

CLERK OF THE

STATE OF INDIANA) IN THE
)SS:
COUNTY OF) CAUSE NO.

Petitioner,
vs.
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came before the Court on
on Petitioner's Verified Petition for Return of Minor Children;
Petitioner was present and represented by counsel
Respondent was present and represented by counsels Bryan L. Ciyou and Darlene Seymour. Evidence was presented and completed. The parties requested and the Court permitted the parties to file Proposed Findings of Fact, Conclusions of Law, and Judgment, and Arguments and Memorandums of Law in support of their positions. Court being duly advised and based upon the testimony of the parties, their witnesses, the exhibits offered and admitted into evidence, arguments of counsel, and post-hearing pleadings, now makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT.

FINDINGS OF FACT

1. This is an action commenced by Petitioner, (hereafter "Petitioner") requesting the return of his children, date of

birth [REDACTED] and [REDACTED] date of birth [REDACTED] (hereafter "Children") to [REDACTED] Australia, the children's place of habitual residence immediately preceding their removal on [REDACTED] by the mother, [REDACTED] [REDACTED] (hereafter "Respondent").

2. Petitioner and the minor Children were born in Australia, are Australian citizens and possess Australian passports. Respondent was born in and is a citizen of the United States of America.

3. The Petitioner and the Respondent met in [REDACTED] at a restaurant in [REDACTED] while the Petitioner was in the United States attending a trade show for his business, exchanged phone numbers, and then began dating.

4. At a subsequent meeting with the Petitioner in Chicago, the Respondent first observed an angry side of the Petitioner when the Respondent received a telephone call from an old boyfriend who wanted to resume a relationship and was continually calling her. Petitioner demanded to end any further phone calls. Respondent would not comply with Petitioner's demands. Petitioner then started using profanity and became enraged. Petitioner called the Respondent names to the extent that the Respondent felt compelled to exit the car on a busy street in [REDACTED]

5. Respondent visited Petitioner in Australia in [REDACTED] before marriage where she was again physically and psychologically assaulted by the Petitioner in one incident in the bedroom of the Petitioner's home.

6. During the visit with the Petitioner in Australia on [REDACTED] [REDACTED] while driving home, an argument also ensued and Petitioner forced Respondent out of the car and made her walk home in an unfamiliar area.

7. During an extended visit with Petitioner in Australia in [REDACTED] where Petitioner continued with his assaultive behavior, Respondent also noticed and was concerned that Petitioner's home was missing basic household items, which appeared to reflect his recent divorce. However, Petitioner was not forthcoming and seemingly evasive about discussing his ex-wife, the status of his divorce, or any other material details of his previous marriage.

8. Petitioner and Respondent were married at the parent's home in [REDACTED] Indiana on [REDACTED]. Respondent was pregnant at the time and then she moved to Australia in [REDACTED] where the child was born.

9. What was unknown to, and hidden from the Respondent was that the Petitioner was a narcissist and a domestic batterer; Petitioner's ex-wife, [REDACTED] (herein [REDACTED]), who was with him for several years (but did not have children with him) divorced the Petitioner after she learned the Respondent and Petitioner were dating; [REDACTED] testified that during her marriage to Petitioner, the Petitioner inflicted numerous serious verbal and physical assaults on her, including—most significantly—pushing her head into a piece of furniture during a phone call because Petitioner did not like the way [REDACTED] was scripting the message she was leaving (about selling a used car) and then left the home with her unconscious and crumpled on the floor.

10. Before this event, [REDACTED] previously had been hit in the face by Petitioner and this was discovered by her co-workers while she was at work.

11. [REDACTED] obtained medical treatment for this aforementioned injury and went to her parents for help, but stayed with the Petitioner because he had generally alienated [REDACTED]

from her family and her friends. [REDACTED] ultimately returned to the Petitioner because she was raised by her parents in Australian culture to “stick it out”.

12. In fact, it was not until after Respondent and the Children fled Australia in [REDACTED] that Respondent was able to obtain contact information for [REDACTED]. Further, [REDACTED] initially refused to communicate with the Respondent and Dr. [REDACTED] in this case about her marriage to the Petitioner. Dr. [REDACTED] attributed [REDACTED] words to him as credible that, even twenty (20) years later: “she was very fearful that sharing information with me would result in potential threat to her.”

13. By the time of the trial, [REDACTED] who lived incommunicado and hid her whereabouts from the Petitioner out of fear of him—and telling of the veracity of [REDACTED] testimony (and significantly bolstering and corroborating the pattern of family violence Petitioner displayed toward the Respondent about Petitioner’s violent propensities and control as a domestic batter and the Petitioner’s desire to conceal this—is that [REDACTED] who had not had contact with the Petitioner for twenty (20) years, was contacted by him, as soon as her name was disclosed on a motion to allow her testify by phone, on Facebook and had a distant person contact [REDACTED] on a remote [REDACTED] island as well, which was clearly to dissuade against or frighten her from testifying about what crimes the Petitioner had inflicted upon her as well as other abuses; Petitioner reluctantly admitted this attempt at contact with [REDACTED] only after extensive cross-examination.

