitual residence of the children without their mother's consent.

I also rely on the Quebec case that Justice MacKinnon cites at paragraphs 22 through - sorry, just 22 - where she quotes from the Quebec Court of Appeal where the distinction was made between a house that was used as a summer residence and the house where the children habitually resided. And in that case the court also concluded that the mother had never accepted the return of the children to the Province of Quebec. It may be that she

agreed to a trip to the summer home, however, she never consented to a change in her habitual residence and that of the children, which brings me to my next finding, which is that I am confident that the case law, a current statement of the case law on the issue of habitual residences is that a child's habitual residence is tied to her custodians. A child is habitually resident in the place where she last lived with her parents in a family setting. One parent cannot unilaterally change the habitual residence while parents share custody.

I'm satisfied that until August 14th the parents were sharing custody in the habitual residence of the children in Sweden, and that there's no issue, and I don't think it was argued that the mother - there's no issue that the mother was not exercising her rights of custody, and I, I do rely on the, the statement of Swedish law that was filed in the mother's material to tell me how that issue would be determined in Sweden.

Now, just for completeness sake, I did want to say that I have looked at - I've considered the four key objectives of the Convention as Justice MacKinnon does in her case starting on page 21, the prompt return of the children, the restoration of the status quo, which I don't think there can be any argument that the status

quo is that the children were living with both parents prior to August 14th on an extended holiday with their father in Hamilton but with the permission of their mother. I don't think there's any question that that's what the status quo was.

The deterrent purpose, of course, is to deter parents from taking matters into their own hands and effectively preventing an opportunity for the other parent to participate in a hearing, a reasoned consideration of what is in the best interests of the children if the parents are not going to be residing together, to have an opportunity to have input into, to that decision. Obviously, that's why we want to re-establish the status quo because that opportunity has been denied.

Now, the fourth is that the best interests of the children should be determined in their place of habitual residence, and the obvious reason for that is that the habitual residence is the place where the children - there is the preponderance of evidence about where the best interest of the children would lie. In particularly when we're dealing with children, we often want to consider their school, so as of August 14th the children had only ever attended school in Sweden. So if I was going to embark on the kind of inquiry that Justice MacKinnon does in this decision because she

feels she's dealing with the situation where parents have agreed to two habitual residences, which I don't find, I'm saying if I did, I would have to find that Sweden is the residence where the preponderance of evidence would be, where it would make most sense that the children's best interest would be determined, if I was comparing the two residences because the children resided - even if I accept the best of the father's evidence that the children resided in Sweden at least for two-thirds of every year, and only ever attended school in Sweden. So all of the independent evidence that a court would have in terms of their school life, which is critically important when you're dealing with children is that other than their life with their parents, their school life is their only other life at this age, that would be in Sweden. So if I was going to embark upon that inquiry, I would still find that Sweden was the place that this determination of the best interests of the children should be made.

Now, the father's position is predicated upon the children's wishes. He makes it clear in his material that his position is he had no intention of, of keeping the children in Ontario, but that was something that developed over the summer, though he does say in his material that there always was an intention to return to Ontario, which may well be. However,

a habitual residence is determined by where the children were residing - I think the cases talk about the day before they were wrongfully retained. So whether or not there was an intention to relocate to Ontario in due course has no bearing on where the children were habitually residing in August of 2009 before they were retained in, in Ontario, Canada.

In the father's material I find it's, it's clear that he bases his position on the fact that he, in his view, was simply following the interests of the, the wishes of the children. At paragraph 25 of his affidavit, sworn March 12th, 2010 he states - sorry, at paragraph 24,

> With respect to the recent events I note that the children and I did not leave Sweden without the respondent's consent or approval. We left as usual, and as consistent with our pattern of coming to Canada to reside in our Hamilton residence.

And then he goes on to talk about that the respondent was becoming more angry at the children and making them more unhappy during telephone calls, which is a different issue. I want to make that perfectly clear, a different issue. If there's a concern about where the children should be, and people want to argue about what the appropriate custody and access

regime for their children is, they're free to do that, but they're not free to take matters into their own hands. Paragraph 25,

> When it came to mid-August, 2009, the children expressed to me their desire to continue to reside in Hamilton. Jennifer was particularly adamant that she did not want to reside in Sweden anymore. Natalie, too, stated that she wanted to continue to reside in Hamilton, but was more worried that her mother would hate her for this. In order to allow the children to reflect on this, we took a break over August 10th and 11th, 2009 in Niagara Falls and Fantasy Island, Niagara Falls, New York. It was important to me that the children decide about the preferred choice of their residence themselves. When we returned from Niagara Falls, [I explained to them] I explained that we could leave as scheduled or we could stay. Both children made it very clear to me that they wished to remain in Canada and continue to reside here in Hamilton in the Hamilton residence. Accordingly, [at paragraph 26] I enrolled them in school in September, 2009.