14. Moving again to Petitioner’s and Respondent’s dating relationship, with this knowledge unknown, Respondent discovered she was pregnant, at which time Respondent and Petitioner formulated and embraced the terms of the plan, whereby they

would live in Australia but return to care for [REDACTED] parents at some indeterminate future point.

15. Prior to the marriage and before the move to Australia in [REDACTED] [REDACTED] Petitioner and Respondent fully agreed with one another that they would reside in Australia for a period of time and then later the family would relocate permanently to the United States so that the Respondent could help care for her aging parents. Well before the Respondent and Petitioner met, the Respondent, her brother, and their parents had a long-term family plan in accordance with the family trust that each had agreed—as well as, subsequently, the Petitioner as the newest member of the family—whereby the Respondent and her brother would take care of their parents in this estate home when they became aged and needed care, instead of using out-of-home placement or keep them near each other if out-of-home care became necessary.

16. The Petitioner visited Indiana before and after the parties were married and stayed at the Respondent's parents' home and the estate property that is sited on land that straddles the [REDACTED] County line, which was set up in a family trust for the Respondent and her brother to inherit upon the passing of their parents. In fact, the Petitioner admitted and agreed at trial that there was a long-existing family plan for relocation to the United States.

17. Prior to the moving on [REDACTED] the minor Children resided at [REDACTED] [REDACTED] Australia, attended school in Australia, attended church in Australia, developed and maintained relationships with their extended Australian family, including aunts, uncles, grandparents, cousins, as well maintained relationships with school classmates and neighbors in Australia.

18. [REDACTED] attended primary school at [REDACTED] [REDACTED] Australia and transferred to [REDACTED] for high school where she was enrolled in [REDACTED] and was progressing well in her school.

19. [REDACTED] was enrolled at [REDACTED] and was in [REDACTED]

20. The parties jointly own the real property, their marital home, located at [REDACTED] Australia. Such home has adequate living facilities, bedrooms for the children, an outdoor swimming pool, furnished with amenities. The home is valued at over \$1 Million.

21. Throughout their marriage, the parties regularly, and at least annually, visited Respondent's parents, [REDACTED] in [REDACTED] Indiana consistent with the family plan for relocation back to the United States. When the parties' children were born, they accompanied their parent(s) for visits to [REDACTED] Indiana. Often, Respondent would visit her parents in [REDACTED] alone (without Petitioner) bringing one, both or neither of the children to [REDACTED] sometimes for extended periods, weeks or months.

22. The parties both acknowledge their future plan was to eventually relocate to the [REDACTED] Indiana area in order to care for Respondent's elderly and ailing parents. Respondent is in line to inherit her parents' farm in [REDACTED] Indiana along with her brother, [REDACTED]

23. On [REDACTED] 2, 2015, Petitioner submitted his application to the Central Authorities in Australia for return of the minor children pursuant to the Hague Convention. A copy of such application is attached to his verified petition as Exhibit

“A”. It has been less than one year from the date of the wrongful removal (on or about [REDACTED] through the date of filing and commencement of this petition with [REDACTED] (Indiana) [REDACTED] Petitioner filed his Verified Petition for the Return of Children Pursuant to the Hague Convention on [REDACTED]

24. Respondent accepted service of process through her prior counsel,

[REDACTED] who withdrew her appearance on [REDACTED]

[REDACTED] successor counsel being Ciyou & Dixon, P.C.

25. This future plan was established, not only by the Petitioner’s and Respondent’s testimonies but by many of Petitioner’s and Respondent’s witnesses who also testified to this Court that the parties did have plans to relocate to [REDACTED] Indiana, however, the specifics and details of the planned relocation were never solidified. In fact, the Petitioner admitted and agreed at trial that there was a long-existing family plan for relocation to the United States.

26. Petitioner previously owned a business in Australia, but is currently employed as an engineer in Australia. Between [REDACTED] the parties’ efforts to relocate to [REDACTED] Indiana intensified, taking some specific actions, including cleaning and painting their Australian home, updating the landscaping around the home, organizing a Church group to assist in the readying of the home for sale.

27. Further, Respondent’s business contacts in the United States were diligently looking for an engineering job for Petitioner in the U.S. Petitioner was unable to secure employment in the U.S.

28. The parties entered into a listing agreement for the sale of the home, and it was put on the market. The object of readying the home for sale and listing the home for

sale was to increase the value of the home to obtain additional refinancing in order to pay off some of Petitioner's business debt.

29. After a portion of Petitioner's business debt was paid off, the home was taken off the market. Petitioner was involved in the sale of and wind down of his business in Australia, however, there was a potential indebtedness owed to the Australian Tax Office (ATO). Because of this indebtedness, and other business debt, there was a possibility that Petitioner would need to file bankruptcy. Should he need to file a bankruptcy in Australia, he would not be permitted to leave Australia for three years.

30. Petitioner was dealing with the ATO and the business liquidator in [REDACTED] and was unable to leave Australia to relocate to Indianapolis at that time.

31. Respondent and Petitioner got into an argument regarding this issue of being unable to immediately relocate as Respondent desired.

32. When Respondent moved the children from their Australian home on or about [REDACTED] the Respondent and children left all clothing and personal items in the marital residence.

33. The habitual residence of the children prior to their moving to the United States on or about [REDACTED] was and is Australia, and the children are not habitual residents of the United States.

34. This Court has jurisdiction over this case pursuant to 22 U.S.C. Section 9003(a): "The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention". Venue is proper pursuant to 22 U.S.C. Section 9003, because, based upon information and belief at

the time of filing the petition, the children are residing at undisclosed locations unknown to Petitioner/Father in the vicinity of [REDACTED] Indiana.

35. Immediately preceding the children's moving from Australia, Petitioner was actually exercising his custodial rights, which included being involved in the physical, emotional and financial care of the children.

36. Petitioner did not consent to Respondent's actual moving of the children from Australia on or about [REDACTED]. Petitioner did not have knowledge that Respondent moved the children from Australia on or about [REDACTED]. Petitioner did not acquiesce to the removal of the children from Australia on or about [REDACTED].

37. Pursuant to Australian law, each parent is a joint guardian and has custody over the children. Respondent assumed a role of a sole guardian in moving the children from their place of habitual residence without Petitioner's consent or knowledge on or about [REDACTED] and located to the United States, thus depriving Petitioner of his rights as "joint guardian" and depriving him of custody of his children.

38. When Respondent moved the minor children on [REDACTED] [REDACTED] was age [REDACTED] was [REDACTED] years old. Pursuant to Article 4, the Convention shall cease to apply when the child attains the age of 16 years. [REDACTED] is [REDACTED] years of age and [REDACTED] is under the age of 16 and therefore the Convention applies to him.

39. Although Respondent testified that the children were dual citizens of Australia and the United States, Respondent failed to produce any documentary evidence to support that the children are citizens of any country other than Australia. Respondent did not produce a Form FS 240 (Petitioner Exhibit #26) substantiating dual citizenship.

40. Petitioner's Australian witnesses testified based on first-hand knowledge of Petitioner and Respondent and of Petitioner's relationship with his children from birth until their moving by Respondent on [REDACTED]

41. In Australia, prior to moving, both children loved their father, had a relationship with him, attended Church and school regularly, were routinely and regularly left in the care of their father alone when mother went to the U.S. to visit her parents or at other times.

42. Prior to moving, Respondent would leave the children in Australia with Petitioner while Respondent visited in the United States.

43. Immediately prior to taking the children to the United States, Respondent advised her pastor, [REDACTED] that she had never been abused nor that the Petitioner had ever been physically violent toward her. Pastor [REDACTED] observed a normal family relationship during the five years he has known the [REDACTED] family. Respondent had never exhibited fear of Petitioner. Pastor [REDACTED] and the church offer marriage counseling to its members.

44. Respondent did not mention to [REDACTED] (godmother), one of Respondent's best and closest friends in Australia who had known her since [REDACTED] that she was being verbally or physically abused or express any reservations about leaving the children alone with Petitioner in Australia.

45. [REDACTED] referred to as [REDACTED] by the children, has known Petitioner and Respondent for in excess of ten years; knows the family very well. [REDACTED] met at the [REDACTED] home each Wednesday evening for men's prayer and bible study and often visited on the weekends. [REDACTED] had many conversations with Respondent over

the years; Respondent never mentioned that she was verbally abused by Petitioner, or physically abused; Respondent never expressed any reservation about leaving [REDACTED] or [REDACTED] in Australia with Petitioner when she went to the United States to visit. [REDACTED] observed that the [REDACTED] family had a loving relationship with one another; [REDACTED] spoke lovingly about his father, never exhibited any fear of or anxiety or stress about his father.

46. Another one of Respondent's closest friends, [REDACTED] testified that over the years, she and Respondent discussed many personal topics. Never once in these discussions did Respondent mention domestic violence at the hands of Petitioner. [REDACTED] testified that Respondent left the children in Australia in [REDACTED] and came to the United States by herself.

47. The Petitioner and Respondent jointly raised a foster child, now an adult, [REDACTED] who has intimate knowledge of the Mother and Father and has testified by Affidavit in Support of Father's Application for Return of the Children.