There's no suggestion that the father even appreciates that the mother may have had some input into a decision such as where her children were going to live.

Counsel for the father has suggested that the court should adjourn this hearing to allow an opportunity for the Office of the Children's Lawyer to intervene and ascertain the wishes of the - wishes and preferences of the children. In my view, that is not appropriate when the court is dealing with the Hague application, the - it's clear the application must be dealt with expeditiously.

It's also clear that Article 12 is mandatory once the court has determined that a child has been wrongfully detained and that the child's habitual residence is another state, the child or children are to be returned to the other state.

Then we look at Article 13, which the father also relies on, to suggest that the children's - the children are objecting to a return to Sweden and that I, I should find that they - that the exception contemplated at Article 13 is met. I don't think that there's evidence sufficient to make a finding that the children - the objection contemplated by Article 13 is, of the, the level here, that level here. I'm relying on the case law, particularly the Court

of Appeal, the case of Justice Hoilett, upheld at the Court of Appeal that what is contemplated by a child's objection is, is much more than the, what we consider in normal custody and access cases of a child's wishes or preferences. And the case relied upon by the father is a case where the evidence seems to have been quite extreme in terms of why the child did not want to return to the care of his father.

I'm looking at, in considering at paragraph 12 of the - Mr. Justice Hoilett's decision in *Toiber v. Toiber* - I'm not sure if I'm pronouncing it right, but it's T-O-I-B-E-R, where he concludes in his judgment a transcript - if I can use that expression - of a hand-printed note from the child who would have been thirteen, I think, at the time, and I think that I can fairly say that if I'm comparing this statement from the child to the note that's attached to the father's affidavit, which he's calling a petition that the children secured, he asserts in his evidence, on their own, that essentially what I think I have from the children is what looks like a note signed by, I would assume, their classmates, that they would like them to stay in Canada. I don't have a statement from the children, and I'm not certain that I would be persuaded by a statement from the children in any event. But what my point is is that I don't have the kind

of statement that Justice Hoilett had when he rejected the notion that this met the test of Article 13.

There are a couple of reasons that I would be very reluctant to rely on what was presented as the children's wishes at this point. The children have been withheld from their mother for nearly nine months, ten months. They haven't seen her since that time as far as I'm aware. It doesn't seem so in the material. All they've had the opportunity to do is speak to her on the phone. I can't - I don't believe that it's appropriate to rely on what the father says the children are saying to him, and I don't think it's necessarily appropriate to rely on what the mother says the children are saying to her. As a Family Court Judge, I consider what the parents are saying to the court in usual circumstances to be slanted to present the case that they want to meet.

Having said that, I have a lot of concerns about the father's material. It isn't appropriate to make findings of credibility based on affidavit evidence, however, I do have to make some comments. I think that it is clear that the father by his actions has attempted to gain a significant advantage in a custody dispute that, based on this record, the mother did not even realize was looming, and she was put to a significant disadvantage.

I also have concerns about the evidence that was presented to Justice McLaren. I do not find a question like the question put to the father by Justice McLaren to be ambiguous in any way, and I do not attribute the suggestion that father's counsel wanted me to - that that wasn't what the father intended to convey, that he was talking about the mother giving permission to have the usual visit or residence in Hamilton, if you want to call it that, from the middle of June to the middle of August.

Justice McLaren asked the father, first of all, when Justice McLaren is saying, it sounds like they were living in Sweden until the end of the school year, the father actually interrupts her. The father, it's clear in the transcript, and then says, "If I may, Your Honour, the understanding, my wife tried to commit suicide", which would, I think the, I think a man on the street would know, would be fairly significant information to put to a Family Court Judge when you're seeking custody. "And I brought both parents over here, and we decided that we would go and live with them for one to two years. That hasn't happened. She refuses to come back." Well, on the evidence, which isn't pointed out at this juncture to Justice McLaren, moving over there was 2001. So when this matter is before Justice McLaren, this is eight years later.