48. [REDACTED] confirmed that the parties had, since the day of their wedding, planned to relocate to the U.S. but knew of no specific of the relocation plan. [REDACTED] did testify that Respondent and Petitioner adopted a foster-daughter, that they went to church together. Petitioner was a normal loving father and the children never expressed fearfulness of their father. [REDACTED] learned there was a family problem in 2015 from Respondent's brother, [REDACTED] and learned Respondent was in hiding in [REDACTED]

49. Another of Respondent's long-time friends, [REDACTED] testified that she knew the [REDACTED] family had planned to relocate to Indiana. In approximately

█ Respondent expressed to █ about an incident (children not present) during which Petitioner engaged in name-calling and foul language in telling Respondent to get out of the car. █ stated that Petitioner was verbally abusive on two occasions but that he was a good father to his children. Respondent never mentioned anything about physical violence to █

50. █ has known Respondent since middle school, and has known Petitioner since they married; knows Petitioner very well and knows their children. Petitioner loves his children.

51. On or about █ Respondent took █ to █ to help care for Respondent's mother, leaving █ in the care of Petitioner, her father. Respondent expressed no reservations about leaving █ alone with her father in Australia until Respondent's anticipated return in █

52. Respondent's stay in █ with Adam was extended to continue to care for her mother; Respondent and █ did not ultimately return to Australia until █ an absence from Australia for just over six months.

53. During her stay in █ with █ between █ and █ Respondent continued to communicate with Petitioner via email regarding family matters.

54. On Respondent's return to Australia with █ on █ Petitioner and Respondent engaged in discussions regarding relocating to Indiana immediately. The parties discussed and argued about this issue between █ and █ weekend end in █ Petitioner contends Respondent's Exhibit #R (transcript of a recording) is the argument he had with Respondent two days before

██████████ weekend (Respondent contends Exhibit #R was recorded on ██████████
██████████

55. Respondent requested Petitioner to leave the marital residence. Petitioner obliged and spent five nights at the ██████████ home and another two nights living in his car until he took up residence in his Church at the insistence of his Pastor.

56. Respondent left the marital residence on ██████████ and took the children to the home of ██████████ and ██████████ where they stayed for two or three days. During the children's and Respondent's time at the ██████████ home, Respondent did not disclose or mention anything to ██████████ about domestic violence, nor did Respondent or the children express any fearfulness about Petitioner; they spent the day watching videos.

57. During the two or three days Respondent stayed with ██████████ they engaged in numerous conversations but domestic violence was not mentioned.

58. ██████████ is a registered nurse and trained to identify signs of domestic violence; different signs, social, psychological and medical. ██████████ found that Petitioner and Respondent engaged in normal family argument, ██████████ was confident there was no domestic violence.

59. Respondent and the children returned to the marital home vacated by Petitioner, but left their passports with the ██████████

60. ██████████ a friend and former Church member, knew Respondent for about 5 years; they met in ██████████ Paterson also got to know Petitioner and their children. ██████████ and her husband, ██████████ knew of the ██████████ plan to relocate and in ██████████ had entertained leasing their house. ██████████ based on her ██████████

and [REDACTED] conversations with Respondent and the recording of their [REDACTED] recording, found Petitioner to be controlling and verbally abusive; recommended that Respondent seek domestic violence counseling, found Respondent to be fearful of Petitioner and afraid to stay in Australia.

61. [REDACTED] testified there was never any physical abuse, but that Respondent was fearful of Petitioner.

62. [REDACTED] also testified to the many resources available in the [REDACTED] area, including [REDACTED] Domestic Violence Agency, Women's Legal Center which help women with domestic violence counseling, [REDACTED] Family of [REDACTED] (domestic violence services); Paterson did not tell Respondent where to go for help, but acknowledged that [REDACTED] with a population of [REDACTED] people have many free sources for domestic violence victims/women; also there are many hospitals, psychologists social workers available for free in [REDACTED]

63. [REDACTED] husband, [REDACTED] assisted Respondent around [REDACTED] in transporting Respondent to various locations. [REDACTED] testified that [REDACTED] told him she was in fear of her safety from Petitioner; [REDACTED] took Petitioner to the police station, but Respondent did not obtain an AVO (protective order), she received no assistance from the police. [REDACTED] took Respondent to a domestic violence agency; [REDACTED] told Respondent she had to make a choice; they returned to the [REDACTED] home and Respondent got the children's and her passports, and left Australia for the United States.

64. [REDACTED] observed the interaction of Petitioner with his children prior to [REDACTED] observed the children love their father and that Petitioner is a good father.

65. Respondent moved the children from Australia on [REDACTED] and went to [REDACTED] and stayed with her long-time friend [REDACTED]. Respondent and the children stayed with [REDACTED] for approximately four weeks, but did not tell Petitioner where they were located. In [REDACTED] Respondent told [REDACTED] that she and Petitioner were not getting along, that they were “fighting”, things were “being thrown”, but reported no physical events, only verbal.

66. After four weeks, Respondent and the children went to [REDACTED] Indiana and took up residence with her parents.

67. During numerous conversations with [REDACTED] Respondent admitted there was never any physical abuse by Petitioner in Australia, no physical or sexual abuse of the children; Respondent told [REDACTED] that she intended to hide the children from Petitioner for a long time; that Respondent became aware of Petitioner’s intent to file a Hague case by getting into his email; Respondent has an electronic device on her computer changing her IP address, thereby avoiding locating the source of the computer.

68. After the children were moved, Petitioner did not know where his children were located, did not hear from his children for months, but he continued to send emails to Respondent; on [REDACTED] Petitioner was permitted a short phone call to his son on his birthday.

69. Since moving the minor children from Australia on [REDACTED] the Mother has prohibited virtually all contact by Petitioner with his son and daughter; Petitioner’s telephonic contact with his son and daughter was either blocked or not permitted on many attempts to make contact with the minor children; Petitioner was

permitted one brief telephone contact with his son on his birthday, [REDACTED] for merely a few minutes, then Mother disconnected the call. Further, except for a few emails which state her refusal to return to Australia, Mother has virtually refused to permit Petitioner any meaningful contact with the minor children.

70. In [REDACTED] Petitioner came to [REDACTED] Indiana and attempted to see his minor children believing they were residing at Petitioner's father-in-law's home in [REDACTED]. The nearly futile attempt to see his minor children and make a genuine request that Respondent return home to Australia with him, resulted in Petitioner receiving a brief hug from his son and a short conversation, after which Respondent learned that Petitioner was in her father's home and she became highly agitated, went to the roof with their son (Petitioner's Exhibit #4) and called 9-1-1 for the police accusing her father of abuse and domestic violence. Petitioner remained at his father-in-law's home until the police arrived. Respondent's call to the Indianapolis Police Department was to make a report of alleged domestic violence against her father and Petitioner. When the police arrived, Petitioner's father-in-law confirmed that it was Respondent who was giving a narrative of events. The police made no report; Petitioner was encouraged by the police to leave the residence. Petitioner shortly thereafter returned to Australia, without seeing his daughter at all, with a brief hug from his son, and without his family.

71. [REDACTED] Respondent's brother, overheard a phone conversation in [REDACTED] prior to the parties' marriage during which Petitioner engaged in name-calling at the pool while Respondent was in Australia; [REDACTED] also became aware only by way of Respondent's report of Respondent locking herself in a room in [REDACTED] to get away from Petitioner, the [REDACTED] incident, the Lego show incident [REDACTED] an incident

in Easter (sometime in [REDACTED] where the children were not present. [REDACTED] learned of this only through Respondent.

72. Respondent testified about thirteen (13) alleged incidents of domestic violence perpetrated by Petitioner between 1999-2015 [REDACTED]

73. [REDACTED] explained during his trial testimony as to why the Respondent would continue in her relationship with the Petitioner after these first few domestic violence episodes, stating that the Respondent suffers from Accommodation Syndrome in which the victim starts to believe in some ways he or she is deserving of the abuse, and may actually go to the extent of protecting their abuser by sometimes covering up the situation and/or failing to make reports of the situation, and/or even lying about the occasion.

74. Continuing into the marriage, Petitioner was verbally abusive and controlling of the Respondent, but went to extreme and intentional steps to hide this dark side from their close friends and church community; as reflected in Petitioner's trial testimony, with such narcissism symptoms and domestic violence propensities, did not even acknowledge or remember such; as was explained regarding the clinical reason for distorted or lack of memory of Petitioner's violence by [REDACTED]

75. The Court finds credible Respondent's testimony regarding Petitioner's continuing pattern of physical and psychological abuse of the Respondent and the Children throughout the marriage (albeit incomplete according to [REDACTED] because she is unable to recount same fully at this time as she suffers from Post-Traumatic Stress Disorder resulting from Petitioner's assaults over the years), reflected in the events as set forth in the Respondent's trial testimony.

76. The credibility of Respondent and of her testimony is given significant weight by the recorded altercation in the kitchen whereby Petitioner reluctantly admitted at trial that he was verbally abusive to Respondent (and by clear inference the Children), but minimized his actions as a “bad habit” of swearing.

77. [REDACTED] the children’s pediatrician in Indianapolis, first saw the children on [REDACTED] diagnosed the children with “situational depression” and having stress factors. The source of depression, according to [REDACTED] was the loss of the family unit.

78. [REDACTED] ordered anti-depressant medications for both children, increasing the dosage and changing the medication from time to time, to deal with their situational depression; [REDACTED] did not obtain the children’s medical records from Australia; he did not talk with Petitioner before prescribing medications for the children.