And then he says, "And in, well, I guess it was January, I paid for her ticket to come back and she cancelled it. She refused to come back." Now, I don't think there's any way to read that except to - except that the intention was to suggest that they agreed to move back to Ontario, and at the last minute the mother refused to come. So Justice McLaren tries to ask a question; the father continues, "However, she did allow the children. She told me she didn't at the time she wasn't, didn't want them. I was the one that wanted the children." So then when Justice McLaren can speak she says, "So you were saying she gave you permission to move back here with them?" Answer: "Yes. She even packed her suitcases, and her brother drove us to the airport." I don't think there could have been any doubt in Mr. Dilellio's mind what impression he was trying to present to Justice McLaren. Now, that was concerning to me.

Also concerning to me is the evidence of the attempt to evade service, which is not addressed by the father in his material despite the fact that he responds to all of the affidavits. So I have some concerns about the way the father has conducted himself in comparison to the way the mother has conducted herself. I note the difficulty the mother had in serving her material on the father, yet the

father was able to mail his application to Sweden, and the mother signed the acknowledgment card and mailed it back knowing, as she said in her material, that she had already filed her application, her Hague application.

The other thing that I rely on when I say that I have some concerns about the way the father has presented this evidence to the court, I don't think I can make any finding other than that suggested by Mr. Marks that when he prepared that chart, he was trying to exaggerate the amount time that the children were in Hamilton, and I can, I can say that because I can compare the times that are blocked off to the times set out in the tickets, and it certainly isn't the first time I've seen something like that being a Family Court Judge. People sometimes want to take the position that if I drop the child off to school, that means the child's in my care all that day. So what I have in this chart is that the children come to Hamilton in the middle of June and leave in the middle of August, and I'm being - it's being suggested to the court that they are in Hamilton for all of June, all of July and all of August, when, in fact, that's not accurate.

Having said all that, I have concerns about whether or not I have wishes from the children

that I can rely on, and I'm - I find that the, the information I have is, doesn't come close to the kind of objections contemplated in the Article 3, that what I have is the kind of evidence that I would expect to receive from two parents in a custody dispute, which is exactly what Justice Hoilett found. And I do want to quote him because I thought that this turn of phrase was particularly apt. Well, I think I remember what he said. He said something like, it wasn't that different from any child caught in the vortex. I, I take, I take the same position that Justice Hoilett did. I, I mean I don't - nobody argued or submitted whether or not the children were in a position to - mature enough to - and this wasn't strenuously argued - that they were mature enough to raise the sort of objection contemplated by Article 13, but I think the argument was more made that they should be listened to, and that was why the Office of the Children's Lawyer should be involved, but in any event even if I assumed that the children are mature enough, if I make that finding, the, the evidence I have doesn't raise to that level. This is what he said,

> Objectively read, the sentiments expressed by Lilia are no more, in my view, than those often expressed by a child caught in the vortex of a custody battle. That being the case

> it is clear on the authorities that those are issues best dealt with by the courts in the jurisdiction which the child was habitually resident immediately before the removal of the retention. In that regard reference might be [sorry - I think there's a typographical error - in that regard, reference might be] usefully had to or made to *Thorne v. Drydenhall* [I won't have the citation, you have the case] as was ncted in *Hawke v. Gamble*. The best forum to ascertain the wishes of the children is in a custody trial where experts capable of assessing these things are called to give evidence tested by cross-examination. Cther than claims by Mr. and Mrs. Gamble and her mother, there presently is no independent reliable evidence before me concerning the wishes of the children.

So I come back to where I started when I was posing questions to Mr. Wellenreiter. It seems to me that the children have been put through a horrible ordeal when - if Mr. Dilellio's intention was to separate and seek custody of tne children, he ought to have done it in the forum where the children's best interests could be determined, and their mother had an

opportunity to participate. So those are my reasons. That's my ruling.

Now, I want to make sure that we organize an orderly transfer of the children from your care to their mother's care so that they can travel with you back to Sweden as soon as possible. Do you need my help in that regard, or have you been able to have some discussions?

MR. WELLENREITER: We have had some discussions. We have had some discussions, Your Honour. I think the - the only place where we seem to be stuck is the actual day of, day of transfer. I believe, I mean, because of....

THE COURT: Do you have a return ticket, ma'am? Does she have a return ticket?

MS. DILELLIO: Yes, I do, but, but it is, it's possible to rebook it.