79. [REDACTED] testimony was not refuted by another doctor, therefore, the returning the minor children to Petitioner and to their place of habitual residence in [REDACTED] Australia is not warranted. The minor children will be subjected to “a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”

80. The Court finds the Children were exposed to this physical and psychological abuse of the Respondent (as well as the abuse inflicted upon them by the Petitioner), captured through neutral interviews of the Children by [REDACTED] (to whom Petitioner also joined as an expert to evaluate the family), as succinctly set out in his direct examination.

81. In the family's final years in Australia together, Petitioner's company became insolvent; Respondent and Petitioner mortgaged the marital home to pay off some of the Petitioner's business debt; Petitioner was unemployed for a period of time, but obtained a new job.

82. Given his business setbacks and the family plan, the Petitioner saw the move back to the United States as a "new start" of sorts when he discussed it operationally with Respondent in [REDACTED]

83. Indeed, Petitioner took steps toward his job search in the United States in order to secure employment, if possible, with implementation of the family plan. These steps included connecting with Respondent's friends who could help him obtain a job, including [REDACTED] who had extensive knowledge of this family plan to return to the United States and met with Petitioner to help him obtain a job

84. This decision to move based upon the [REDACTED] formal agreement to do so actually occurred while Respondent and one of the Children were in the United States in late [REDACTED] and during the first few months of [REDACTED] for the purpose of checking on Respondent's parents, and at which time Respondent observed the rapid decline of her mother. Respondent's decision to travel to the United States was made with the understanding that the other Child would remain in Australia with her father.

85. Given the rapidly declining state of Respondent's Mother, Respondent and Petitioner agreed to act on the family plan and Respondent then began to make arrangements with Petitioner in Australia to repair the home in preparation for the sale of it.

86. While still in Indiana, Respondent began implementing a plan to store items in the home for ultimate shipment to the United States and assisted Petitioner in beginning to make the necessary repairs to the home so same could be sold for this move, and so he could get a job.

87. Respondent and her son returned to Australia to complete the move, but Petitioner inexplicably delayed obtaining the shipping container; but, it is clear Petitioner was packing the family for the move before the Respondent returned, and this continued when Respondent and her son returned, as Respondent testified and congruous with Petitioner's agreement to move reflected in his confirmations to individuals like [REDACTED] and [REDACTED] as well as his testimony about his "new start" in the United States.

88. [REDACTED] Respondent's friend whom she has known for thirty (30) years, a structural forensic engineer, testified as to his efforts to help Petitioner land a good job in the United States in [REDACTED] corresponding with the planned move.

89. In [REDACTED] LinkedIn message to [REDACTED] on [REDACTED] specifically acknowledged the execution of the family plan to relocate: "*The plan is that [REDACTED] head back to the US in a month or so and [REDACTED] and I join them a few months later when everything is settled here.*" (Respondent's Exhibit "I"). (emphasis added).

90. The Court also notes that after multiple days of trial during an attorney conference, namely on [REDACTED] the Court returned to find Petitioner requesting to delay the trial on his return request of the children, all to go to mediation to determine how he would effectuate the planned move, placed on the record.

91. The rapid decline of [REDACTED] was well-known, as was Petitioner's agreement to move to the United States beginning [REDACTED] as noted by [REDACTED] [REDACTED] trial testimony and contingency plan and the case of delay in Respondent's and Petitioner's move to the family estate.

92. When Respondent and her son returned in [REDACTED] Petitioner had or began to delay and stalled on the agreed upon move and the packing in progress, creating a pressure cooker situation in the home that caused Respondent and the Children to have to leave out of concern for their safety and stay with acquaintances, ultimately seeking police help for protection from Petitioner.

93. The flash-point occurred on [REDACTED] where, among other things, Petitioner told Respondent to leave the country and take her "bitch daughter" with her and leave Australia, as reflected in Respondent's testimony.

94. As with [REDACTED] and consistent with [REDACTED] testimony about the extreme steps domestic batterers take to shield themselves from being discovered, the Petitioner also made it known to [REDACTED] (husband) that he had better not testify against him as [REDACTED] wife did in a prior day of trial testimony.

95. Respondent and the Children ultimately settled in the family estate and her parent's home in [REDACTED] with Respondent providing the care for the Children through the time of trial.

96. [REDACTED] went on to connect narcissistic traits with individuals like the Petitioner who are also domestic batterers; who go undetected regarding both because of the public image they create; and also because domestic batterers may not even remember, or acutely remember domestic abuse.

97. The Court finds credible [REDACTED] testimony that Respondent is suffering from acute post-traumatic stress disorder, consistent with his forensic investigation and his conclusion it was likely caused by physical and psychological violence of her by the acts and behaviors of the Petitioner.

98. Under the totality of the forensic interviews, psychological testing, and collateral contacts (such as [REDACTED] addressed the long-term consequences on the Respondent and the Children of the Petitioner's physical and psychological abuse would continue.

99. From an actual impact on the Children of the physical and psychological abuse suffered solely by the Respondent, [REDACTED] testified as to the impact: "Both children report frequent occasions where Father has lost his temper, screamed, and yelled in ways that have been terrifying to them. That's why the son goes to his closet and hides sometimes. So, these are the kinds of behaviors that have occurred from Father with the Children, separate and apart from anything they've observed with Mother."

100. As it relates to Petitioner's ability to acknowledge his narcissism and pattern of domestic violence and understanding of his actions against Respondent and the Children and to perhaps try to manage these behaviors, [REDACTED] painted a bleak picture.

101. In furtherance of this view, [REDACTED] did not say that the Children should not see their Father again or that they did not love him. Rather, he maintained that, for there to be healthy contact, it would have to be a product long-term therapy for the Petitioner.

102. In being asked about his professional opinion as to the impact of return of the Children to Australia from a psychological and physical health standpoint, [REDACTED] [REDACTED] proffered and explained the anticipated significant and substantial short-term and long-term outcomes.

103. When asked as to the ultimate psychological question that impacts the ultimate legal issue before this Court regarding issuance of a Return Order, [REDACTED] [REDACTED] testimony was powerful and unqualified in that he believed that if the children were returned to Australia it would put them psychologically at a grave risk of harm or in an intolerable situation.

104. That Father seeks \$45,386.92 in legal fees associated with this Hague Case. (Petitioner's Exhibit "31", Fee Affidavit of [REDACTED] Petitioner also submitted a travel expenses Affidavit totaling \$14,580.20, as well as costs he paid to [REDACTED] for the evaluation. (Petitioner's Exhibit "30").

105. That Mother seeks \$111,295.39 in legal fees associated with this Hague Case. (Respondent's Exhibit "N").

CONCLUSIONS OF LAW

1. The Respondent requested Special Findings in this Hague Case pursuant to Indiana Rule of Trial Procedure 52(A) (C.C.S.).

2. This action for the return of minor children to Australia was filed by Petitioner pursuant to the Convention on the Civil Aspects of International Child Abduction (the "Hague Convention" or the "Convention") and the International Child Abduction Remedies Act (ICARA"). The Hague Convention came into effect in the

United States of America on July 1, 1988, and has been ratified between, among other Contracting States, the United States of America and Australia.

3. This Court has subject matter jurisdiction over this case pursuant to 22 U.S.C. Section 9003(a): “The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention”. Venue is proper pursuant to 22 U.S.C. Section 9003, because Counsel for Respondent has acknowledged receipt of the Summons and Petition, filed an Appearance pursuant to the Indiana Trial Rules and has filed a responsive pleading, together with affirmative defenses, with the Court. The Court has subject matter jurisdiction over this action and personal jurisdiction of the parties; venue is proper herein.

4. The purpose of habitual residence is “to identify the place where the children are settled and where recent information about the quality of life is available.” Further, “a child will be found to be habitually resident in a country if he or she has been living there for a sufficient period of time”, including “geographic stability” and “adequate duration.” *Koch v. Koch*, 405 F.3d 703, 709 (7th Cir. 2006). . Any plan to move to the U.S. at some time in the future was purely aspirational and never came to pass. See *In re Polson*, 578 F. Supp. 2d 1064, 1070 (SD Illinois 2008).

5. “Habitual residence is the place where he [the child]....has been physically present for a time sufficient for acclimatization and which has a degree of settled purpose from the child’s perspective.” *Feder v. Feder-Evans*, 63 F.3d 217, 223-24 (3rd Cir. 1995).

6. “The court must look back in time, not forward, regarding the habitual (or ordinary) place of residence.” Further, “a parent cannot create a new habitual residence

by wrongfully removing and sequestering a child.” *Miller v. Miller*, 240 F.3d, 392, 400-401 (4th Cir. 2001) and *Kijowska v. Haines*, 463 F.3d. 583, 586-589 (7th Cir. 2006).

7. The Father and Mother have rights of custody, visitation or relation to his minor children as established by Australian law. Petitioner is the Father of the minor children, and while there is no court order or parenting plan which modifies or amends Father’s parental responsibility for the minor children, pursuant to Australian law, Petitioner shares custody rights of the children with the Mother, under the *Australia Family Law Act 1975*, Sections 111B(4)(a) and 61C. Further, such shared parental rights under Australian law relating to the minor children’s care include the right to determine the children’s place of residence *Family Law (Child Abduction Convention) Regulations 1986, Regulation 4*.

8. Under Australian law, in the absence of any orders of the Court, each parent is a joint guardian and has custody rights over the children. Petitioner was actually exercising his custody rights by operation of Australian law at the time the children were moved from Australia, as set forth in *Sealed Appellant v. Sealed Appellee*, 394 F.3d 338, 343-44 (5th Cir. 2004).