THE COURT: Okay, all right.

MS. DILELLIO: I made it so it's possible to rebook.

MR. WELLENREITER: So as I understand it, the ticket, the return ticket is for Wednesday, and we were in discussions when we were looking to try and do it late, late this weekend or Monday was our position.

THE COURT: What's wrong with today?

MR. WELLENREITER: Well, there should be some time to allow my client to prepare the children.

THE COURT: Well, I don't think he allowed the

mother that opportunity, and I've made a ruling. The children are to be in her custody now.

MR. WELLENREITER: Well, this should be - even looking at the case that my friend submitted, which is where we were....

THE COURT: I'm not inviting your submissions. I've made a ruling. The children have been wrongfully detained. They are to be returned to the care of their of their mother.

MR. WELLENREITER: So....

THE COURT: Now, you either want to talk to your client and have some input into that, or you don't.

MR. WELLENREITER: All right. I'll talk to him first.

THE COURT: Thank you.

R E C E S S

...UPON RESUMING

THE COURT: Have you been able to work anything out?

MR. WELLENREITER: Yes.

THE COURT: Okay.

MR. MARKS: This is marked up, Your Honour...

THE COURT: Okay.

MR. MARKS: ...but it basically follows - I included a case at tab 4 of my Book of Authorities and an example of an order returning a child overseas so we just kind of track that order as - with, with a few exceptions, those exceptions being - so - if

you don't think we need to be as complicated as that....

THE COURT: Well, I'm just trying to think of how to get the order issued before 4:30. I had written out - why don't I try to write it out. What I, what I included, and I, I'm, I don't know if I'm reading it in here but I said that - I've also - part of my order - I'll read you what I've written, and I can amend it to include this. Habitual: For oral reasons I've found the habitual residences of the children - and I've set out their names, their dates of birth as Rimbaud, Sweden - the children have been wrongfully retained in Hamilton, Ontario by their father since August 15th. The children are to be immediately returned to the care of their mother, who will return with them to their habitual residence of Rimbaud, Sweden, with temporary order of McLaren, J. is vacated. The application of the applicant is dismissed as the only claim as custody, and this court does not have jurisdiction to deal with this issue. The applicant will deliver the children's passports, all travel documentation and medical documents to the respondent, and then I included a clause that the father's consent to the children's travel to Rimbaud, Sweden is dispensed with just to make sure that there was no difficulty at the border and that - because I need - we need to get this order issued. Approval as to form and content of the order would be dispensed with. So I can look

at what you've - what in addition to that you want me to include. I - okay, I see that you want me to include the police assistance. Okay. And you want me to do this part about costs, as well?

MR. MARKS: We brought written submissions.

THE COURT: Okay. All right. By - I think what I'll do, then....

MR. MARKS: If you want to keep it simple, that's, that's fine.

THE COURT: No, I think - I'm just trying to think of how to write it so that the staff downstairs will know how to prepare it. So, so I'm adding to the, my clause where I said the children should be immediately returned to the care of their mother. The specific terms are as set out on the consent attached, and I think that should take care of it. And then what I'm going to suggest is that Mr. Wellenreiter can direct you to the lawyer's lounge where there's a computer if you want to prepare the order and get it issued today...

MR. MARKS: All right.

THE COURT: And I'll wait and sign it.

MR. MARKS: Okay.

THE COURT: I'm sure you'll be happy to assist him in that regard. Okay. So I'll let you take the file. I haven't inserted that yet, but I think all you need is the endorsement read and I'll wait for it, okay.

MR. MARKS: Thank you.

THE COURT: Thank you very much.

MS. DILELLIO: Thank you.

R E C E S S

...UPON RESUMING

THE COURT: How we doing? Oh, okay.
MR. MARKS: Your Honour, there's just one point on there that seemed a bit vague and we couldn't agree on it.
THE COURT: Okay.
MR. MARKS: It's, it's - you're ordering a number of undertakings there in Schedule A.
THE COURT: Oh, in the schedule, sorry.
MR. MARKS: And it was the, it was the order - sorry - the undertaking about access.
THE COURT: But you haven't included the, the parts of my endorsement, the habitual residence of the children, so are you asking me to make two orders?
MR. MARKS: I didn't include them as they were findings.
THE COURT: Okay.
MR. MARKS: I just included....
THE COURT: Okay. All right. I'm not - all right.
MR. MARKS: I thought about that. I started to and then I thought the findings...
THE COURT: Yeah.
MR. MARKS: ...are not orders, so....
THE COURT: I think you're right. Okay. Sorry. What do you want me to look at?
MR. MARKS: There's, there's a part in there that you're, you're ordering undertakings -

sorry, I don't have it front of me.