9. [REDACTED] date of birth [REDACTED] is [REDACTED] years old; [REDACTED] date of birth [REDACTED] is [REDACTED] years old. Article 4 of the Convention states: “The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.” The Convention continues to apply to [REDACTED]

10. Petitioner made application to the Central Authorities of Australia for return of the minor children on or about [REDACTED]. The minor children were moved from their place of habitual residence in [REDACTED] Australia on [REDACTED]. Petitioner, through Counsel, filed his Verified Petition for Return of Minor Children with the [REDACTED] (Indiana) Superior Court on [REDACTED] accordingly, proceedings were commenced with the filing of this action within one year of the moving of the minor children.

11. As her first affirmative defense, Respondent contends that there is a grave risk that returning the minor children to Australia “would expose the child(ren) to physical or psychological harm or otherwise place the child(ren) in an intolerable situation.” The Court has found merit to this defense.

12. 22 U.S.C. § 9003(e)(2) requires that this “grave risk” defense be established by “clear and convincing evidence.” The court must distinguish between “risk of harm”, “serious risk of harm” and “grave risk of harm”. The gravity of the risk involves both probability of harm and the magnitude of harm if the probability materializes. See *Van De Sande v. Van De Sande*, 431 F.3d 567, 570 (7th Cir. 2005). The physical or psychological harm must be “a great deal more than minimal.” *In re D.D.*, 440 F. Supp. 2d 1283, 1298 (M.D. Fla. 2006). The child must be at “grave risk for serious abuse, neglect or ‘extraordinary emotional dependence’ where the country of habitual residence could provide a child with adequate protection.” *Friedrich v. Friedrich*, 78 F.3d 1060, 1069 (Cir. 1996).

13. Actual grave risk of physical or psychological harm or an intolerable situation must rise to a level that includes generally imminent danger. *Simcox v. Simcox*,

511 F.3d 594 (6th Cir. 2007). In *Reves Olguin v. Cruz Santana*, No. 03 CV 6299 (JG), 2005 WL 67094 (E.D.N.Y. Jan. 13, 2005), the court found a grave risk of psychological harm if “the child would experience ‘suicidal impulses generated by his prior trauma’ of witnessing his father beat his mother, as well as his own experience of abuse.”

14. An actual “intolerable situation” does not “encompass return to a home where money is in short supply, or where educational or other opportunities are more limited than in the requested State.” *Friedrich* at 1068-69 (6th Cir. 1996). In *Mendez Lynch v. Mendez Lynch*, 220 F. Supp. 2d 1347, 1365-66 (M.D. Fla. 2002), even though there was great economic and governmental turmoil in the home country of Argentina, the home country would be tolerable because:

there were no demonstrations in the street near [the petitioner’s home]...or closed schools due to strikes...[T]his alone or in combination with the other credible evidence in this case does not come within the grave risk exception.

15. In *Whallon v. Lynn*, 230 F.3d 450, 460 (1st Cir. 2000), a shoving incident and verbal abuse were not enough. Also, evidence of verbal abuse was insufficient to trigger the defense of physical and psychological harm. *In re D.D.* at 1299. In *Altamiranda Vale v. Avila*, 538 F.3d 581, 587 (7th Cir. 2008).

16. As her second affirmative defense, Respondent contends that her removal of the children from Australia, their habitual place of residence, was not “wrongful” as defined in the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Respondent attempts to justify her removal of the children from their habitual place of residence by stating that it was “not wrongful and that Petitioner was fully aware that Petitioner, Respondent, ██████████ and ██████████ would *sometime in the future*, (notation and emphasis added) be moving permanently to the United States, as

they had discussed and planned to move to care for Respondent's ailing parents." The Court finds no merit with this defense.

17. Article 26 of the Hague Convention states that the judicial authority ordering a return of the child may direct that the person who removed the child (Respondent herein) pay necessary expenses of the applicant (Petitioner herein), including travel expenses, costs for locating the child, costs of legal representation and costs of return of the child. While a reading of this article implies that an award of such expenses is discretionary, the ICARA uses the mandatory language that the court **shall** order the respondent to pay such necessary expenses of the applicant. 2 U.S.C. § 9007(b)(3).

18. Respondent proved, by clear and convincing evidence, the narrow exceptions which may be considered under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

19. The Court declines to assess attorney fees and costs to the Petitioner or Respondent.

JUDGMENT

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED as follows:

1. The Verified Petition for Return of the Minor Children is hereby DENIED.

2. Respondent's defenses as raised herein are GRANTED in part and DENIED in part.

3. The children, [REDACTED] date of birth [REDACTED]
and [REDACTED] date of birth [REDACTED] shall remain in the care
and possession of Respondent, [REDACTED]

SO ORDERED this [REDACTED] at the hour of [REDACTED]

[REDACTED]
Judge, [REDACTED]

Copies to:

[REDACTED]

Bryan L. Ciyou
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