THE COURT: Yeah. The following undertaking.

MR. MARKS: Yep. And there's something dealing with access.

THE COURT: Okay.

MR. MARKS: It just seems too vague to me as the children may wish. We're just back into the wishes of the children again. I would suggest what Justice McLaren ordered on the temporary custody order which was the respondent mother when, this was when she was - when he was here.

THE COURT: I agree with you. Why would I order that? The whole point was that I was saying that, that - in any event, I'm not going to order that. First of all, I can't order something that's going to be - what's going to happen in Sweden. All I can do is make the findings that I've made and the kids are going back to Sweden - full stop.

MR. WELLENREITER: Your Honour, this, this was already on the consent. I, I'm not arguing with you. I'm just saying this is how the consent went up to you, and that's, that's what I typed. That's what was typed up. If you're not ordering it, that's fine.

MR. MARKS: Quite frankly, we'd be happy if none of those undertakings were ordered. I didn't want to put them in there, but....

THE COURT: Well, I don't have a problem - well, frankly, I don't think I can order it anyway. I can't make an order that's binding

in Sweden. I mean I don't think anybody's going to tell me that I can.

MR. WELLENREITER: No, the, they're - it's - it comes from....

THE COURT: And I can't order undertakings. If the parties can agree to undertakings, that's a separate agreement between them...

MR. WELLENREITER: All right.

THE COURT: ...which they have to negotiate. So....

MR. MARKS: So, we would like those taken out then.

THE COURT: Okay. So my order....

MR. MARKS: Your order starts at paragraph two. It's paragraph one.

THE COURT: What I'm going to delete is F, and then I'm going to say that Schedule A I'm putting in not on consent in front of paragraph one, and then I'm saying pursuant to the following terms which are on consent, and that's A, B, C, D, E, and then I guess I'll make - well you had as F sub two, I'll make that F. And then not on consent the temporary order of McLaren J. of November 4th is vacated. The application is dismissed. The applicant father will deliver the children's passports, travel and medical documents, and the father's consent to the children's travel is dispensed with.

MR. MARKS: Okay.

THE COURT: Now, the only problem is, is you haven't left me a signature line.

COURTROOM CLERK: I can stamp Justice on it and draw a line for you.

THE COURT: Do you think you would do it there?

COURTROOM CLERK: Yep.

THE COURT: And then I've asked the staff to wait downstairs to have it issued.

COURT ROOM CLERK: That was done, and they just called up.

THE COURT: Oh, okay. I just imagine they're anxious to be on their way.

MR. MARKS: The, the divorce-mate software is not....

THE COURT: It's okay. I know you did the best you could. I've heard that before.

MR. MARKS: Your Honour, do you want to make an endorsement about cost submissions just on lines on those?

THE COURT: Sure. Okay. Okay. Thirty days for your submission?

MR. MARKS: I can do them in ten actually.

THE COURT: Okay.

MR. MARKS: Yeah. I would suggest ten for me, then seven days for my friend to, to put in his response, and then four days for me for any reply.

THE COURT: Do you agree?

MR. WELLENREITER: That's fine, Your Honour.

THE COURT: Thank ycu. I've just written it in. So I've said on the issue of costs, to be dealt with in writing. Respondent's submissions, bill of costs and any offers to be served and filed in ten days, the applicant's

response in seven days, and four days for reply. So, so I think downstairs they can make photocopies for you and get this issued and then my endorsement. Okay. So that's my endorsement, and when you're down there you can get photocopies of that, too, I think, if you want, and otherwise, I think we're done for today. Okay. Thank you both. Good luck. I hope that you're not going to continue to fight over your children, but are going to learn to co-parent if that's what must happen. Okay. Thank you very much.

FORM 2

Certificate of Transcript

***Evidence Act*, Subsection 5(2)**

I, Suzanne Macaulay certify that this document is a true and accurate transcription of the recording of Dilellio v. Dilellio in the Superior Court of Justice (Family Court) held at 55 Main St. West, Hamilton, Ontario taken from Recording Nos. 4721- 3-120/2010 which has been certified in Form 1.

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(Date) **(Signature of authorized person)**